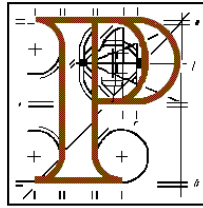


An Bord Pleanála



Inspector's Report

PL15.246173

DEVELOPMENT:-

Construction of a single storey Leisure Centre and the demolition of a derelict non-habitable structure and outbuildings at Redcow, Old Newry Road, Dundalk, County Louth.

PLANNING APPLICATION

Planning Authority: Louth County Council
Planning Authority Reg. No: 15/520
Applicant: Handlova Limited T/A Cooley Spring Water
Application Type: Outline Permission
Planning Authority Decision: Grant

APPEAL

Appellant: Eileen Kirk
Types of Appeal: 3rd Party -v- Grant
Observers: None

DATE OF SITE INSPECTION: 28th April, 2016.

INSPECTOR: Paul Caprani

1.0 INTRODUCTION

PL15.246173 relates to a third party appeal against the decision of Louth County Council to issue notification to grant planning permission for the construction of a single storey Leisure Centre which also involves the demolition of a non-habitable derelict structure together with outbuildings on a site on the Old Newry Road north of Dundalk in County Louth. The grounds of appeal argue that the proposed development contravenes the zoning objective associated with the site, is subject to a flooding risk, would undermine the carrying capacity of the national road network and is premature pending the provision of appropriate infrastructure. The grounds of appeal also express concerns in relation to the amount of woodland to be removed to cater for the proposed development and potential archaeological impacts.

2.0 SITE LOCATION AND DESCRIPTION.

The appeal site is located in the townland of Redcow to the north of Dundalk Town and to the south of the M1 Motorway which skirts the northern side of Dundalk Town. The site is located approximately half a kilometre from the M1 Junction 18 which provides access to the Ballymascanlan Roundabout and the Carlingford/Greenore Peninsula.

The appeal site is located on the eastern side of a third class road which links the R215 to the south and ends in a cul-de-sac to the immediate south of the M1 Motorway.

The subject site is rectangular in shape and has a stated area of 2.31 hectares. The south-western portion of the site accommodates mature woodland the remainder of the site is under grass. The site is surrounded on all sides by agricultural land. Directly opposite the site on the western side of the local access road, a new business park has been partially developed but is currently not open. The vehicular access leading to this business park is located directly opposite the north-western boundary of the site.

The site is surrounded by hedgerows and a small stream, The Raskeagh Stream runs along the northern boundary of the site discharging into Dundalk Bay, a designated Natura 2000 site. At its closest point, this designated Natura 2000 site is just over a kilometre from the eastern boundary of the subject site.

In terms of access to the subject site, traffic would travel southwards along the R215 to the centre of Dundalk Town, a distance of approximately 3 kilometres. Alternatively if travelling northwards traffic would exit southwards from the site before turning eastwards along the R215 and then northwards along the R215 to the east (rear) of the site where it would access the Ballymascanlan Roundabout and onto the M1. The site accommodates two non-habitable structures located in the north-western corner of the site directly opposite the access road to the industrial estate to the west of the site.

3.0 PROPOSED DEVELOPMENT

Outline planning permission is sought for a proposed single-storey leisure facility with a gross floor area of 4,500 square metres.

The building is to be located in the north-western area of the site. The area to the south of the building is to be used for car parking. A total of 84 car parking spaces are to be provided. A 10-15 metre wide strip of woodland area is to be retained along the southern boundary of the site. A 10 metre wide buffer zone is to be retained along the northern boundary of the site between the leisure facility and the Raskeagh Stream. Coach parking and a service yard are to be provided to the rear of the leisure facility. The rear of the site (c.120 metres by 60 metres) is to be retained as open space and within this area a compensatory flood area is to be accommodated to counteract any potential flood threat.

As the application site relates to outline permission only, details of the plans and elevations of the proposed building to be constructed on site are not contained on file.

4.0 PLANNING AUTHORITY'S DECISION

The planning application was lodged with the Planning Authority on the 7th August, 2015.

