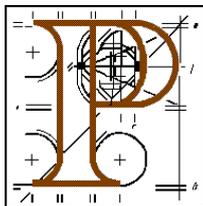


An Bord Pleanála



Inspector's Report

Site Address: Mill Road, Kanturk, Co. Cork.

Proposal: 16 classroom primary school and all ancillary site development works.

Planning Application

Planning Authority: Cork County Council

Planning Authority Reg. Ref.: 15/4230

Applicants: The Minister for Education and Skills

Type of Application: Permission

Planning Authority Decision: Grant

Planning Appeal

Appellant: The Minister for Education and Skills

Type of Appeal: **1st party –v- condition**

Observers: None

Date of Site Inspection: 17th January 2016

Inspector: G. Ryan

1.0 INTRODUCTION

- 1.1 This is a first party appeal against a condition of the planning authority's decision to grant permission for a school. The condition is a 'condition precedent' relating to the provision of a new east-west road adjacent to the school site which would improve access and permeability.
- 1.2 The provision of this road is the responsibility of the County Council. The planning authority contend that it is necessary to provide this road in advance of the school opening, whereas the applicant/appellant contend that the road can be completed at a later date.

2.0 SITE

- 2.1 The site is a greenfield site within the footprint of the town of Kanturk in North County Cork. The town centre is located to the northeast. The site falls from the west to the east. The site has a stated area of 2.389ha.
- 2.2 Access to the site from the town is via Percival Street, which runs west of the town centre, uphill. A left turn onto Mill Road at a T junction provides access to the site's road frontage.
- 2.3 There are informal pedestrian paths through the site from west to east, crossing an embankment on the line of an old railway at the site's eastern boundary. These informal paths link with Market Place, which links to Bluepool Upper and onward to Strand Street. There is also access from Market Place to Watergate Street through a car park.
- 2.4 There are two notable banks of land to the north and northeast of the site at an old bakery and mart site respectively. A residential area lies to the south and adjacent to the site.

3.0 PROPOSAL

3.1 OVERVIEW OF APPLICATION

- 3.1.1 The proposed development is for a 16 classroom school and associated facilities, including the provision of an access road along the site's northern boundary.
- 3.1.2 The gross floor area of the building(s) on site is 3,318m².
- 3.1.3 The applicant is not the owner of the site, but is contracted to purchase the site. A letter of consent from the owner is included with the application.

- 3.1.4 As per the application form, a new water main is to be laid along a new link road from Mill Road to Market Place/Bluepool Upper. A new connection is to be made to the foul sewer along the railway line. Surface water is to be attenuated on site, prior to discharge to the public sewer at the Entrance to Market Place.

3.2 ARCHITECTURAL PLANNING REPORT

- 3.2.1 This report from the OPW sets out the background to the proposed development,
- 3.2.2 I note that drawing P001 (Section 8.0) indicates that the 'red line' subject site sits within a larger landholding of the landowner 'One Fifty One Capital Limited' and that the lands to the northeast, between the school site and the existing road at Market Place are owned by Kanturk Co-Operative Mart Limited. The entirety of the school site and the entirety of the U-02 road are included in the 'red line' site, including parts of the Mart lands.
- 3.2.3 Section 9.0 of the report consists of an 'Ecological Screening Report' by Natura Environmental Consultants, which concludes that the site is of a low ecological value

3.3 TRAFFIC IMPACT ASSESSMENT

- 3.3.1 This TIA by DBFL consulting provides a number of key stages, namely Site Audit, Traffic Counts, Trip Generation, Trip Distribution, Network Impact, and Network Assessment. Some relevant points are as follows.
- 3.3.2 The pedestrian link from the site, along Mill Street to Percival Street is provided for by footpaths along its entire length on one side, but involves a crossing of the road at the site's northwestern corner.
- 3.3.3 There are no dedicated cycle facilities in the area. There is a local bus service, although the timetable and frequency is such that it would be unlikely to be used by school children.
- 3.3.4 The local road network is subject to 50km/h speed restrictions.
- 3.3.5 All car based trips from within Kanturk are expected to travel via Percival Street until such time as the local authorities implement Roads Objective U-02, linking Mill Road to Bluepool Upper.
- 3.3.6 The proposed development would result in the physical delivery of the first 75m of the western section of local roads objective U-02. The remaining 340m of the road would be implemented by others at some time in the future.
- 3.3.7 There is no fixed date regarding the delivery of U-02. Accordingly, DBFL have modelled for Scenario A (U-02 not implemented) and Scenario B (U-02 fully implemented). Scenario B incorporates T-02

[town centre expansion] not implemented by 2032, while Scenario C incorporates T-02 being fully built and occupied (along with the provision of U-02).