An engineering report was submitted with the application which includes details of a flood risk assessment and details of the proposed infrastructure necessary to serve the proposed development. The Flood Risk assessment notes that the site in question is susceptible to coastal flooding and fluvial flooding under a 1 in 100 year and 1 in 1000 year flood scenario respectively. It is stated however that the proposed

building is located outside the extent of the predicted 1 in 100 year flood with only the eastern and southern parts of the site, where it is proposed to incorporate the car parking and flood attenuation area located within the predicted 1 in 100 year flood area.

It is stated that the proposed arrangement and configuration of the site which incorporates an additional 100 cubic metres of storage area, offers a very robust design and should reduce flooding on other lands. The incorporation of a 10 metre buffer zone along the Raskeagh River to facilitate future maintenance will have no impact on the existing or future communal flood risk management provisions.

4.1 Initial Assessment

A report from the **Infrastructure Planning Department** states that there is no objection subject to the following conditions.

- A Transportation Assessment should be submitted in respect of the proposed development.
- Further details in relation to access along the 10 metre wide easement adjacent to the Raskeagh Stream.
- The setting back of the front boundary of the site.
- The proposed flood risk mitigation measures as detailed in the engineering report.
- Further details in relation to road drainage.

A report from the **Department of Arts, Heritage and the Gaeltacht** sets out detailed requirements in relation to an archaeological impact assessment on the grounds that the site is located close to Recorded Monument LH007-15 – a possible fulacht fiadh.

An observation from the current appellant was submitted by Stephen Ward, Town Planning Consultant the contents of which have read and noted.

A report from Irish Water notes that further information is required in relation to connection to the watermain.

4.2 Request for Additional Information

The Planner's Report noted the internal reports contained on file and the letter of objection from the observer and recommended the following additional information as follows:

- It is noted that Irish Water cannot guarantee a service to a customer connected to a third party infrastructure. In this regard the applicant must complete a Pre-connection Enquiry Form and forward to the Irish Water new connection team.
- It is noted that there is a 450 millimetre diameter cast iron trunk watermain traversing the site. The applicant must indicate how this will be protected both during and after construction.
- The site is located within 2 kilometres of the Dundalk Bay SAC/SPA. And is hydrologically connected to that Bay through the Raskeagh Tributary. The applicant is therefore requested to submit an Appropriate Assessment.
- The current zoning for the site is for Strategic Employment Use. The applicant has not submitted justification for the requirement for this use to be located on a site which has been designated for uses which are of strategic importance.
- The applicant is requested to submit a detailed archaeological assessment having regard to the site's close proximity to a Recorded Monument.

4.3 Further Information Submission

Further information was submitted on 5th January, 2016. The information contained therein is briefly summarised below.

- A pre-connection enquiry form for Irish Water has been completed and forwarded to the Authority.

- In relation to public sewer infrastructure, it is noted that a 10 year permission was granted in 2010 for site development works associated with the adjacent Business Park. These works include a foul sewage pumping station to serve the Business Park and adjacent lands including the subject site. It is stated that there are arrangements to have the pumping station constructed and operational by the end of 2016.
- The location of the 450 millimetre cast iron watermain is indicated on drawing 3534-FI001. The pipes are located c.23 metres to the east of the proposed building and there will be no need to relocate into the pipes of the buildings.
- An Appropriate Assessment Screening Report is attached. It concludes that no negative impacts on a Natura 2000 sites will arise and that a finding of no significant impact can be reached. The proposed development does not therefore necessitate or warrant a Stage 2 Appropriate Assessment.
- In terms of land use zoning it is argued that the proposed development is not a standard leisure centre but a large and unique family based leisure facility which shall serve both local and regional markets. The facilities will include indoor ski slopes, climbing walls and a 100 feet mobile zip line and a soft play area etc. It is envisaged that the development will become part of a suite of facilities including Dundalk Stadium and will assist in promoting Dundalk a short stay holiday destination. The proposed development shall employ approximately 50 persons and be of clear economic benefit to the town. Details as to how the proposed development complies with strategic objectives set out in the Plan are set out in the further information submission.
- Finally an archaeological impact assessment has been submitted. The report concludes that no further archaeological assessment of the site is required.

4.4 Further Assessment by Planning Authority

A further letter of objection from the current appellant has been submitted. The contents of which have been read and noted.

A further **Planner's Report** notes the information submitted and deems this information to be generally acceptable. It further notes that the principle of development is acceptable under the zoning matrix for Strategic Employment Mixed Use as the use is evidently a sporting and leisure activity. In relation to flooding, it is noted that the Infrastructure Department were satisfied that the development could be undertaken in a sustainable manner and the compensatory measures in respect of flooding on site are deemed to be acceptable. It is also considered that the Archaeology Appraisal and the Appropriate Assessment screening are acceptable. It is therefore recommended that planning permission be granted for the proposed development.

In its decision dated 22nd January, 2016 Louth County Council issued notification to grant planning permission for the proposed development subject to 17 conditions.

5.0 PLANNING HISTORY

One history file is attached. In 2012 An Bord Pleanála under PL 15.238860 refused planning permission for an Integrated Sports Leisure and Recreational Facility approximately 500m to the South East of the subject site, adjacent to Baldoyle Racecourse. The Board issued a decision to refuse for two reasons relating to sustainable transport and flooding.

The planner's original report notes previous planning applications for a petrol station (1974), a dwellinghouse (1985) and two further applications for dwellinghouses both in 1987 relating to the subject site. There appears to be no more up-to-date planning applications in respect of the subject site.

6.0 GROUNDS OF APPEAL

The decision of Louth County Council to issue notification to grant outline planning permission for the subject site was appealed on behalf

of Eileen Kirk by Stephen Ward, Town Planning and Development Consultant. The grounds of appeal are outlined below.

It is stated that given the location of the site the following statutory consultees should have been notified of the proposed application.

- Transport Infrastructure Ireland by virtue of the proximity to a motorway junction.
- The Department of the Environment.
- The National Parks and Wildlife Service.
- An Taisce.

Article 326(1) expressly provides that an outline application may not be made in respect of the development which requires an NIS. It is further argued that the proximity of the development to Dundalk Bay SAC and the potential hydrological connectivity which exists via the Raskeagh Stream necessitates the requirement for a Natura Impact Statement. The appeal goes on the state that the findings in the AA Screening Report submitted on foot of the further information request are questionable and that a full NIS should be submitted.

It is further argued that the nature of the proposed development was not sufficient described in the public notices. Further details as to what the leisure centre entails should have been set out in the planning notices.

It is submitted that the development on the scale proposed cannot be properly assessed and that a full application is required. Third parties have been deprived from objecting in principle of the intended use of the floor space as details have not been provided by granting outline planning permission.

It is argued that the proposed development constitutes a leisure centre and there is no basis whatsoever to support the Planning Authority's view that what is proposed in this instance is a sports facility. Concern is expressed that the building may accommodate a ski slope which by implication would require a very tall building yet no details or dimensions of the buildings are provided.

It is noted that An Bord Pleanála previous refused planning permission for an integrated sports, leisure and recreational facility on a site nearby to the south of the Ballymascanlan Roundabout (see Planning History above).

It is suggested that a transportation assessment should have been submitted with the application for outline planning permission and should not be dealt with by way of condition. A transportation assessment is a significant issue in determining the principle of development particularly as a proposal has the potential to materially impact on the carrying capacity of the national road network being in such close proximity to Junction 18 of the M1 Motorway.

The proposed development contravenes the land use zoning objective affecting the site which seeks to provide a range of business and employment activities which have strategic importance. It is argued that the proposed leisure centre has no strategic importance and does not comply with the provisions of the Development Plan. It is noted that a sports facility is only listed as a use which is 'open for consideration'. The applicant has failed to provide any tangible or credible evidence as to how the proposed development will contribute towards the achievement of strategic employment and mixed uses.

It is argued that the application site is located on lands designated as Flood Zone A. It is stated that there is a strong presumption against development in these areas where the probability of flooding is high except in exceptional circumstances. A development of this nature does not constitute exceptional circumstances. In order to mitigate against flood risk the applicant is proposing to raise the level of the site by c.1 metre. This is a matter of grave concern particularly as the applicant has failed to appropriately assess the potential for displacement of water elsewhere. It is argued that the proposed development contravenes Policy EN5 of the Development Plan.

Reference is made to a previous refusal by An Bord Pleanála in 2012 under PL15.238860 for a similar integrated sports, leisure and recreational facility on a nearby site and this proposal was refused on two grounds with one relating to the level of intervention required to facilitate the proposed development in an area which is subject to coastal flooding.