- 3.3.8 Modelling at the proposed new Mill Road T-junction shows that under all scenarios, the maximum RFC (ratio of flow to capacity) for any arm of the junction is 0.596, which would result in a queue of 1.44 vehicles and a delay of 21.3 seconds. This would occur on the B-A arm (New Road/Mill Road North).
- 3.3.9 The report concludes that the proposed development would have a minimal impact on the local transport, but nevertheless suggests a range of 'mobility management' measures that could possibly be implemented (Section 5.2 of TIA)

3.4 SERVICES REPORT

- 3.4.1 This report by PHM consulting refers to the surface water drainage and foul drainage for the proposed development. An underwater storage tank for stormwater of 650m³ is proposed.

3.5 FURTHER INFORMATION REQUEST AND RESPONSE

- 3.5.1 Prior to issuing a decision, the planning authority sought further information on 10 points. However, all these items refer to matters other than those raised in the appeal. As per my determination at 10.1 below, and the restrictions imposed under S139, I will not be drawing on this information in my assessment, and for that reason, I will not summarise this aspect of the appeal file here.

4.0 <u>SUMMARY OF REPORTS TO THE PLANNING AUTHORITY</u>
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4.1 DEPARTMENTAL REPORTS AND EXTERNAL CONSULTEES

4.1.1 Area Engineer's Report

- 4.1.2 This report, issued in advance of the further information request highlights concerns regarding the link road, U-02, in that it is of critical importance to the public access to and from the development. This road is subject to obtaining the required funding.
- 4.1.3 There is no continuous footpath along Mill Street.
- 4.1.4 Stormwater disposal is dependent on Cork County Council upgrading the existing 225mm pipe from Upper Bluepool to Strand Street.
- #### **4.1.5 Other reports and submissions from consultees**
- 4.1.6 A number of other departmental reports are on file, but do not fall under the terms of what is to be considered under this S139 appeal,

in my opinion (see Section 10.1 below). These reports pre- and post-date the further information request, and are from the following sections.

- Public Lighting Report
- Irish Water
- Department of Arts, Heritage, and the Gaeltacht
- Fire Officer
- Heritage Officer
- Archaeologist
- Ecologist

4.2 REPRESENTATIONS

4.2.1 As per my determination at 10.1 below, and the restrictions imposed under S139, I will not be drawing on this aspect of the appeal file in my assessment.

4.3 CASE PLANNING OFFICERS REPORT

4.3.1 This report was issued in advance of the further information request.

4.3.2 Items discussed at pre-planning stage with the applicant included.

- Access to the site and road construction to the east of the site, connecting Mill Road to Market Road.
- Road A-B to be built by applicant
- Road B-C condition by local authority as part of planning, and contribution to apply.
- Road C-F to be acquired and built by the County Council.
- Road B-C-F – site of temporary footpath.
- Storm water and drainage to follow route of U-02.

4.3.3 Notes that the proposed development is smaller than that refused permission under PA. Ref. 12/5709.

4.3.4 The build-out of U-02 would enable adequate vehicular linkages and cycle and pedestrian access to the site, and allow the development to achieve good connectivity with the town centre, and to overcome one of the previous refusal reasons. The site plans only make partial provision of the road. The 340m section to the east is a 'future road

by others'. No other details have been submitted in relation to the build-out of this road.

- 4.3.5 It is the planning officer's understanding that the lands forming the site of the access road are in the process of being purchased by Cork County Council. A special contribution would be required for the proposed development.
- 4.3.6 While the site red line boundary would enable U-02 to be delivered, further details regarding the ownership of these lands should be provided, in order that any conditions attached to the permission would be enforceable.
- 4.3.7 Recommends further information.

4.4 SENIOR EXECUTIVE PLANNER'S FIRST REPORT

- 4.4.1 This report was issued in advance of the further information request.
- 4.4.2 It is the SEP's understanding that at pre-planning stage, the issue of a special contribution towards U-02 was discussed, and that the applicants were willing to pay same. This may involve the provision of a footpath from Upper Bluepool in the first instance, with the local access road being developed at a later date.
- 4.4.3 The timeframe for delivery of the road is unclear, but the provision of a road would address the previous refusal.

4.5 SENIOR PLANNER'S REPORT

- 4.5.1 This report was issued following the receipt of further information and consists of a memo to the Case Planner.
- 4.5.2 It states that the application was discussed with the Divisional Manager and the Director of Planning, specifically in relation to the road link. The link between the school site and Bluepool is an essential requirement of this development and Cork County Council will be providing this. The timeframe for delivery is unclear. The provision of a pedestrian connection to Bluepool is a minimum requirement. A special contribution is to be levied in respect of the provision of the road.
- 4.5.3 Land is being transferred to Cork County Council to complete the road. The Senior Planner understands that negotiations are essentially complete, but that final contracts have not been signed.
- 4.5.4 A condition needs to be included tying the delivery of the school to the provision of the road and/or pedestrian link. [suggests wording as per what would become Condition 2 of the planning authority's decision]

4.6 SENIOR EXECUTIVE PLANNER'S SECOND REPORT

- 4.6.1 This report was issued following the receipt of further information.
- 4.6.2 This report reflects the contents of the Senior Planner's report above on the issue of Road U-02.
- 4.6.3 Having regard to the planning history of the site and most particularly having regard to the reasons for refusal associated with the most recent application on this site, it is considered appropriate to include a condition specifying that the school would not become operational until such time as the new road and/or footpath linking the school site with Upper Bluepool is available for use by students/staff/visitors to the school.
- 4.6.4 No development contributions apply. A special contribution of €100,000 is to be levied in respect of road U-02.
- 4.6.5 Recommends a grant of permission.

5.0 PLANNING AUTHORITY DECISION

The planning authority decided to grant permission subject to 22 conditions. Condition 2, which is the subject of the current appeal, was as follows.

2. *The primary school permitted herein shall not become operational until such time as:*
- (a) a road and/or footpath linking the site with Upper Bluepool (route identified as U-02 in the Local Area Plan Zoning Map), is in place, or such other timeframe as agreed with the Planning Authority. This link is to be developed by the local authority.*
 - (b) the surface water sewer and outfall arrangements, as indicated in the plans and particulars submitted on 15/09/15 are in place, to the satisfaction of the Planning Authority.*

Other conditions of note are as follows.

3. *Within 12 months of the opening of the school a Mobility Management Plan shall be prepared and submitted to the Planning Authority for agreement.*
22. *At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €100000.00 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out, for the provision of a road and footpath linking the school to Upper Bluepool. The payment of the said contribution shall be subject to the following: :*

(a) where the works in question—

(i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment),

(ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment), or

(iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council.

(b) Where under subparagraphs (ii) or (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

(c) payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.

6.0 HISTORY

PA Ref. 12/05709 – Permission refused for a 24-classroom¹ school on this site for two reasons, as follows.

- 1. The proposed development does not make provision for adequate vehicular linkages or pedestrian access to the site, as required in the Kanturk Area Electoral Area Local Area Plan 2011 and the proposed single access route to the site from the town centre does not support sustainable travel to the site. Accordingly the proposed development would be contrary to public safety by reason of inadequate pedestrian access and facilities, contrary to the Local Area Plan 2011 and would also be contrary to the proper planning and sustainable development of the area.*
- 2. On the basis of the information submitted to the PA is not satisfied that the surface water disposal arrangements proposed will ensure that the site will be adequately drained and avoid surfaced water flooding. Furthermore the proposal does not adequately address the development objective R-04 of the Local Area Plan 2011, and would be contrary to the proper planning and sustainable development of the area.*

¹ The current proposal is for 16 classrooms

The application form refers to a pre-planning meeting held on 27th January 2014.