The grounds of appeal argue that the proposed development is premature pending the provision of public sewer infrastructure. It is argued that there is no coherent evidence to suggest that public sewer infrastructure is forthcoming to serve the development.

It is argued that the proposed development would undermine the carrying capacity of the national road network and as such would

contravene Policy TC5 of the 2009 Louth Development Plan. The development of the size and scale proposed would result in a material increase in traffic movements along national and local roads in the vicinity of the national secondary road and the M1 Motorway. There is insufficient information submitted with the planning application to allow an adequate assessment of the traffic impacts of the development. The proposal also has the potential to lead to congestion and traffic hazard on the local road network at the Junction 18 of the M1.

The proposed development also includes the removal of a very large section of wooded area located to the south of the site. This is visually prominent and a significant feature within the natural landscape. There are a number of policies contained in the Development Plan which seek to protect the natural heritage and biodiversity of the county.

Concerns were also expressed that the site is located in close proximity to a number of recorded monuments and that a proper archaeological assessment was not carried out on the grounds that the site was not suitable for geophysical survey due to its waterlogged condition and the underlying geology.

Finally the grounds of appeal argue that the proposed development would undermine operations and viability of other leisure centres nearby. Reference is made to three leisure centres including the Ballymascanlan Golf and Leisure Club on the R173 to the east of the site. The Carnbeg Leisure Centre which is located to the west of the site and the Aura Leisure Centre which is located in the centre of Dundalk.

7.0 APPEAL RESPONSES

7.1 Louth County Council's Response to the Grounds of Appeal

In respect of procedural matters, the Board are asked to note that the Planning Authority did not deem that an NIS was required following the submission of a screening assessment.

In terms of land uses it is stated that all the uses proposed in the leisure centre may be included within the definition of leisure, sports and entertainment and as such are relevant for the strategic development of Dundalk as a designated gateway. The grant of planning permission for light industrial employment uses on the other side of the road would ensure that this grant of permission could provide a mix of uses which further support the cohesive development of the area.

In terms of flood risk assessment it is stated that the proposed development provides a large area of compensation to the east of the site which will support habitats and will not displace flood waters.

In terms of prematurity pending the provision of public sewer infrastructure, it is stated that the area has been identified as an area for further growth and there are numerous live planning permissions in the vicinity. The proposed development will provide Irish Water with further investment to upgrade facilities in the area and promote Dundalk.

In terms of the carrying capacity of the national road, it is stated that the site is not located along a national road and if such a restricted approach was adopted by the Planning Authority, then the majority of all developments within Dundalk would be restricted in terms of potential impact on the national road.

In terms of tree preservation, it is stated that there is currently no Tree Preservation Order nor is any Tree Preservation Order proposed in relation to the existing trees on site. Condition No. 10 of the grant of planning permission requires that native trees and a landscaping scheme is submitted with any permission.

With regard to archaeology the subject application was referred to the Department of Arts, Heritage and the Gaeltacht who requested a more detailed archaeological assessment. This subsequent archaeological assessment was referred to the Department and they are satisfied that the proposal will have no negative impact on archaeological heritage.

Finally, it is argued that the vitality and viability of other leisure centres in the area is not a valid planning consideration in assessing the application and appeal.

7.2 Applicants Response to the Grounds of Appeal

A response was submitted on behalf of the applicant by Declan Brassil and Company. The response states that the nature of the leisure centre and its intended use is clearly defined in the submitted application documents and elaborated upon in Response 3 of Louth County Council's request for further information. The precise range and internal layout of recreational activity spaces will be defined at full planning

application stage and will contain a selection of all of the following activities.

- An indoor ski slope.
- Climbing wall.
- A zip line.
- A wire course.
- A soft play area.
- A trampoline park.
- Ancillary café.

The grounds of appeal set out the various classes of development to which outline planning permission cannot be sought. It is stated that the proposed development does not fall under any of these categories. The outline planning permission in this instance seeks to establish if the Planning Authority supports the principle of a proposal.

The applicant submitted an Engineering Report, a Flood Risk Assessment, an Appropriate Assessment Screening Report, Site Plans and an Archaeological Impact Assessment and therefore the Planning Authority had substantial information in order to make an informed decision of the principle of the proposed development.

In relation to the zoning objective as it relates to the site, it is argued that the proposed development is not captured in any categories listed in the zoning matrix. It is however a commercial and employment generating use. It is further considered that the approach to the zoning objective contained in the planner's report is appropriate and correct. The proposed development will provide a commercial employment generating leisure facility which is unique in character in the county and the wider region. Furthermore the proposed development complies with Policy EC6 which seeks to encourage and facilitate development of identified key opportunity sites in order to generate economic activity and renewal. It is also considered that the proposal could be considered as a tourism facility which is permitted in principle under this zoning objective.

In relation to flood risk a flood risk assessment was prepared as part of the planning application. The assessment identifies that the proposed development is deemed to be a less vulnerable use. Furthermore the assessment clearly sets out compliance with the justification test for development management and incorporates a design feature to ensure that the proposed development does not give rise to flooding in other

lands. With reference to An Bord Pleanála's decision under PL15.238860 it is stated that the nature and extent of the development proposed is materially different to the current development. The development refused had a proposed gross floor area of 44,246 square metres and had almost 800 car parking spaces and included more vulnerable uses such as a 128 bed roomed hostel. A detailed floor risk assessment is attached as Appendix A.

With regard to the availability of sewage infrastructure it states that it is proposed that wastewater generated by the proposed development shall drain towards the Redcow Foul Sewage Pumping Station which is located to the immediate west of the site. A 10 year permission was granted for this pumping station to cater for the 30 hectare business park to be constructed on lands to the west. The pumping station is designed to be capable of serving c.80 hectares of zoned land including the subject site. The proposed development will contribute towards the associated capital cost of the pumping station.

With regard to traffic impact it is again submitted that the subject application relates to outline permission only and is generally restricted to establishing the acceptability of the principle of development. The site is located on the former Newry Road with easy access to the N52. The nature of the proposed use results in a predominantly off-peak traffic generation. Furthermore the surrounding road network is of a high standard with a high vehicle carrying capacity. Giving the relatively modest number of car parking spaces, the quality of the surrounding road network and the fact that outline permission is being sought in this instance, it is considered that Louth County Council undertook a fair and reasonable approach to the assessment of traffic. Detailed information in respect of traffic and trip generation will be set out at full planning application stage in accordance with Condition No. 11. A preliminary assessment of likely traffic impact has been prepared and is attached as an appendix to the response.

With regard to the removal of woodland it is stated that the woodland is not subject to a tree preservation order nor is it protected in the Development Plan. Furthermore the woodland comprises of conifer trees which is of little ecological or aesthetic value. A separate appendix is attached to the response by Kestrel Forestry Consultants which supports the view that the trees in question are of very little environmental or biodiversity value.

The AA Screening Report ruled out the need for a full Natura Impact Statement.

In relation to the archaeological assessment, it is stated that while it was not possible for a geophysical survey to be undertaken, the applicant in response to the request for additional information request carried out test trenching. It notes that the DAHG indicated that it was satisfied with the Archaeological Assessment report and no further comments were required.

Finally with regard to the issue of impact on viability and vitality on other leisure centres, it is stated that all the other leisure centres referred to are swimming pools/gyms associated with hotels. The development in question does not provide either a swimming pool or a gym and therefore will not impact on the viability of existing facilities. Finally it is stated that commercial viability is not a planning consideration. The various appendices referred to are attached.

8.0 FURTHER SUBMISSION

8.1 Submission on behalf of the Appellant

A further submission on behalf of the appellant Eileen Kirk was submitted by Stephen Ward, Town Planning and Development Consultants.

It states that the applicant in response to the grounds of appeal cites a similar type facility in Belfast in order to justify the current development. It is noted that the facility in Belfast occupied an existing warehouse and is located within an established industrial park. The subject application is located in a Greenfield site and remote from Dundalk Town. Notwithstanding that the current application is for outline planning permission, the particulars of the proposed development in this instance are entirely unclear. It is the appellant's belief that the outline permission issued is ultra vires leaving substantive matters to be dealt with at permission consequent stage.