7.0 POLICY

7.1 KANTURK ELECTORAL AREA LOCAL AREA PLAN 2011²

The site is zoned 'Residential', with the 'mart' site to the east of the old rail line zoned 'Town Centre/Neighbourhood Centre.

Under the 'Education' section of the plan, Section 2.2.11 states that

Kanturk currently has two Secondary Schools and two National Schools. It is considered that future population growth will require the construction of a single large National School.

A number of specific objectives are of relevance to the subject appeal, namely

- R-04 [applying to the subject site specifically] *Medium B density residential development with the option for the development of a primary school on this site. Layout to make provision for road reservation (U-02) along northern edge of site and ensure connectivity with town centre development to the northeast and provision for amenity walk to east. Residential development to include a mixture of house types and sizes. This area is close to the Blackwater River Special Area of Conservation. Development proposals will be required to provide adequate storm water attenuation and SUDS. Development proposals here are likely to require the provision of an ecological impact assessment report (Natura Impact Statement) in accordance with the requirements of the Habitats Directive and may only proceed where it can be shown that they will not have significant negative impact on the SAC.*
- U-02 *Proposed local access road. [shown along the alignment of the road that is the subject of the current appeal, linking Mill Road to Market Place / Upper Bluepool]...*
- U-03 *Provide new downstream river crossing [linking Bluepool Lower to the east side of the riverbank, providing a 2nd crossing point]...*
- U-05 *Develop and maintain pedestrian walk along Percival Street along old railway line [adjacent to the site's eastern boundary] and along bank of stream through scenic area....*
- T-02 [indicated roughly on the site of the Mart lands to the east of the old rail line from the subject site] *Town centre expansion. Provide new road to Percival Street connecting with existing relief road serving Strand Street and high quality pedestrian linkages to residential / school lands and amenity walk to the west...*

² The edition available online is titled 'Second Edition January 2015'

7.2 DEVELOPMENT MANAGEMENT GUIDELINES FOR PLANNING AUTHORITIES

Produced by the DoEHLG in 2007, these guidelines provide useful advice in the area of planning conditions, which is of specific relevance in this instance. The following excerpts are cited in the appeal. I have highlighted in bold areas that are specifically quoted, and omitted by way of “...” any sections that are not of relevance to the appeal.

7.3.5 Conditions should be reasonable

A condition may be so unreasonable that it would be in danger of rejection by the Courts. ... Again, it may be unreasonable to make a permission subject to a condition which has the effect of deferring the development for a very long period, by requiring, for example, that the permitted development should not be carried out until a sewerage scheme for the area - which may only be at the preliminary design stage - has been completed. If the development is genuinely premature, the application ought to be refused. A condition that requires a developer to carry out additional works may be reasonable but the provisions of section 34(4)(m) of the Planning Act may come into play in some cases where such a condition is attached. Section 34(4)(m) of the Act allows for planning authorities to impose conditions to require a developer to carry out additional works, such as the provision of roads, traffic calming measures, open spaces, car parks, sewers, watermains or drains, facilities for the collection or storage of recyclable materials and other public facilities in excess of the immediate needs of the proposed development, subject to the local authority paying for the cost of the additional works and taking them in charge or otherwise entering into an agreement with the applicant with respect to the provision of those public facilities. If such a condition is attached the planning authority will be liable for the costs of the services over and above the requirements of the development.

In other cases, a useful test of reasonableness may be to consider whether a proposed condition can be complied with by the developer without encroachment on land that he or she does not control, or without otherwise obtaining the consent of some other party whose interests may not coincide with his/hers.

7.11 Conditions requiring the ceding of land

*Conditions should not be attached to planning permissions requiring land to be ceded to the local authority for road widening or other purposes, nor should conditions require applicants to allow the creation of public rights-of-way, other than such access roads as are considered a necessary part of the development, or to agree to transfer part of their land to some third party as, say, the site for a school or a church. Conditions of this sort are not lawful. It is in order to require a developer to reserve land free of any development in order, for example, to permit the implementation of a road improvement proposal, or to reserve land as a site for a school or other community facility. **It is not lawful, however, to require by condition a***

transfer of an interest in land to the local authority or other person/body.

Elements of “planning gain” – not strictly required as part of the development, but of benefit to the public (e.g. transfer of specified land or buildings for public use) - may be accepted as part of a permitted development. (In such cases, it may be appropriate to refer in the decision to specific application documents that set out the offer). However, it is important to ensure that the decision whether to grant or refuse planning permission is not contingent on an offer of planning gain.

8.0 GROUND OF APPEAL

- 8.1.1 The 1st party appeal against a condition was submitted by the Office of Public Works (OPW) on behalf of the applicant, the Minister of Education and Skills.
- 8.1.2 The applicant is appealing Condition 2 of the planning authority’s decision [See Section 5.0 above for text]. The applicant contends that this condition is unreasonable and unenforceable.
- 8.1.3 It is not appropriate to refer to lands outside the control of the applicant, and where the co-operation of a 3rd party is required. Refers to sections of the Development Management Guidelines for Planning Authorities (DoEHLG 2007) in this regard [See Section 7.2 above, and in particular the cited excerpts highlighted in bold]
- 8.1.4 Refers to the previous refusal of permission under PA Ref. 12/5709. The applicant progressed the current proposal on the understanding that Cork County Council were at an advanced stage of negotiations with 3rd parties for the transfer lands to Local Authority ownership that would facilitate the provision of the required road, path, and surface water connections.
- 8.1.5 Prior to submitting the application, the applicant agreed to the provision of a €100,000 contribution in respect of these works, which is reflected in Condition 22 of the planning authority’s decision.
- 8.1.6 The applicant recognises the long term advantages of the roadway, footpath, and surface water connection, but contends that it is possible to progress the development and occupation of the school without these connections by providing a short term solution to surface water disposal within the boundary, and by providing vehicular and pedestrian access via Mill Road.
- 8.1.7 There is an urgent requirement for a school in Kanturk, in accordance with government policy.

9.0 SUMMARY OF RESPONSES

9.1 PLANNING AUTHORITY

- 9.1.1 In light of the previous refusal under 12/5709, the council went about securing land from a third party to develop U-02 in order to facilitate the school development. Refers to the Area Engineer's report. If funding is not available for the road, a pedestrian link will be provided by the local authority as a first phase.
- 9.1.2 The planning authority's concern is that Mill Road is not adequate to cater for all transport to and from the school. The provision of a pedestrian link in the first instance, and ultimately the full road link, would provide a direct route to the school from much of the town , and ease the pressure on Mill Road.
- 9.1.3 The acquisition of land for U-02 is also required for surface water disposal from the site.
- 9.1.4 The appeal has not demonstrated that the development can operate without the road/pedestrian link or connection to the surface water system.
- 9.1.5 Condition 2 is consistent with normal practice, and the phrase 'until such other timeframe as agreed with the planning authority' gives some flexibility to the department if there is a prospect of the school being ready ahead of the necessary public infrastructure.
- 9.1.6 The consequences of removing the condition would be that the school would operate without adequate transport links or surface water arrangements, resulting in increased congestion on Mill Road and increased flood risk in the area. The condition should remain.

10.0 ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following broad headings:

- Section 139 -v- 'de novo' assessment
- The principle of developing the school in advance of road U-02
- Foul and surface water drainage
- The appropriateness of the condition as framed

10.1 SECTION 139 -V- 'DE NOVO' ASSESSMENT

- 10.1.1 This is a first party appeal against a condition only. As such, the terms of Section 139 of the Planning and Development Act 2000 (as amended) apply. This section gives the board the latitude to

consider just the issues involved in the disputed condition(s), or to consider the entirety of the proposal 'de novo', and sets out the framework for this decision. Furthermore, if the former approach is to be followed, the legislation sets out what matters shall and shall not be considered. At this juncture, it is worth providing the wording of this section in its entirety.

Appeals against conditions. 139.—(1) Where—

(a) an appeal is brought against a decision of a planning authority to grant a permission,

(b) the appeal relates only to a condition or conditions that the decision provides that the permission shall be subject to, and

(c) the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted,

then, subject to compliance by the Board with subsection (2), the Board may, in its absolute discretion, give to the relevant planning authority such directions as it considers appropriate relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions.

(2) In exercising the power conferred on it by subsection (1), apart from considering the condition or conditions to which the relevant appeal relates, the Board shall be restricted to considering—

(a) the matters set out in section 34(2)(a), and

(b) the terms of any previous permission considered by the Board to be relevant.

10.1.2 S139 or 'de novo'

10.1.3 In determining which route to take, the board is asked by the legislation to have regard solely to *'the nature of the condition or conditions [to which the appeal relates]'*.

10.1.4 In this instance, condition 2, which is replicated in full in Section 5.0 above is effectively a 'condition precedent' stating that the school may not *'become operational'* until such time as the U-02 road is in place, or other timeframe to be agreed, and the surface and foul water arrangements as proposed are in place.

10.1.5 In my opinion, this condition is largely 'ring-fenced' from the principle of development and from other planning issues relating to the proposed development. The question at hand under the appeal is

one of timing and scheduling, which can appropriately be dealt with in isolation. Having regard to the nature of the condition, I do not consider that a determination by the board of the application as if it had been made to the board in the first instance (a 'de novo' assessment) would be warranted.

10.1.6 As such, I proposed to assess the application under the terms of Section 139 of the act.

10.1.7 What may be considered under a S139 assessment

10.1.8 Section S139(2) (see above) states that in assessing an appeal under this section, the board 'shall be restricted to considering' the following (in reverse order), along with consideration of the condition itself.

- Any previous permission considered relevant – in this instance the refusal under PA Ref. 12/05709 (see Section 6.0 above), and
- The matters set out in Section 34(2)(a), which are as follows –
 - the development plan,
 - any Special Amenity Area Order,
 - any European Site.
 - where relevant, the policy of the Government, the Minister or any other Minister of the Government,
 - Conditions of a permission, as referred to in subsection (4), and
 - any other relevant provision or requirement of this Act, and any regulations made thereunder.

10.1.9 It is notable that the board is restricted from considering the matters set out in Subsection 34(3) of the act, namely

(a) in addition to the application itself, any information relating to the application furnished to it by the applicant in accordance with the permission regulations,

(b) any written submissions or observations concerning the proposed development made to it in accordance with the permission regulations by persons or bodies other than the applicant.

10.1.10 The entirety of this report is framed in terms of Section 139, and my determination above. I have sought to focus on the matters covered

in S139 and excluded those which the board is restricted from considering.

- 10.1.11 If the board arrive at a different decision on this matter, a 'de novo' assessment, incorporating these excluded matters would be required.

10.2 THE PRINCIPLE OF DEVELOPING THE SCHOOL IN ADVANCE OF ROAD U-02

- 10.2.1 The two parties to this appeal, the applicant and the planning authority, present two broad contentions as follows.

10.2.2 The applicant's contention

- 10.2.3 That the school can successfully operate without the eastward road link to Bluepool Upper. This road can be built at some time in the future. The applicant is happy to pay a special contribution to this effect.

10.2.4 The planning authority's contention

- 10.2.5 That it would be inappropriate to operate the school in advance of the provision of this road. The road, or at least a pedestrian link to Bluepool Upper should be built in advance of the school's opening.

10.2.6 My assessment on this issue

- 10.2.7 On basic planning principles, and having inspected the site and its surroundings, I agree completely with the broad position set out by the planning authority. To build the school in the absence of the east-west link would probably operate successfully from a traffic perspective, and the TIA shows that there would not be any capacity issues.

- 10.2.8 However, from a pedestrian and cycling perspective, this arrangement would be wholly substandard. Routes from residential areas of the town to the school would:

- be indirect, circuitous, and unnecessarily long,
- routed along Mill Road, which has relatively poor pedestrian facilities consisting of a one sided, narrow, and discontinuous footpath, and no cycle facilities at all, and
- involve negotiating a relatively steep hill at Percival Street before losing much of this altitude again between the site frontage and the school entrance (the route from the town via U-02 would involve less of a climb).

- 10.2.9 To allow this situation to exist, even for a short period of time, would by its very nature result in a travel pattern that would be heavily

skewed towards car-borne trips and away from pedestrian and cycle usage. This would be contrary to a slew of planning policies at local and national level. Furthermore, even if this scenario were to be relatively short lived, the travel patterns established in the early years of the school's operation would be likely to persist long after the appropriate infrastructure were to be provided.

- 10.2.10 As such, I consider it is vital that the principle of delivering the roadway in advance of the school be adhered to, as per the planning authority's decision. This position is consistent with the planning authority's original refusal of permission under 12/5709

10.3 FOUL AND SURFACE WATER DRAINAGE

- 10.3.1 Foul water drainage would be via a connection to the existing sewer that runs along the old rail line at the site's eastern boundary, which could be implemented without U-02. However, surface water drainage would appear to be via a connection along the alignment of U-02, over which the applicant has no direct control.
- 10.3.2 The applicant asserts in the appeal that a 'short term solution to surface water disposal within the site boundary' could be put in place, but does not provide any details of this proposal. I do not consider it appropriate to consider the grant of permission for a development in the absence of any coherent and implementable set of proposals for surface water drainage.

10.4 THE APPROPRIATENESS OF THE CONDITION AS FRAMED

- 10.4.1 The scenario as presented by the planning authority in relation to the provision of U-02 is that effectively two things have to happen for this to be realised. Firstly, the lands have to be bought by the County Council. Secondly, funding has to be secured for the provision of this road. In respect of the former, there are several junctures where it is asserted that this is imminent in the short term, yet at no point is there any evidence that the matter was concluded. On the issue of funding, aside from the provision of a special contribution from the applicant of €100,000, not details are provided. Given the reference to the interim provision of a pedestrian route, it would appear that there is some doubt on the funding side.
- 10.4.2 In conclusion, it would appear that work has been done to advance this project, but there is no certainty regarding the provision of this road.
- 10.4.3 Much of the appeal grounds attack Condition 2 from a legal or procedural perspective, asserting that it is unreasonable and unenforceable, and that it is inappropriate to refer to lands outside the control of the applicant.

- 10.4.4 I have consulted the Development Management Guidelines, which are cited by the appellant (See Section 7.2 above). Section 7 of the guidelines are of particular relevance in that they refer to conditions. I do not consider that the appeal grounds have interpreted the guidelines correctly. The guidelines refer to obligations that might be put on an applicant requiring them to undertake works on lands outside of their control.
- 10.4.5 This was not the approach of the planning authority under Condition 2. Rather, Condition 2 is a 'condition precedent' whereby the applicant may not occupy the school until such time as the infrastructure (to be provided by the planning authority) is place, or suitable alterative arrangements are agreed. This is an entirely different scenario to that which is dealt with in Sections 7.3.5 and 7.11.
- 10.4.6 I note that Section 34(4)(h) of the Planning and Development Act 2000 (as amended) makes provision for 'conditions for determining the sequence and timing in which and the time at which works shall be carried out'. In my opinion, this gives sound legislative basis for the 'condition precedent' approach followed by the applicant in this instance, a commonplace planning tool.
- 10.4.7 In my opinion, Condition 2 of the planning authority's decision is not subject to any legal or procedural infirmity.

11.0 CONCLUSION AND RECOMMENDATION

- 11.1.1 Based on the above, I recommend that, in line with the provisions of Section 139(1) of the Planning and Development Act 2000 (as amended), the board direct the planning authority to **attach** Condition 2 as originally worded by the planning authority in their notification to grant permission

12.0 REASONS AND CONSIDERATIONS

- 1 The principle of providing the roadway U-02 and associated drainage infrastructure in advance of the occupation of the proposed school is consistent with the proper planning and sustainable development of the area having regard to the reasonable objectives of achieving an appropriate range of travel options associated with the school, and the reasonable objective of providing the site with adequate surface water drainage.

G. Ryan
Planning Inspector
25th February 2016