It is inappropriate to have compliance conditions in respect of developments requiring EIA or having potential impacts on Natura 2000 sites. Reference is made to DoEHLG Circular PD2/07 and NPWS 1/07 which requires that the Planning Authority must have adequate information on the potential effects of the proposed development on

European Sites. Having regard to these matters it is considered that the decision of the Planning Authority to grant outline planning permission could be subject to judicial review. Likewise in relation to traffic and traffic impact assessment it is argued that it is inappropriate to address this issue by way of condition. At 4,500 square metres, the proposed development is clearly in excess of the minimum recommended threshold for a TIA. This should be carried out as part of the current application for outline planning permission. Under Section 34(4) and Section 34(5) of the Act, it is stated that the Planning Authority cannot refuse to grant planning permission on the basis of any matter decided in a grant of outline planning permission provided the Planning Authority is satisfied that the proposal is within the terms of the outline planning permission. Likewise under subsection 5, no appeal can be made to An Bord Pleanála against a decision of the Planning Authority to grant permission consequent on the grant of outline permission. It is submitted that a grant of outline planning permission in the absence of such fundamental detail would seriously compromise the rights of third parties.

It is reiterated that a leisure facility such as that proposed, is not in compliance with the SEMU zone. It cannot be considered to be of a strategic nature. If the applicant in this instance considers the proposal to be of a strategic nature then it is imperative that a transport and traffic assessment is carried out. There are also inconsistencies in respect of the number of jobs to be provided by the proposed development.

Concerns in relation to flood risk are reiterated in the submission. It is argued that the applicant has failed to demonstrate exceptional circumstances which would permit development in a flood risk zone.

It is reiterated that the development remains premature and should not be permitted in the absence of available sewage infrastructure.

Again in relation to traffic and transport assessment, it is reiterated that there is insufficient information to allow adequate assessment of the impacts of the development on the national road network in the vicinity of the site and in particular at Junction 18 of the M1.

8.2 Further Submission by Planning Authority

A submission from Louth County Council dated 11th April, 2016 states that the Planning Authority has no further comments to make.

9.0 Planning Policy Context

The Board will note that the Dundalk and Environs Development Plan 2009 – 2015 is still the operative plan for the subject site and its surroundings.

The subject site is zoned SEMU – ‘Strategic Employment Mixed Use’ to provide a range of business and employment activities which have strategic importance. There is no specific land use category of leisure activity contained in the Land Use Zoning Matrix. However sports facilities are open for consideration in the Development Plan and tourist facilities are permitted in principle.

Chapter 3 of the Development Plan relates to economic development retail and tourism. The tourism objectives include:

- Promotion of Dundalk as a centre of international, national and regional importance for sport and recreation.
- Promotion of Dundalk as a place to visit and stay with high quality public places, amenities and facilities.
- Joint marketing initiatives for the town and the area with other local authorities, agencies and private tourism sector.
- Support the development of communities, festivals, cultural activities and other outdoor activities.
- Promote Dundalk for business related tourism.

10. PLANNING ASSESSMENT

I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal. I consider the pertinent issues in determining the current application and appeal before the Board to be as follows:

- Zoning Issues.
- The Nature of the Outline Planning Permission.
- Flood Risk.
- Potential Impact on the Road Network.
- Other Issues.

10.1 Zoning Issues

The grounds of appeal suggest that the proposed development contravenes the zoning objective for the subject site. As indicated in the previous section of my report, the subject site is zoned SEMU – Strategic Employment and Mixed Uses. The purpose of the zone is to provide a range of business and employment activities which have strategic importance. The subject application before the Board is for outline planning permission and as such the detailed nature of land uses to be provided at the facility are not tied down but according to the applicant are likely to accommodate activities such as:

- An indoor ski slope.
- A climbing wall.
- A zip line.
- High wire course.
- A soft play area.
- A trampoline park.
- Ancillary café.

I consider that the facility in this instance can be best described as a leisure facility having regard to the nature and type of uses proposed. Given the nature of the physical activities to be undertaken on the subject site it could be reasonably argued that the proposed development is akin to a sports facility which is 'Open for Consideration' under the land use zoning matrix for the Development Plan. Equally having regard to the unique uses to be incorporated at the site it could well be considered as part of the tourist infrastructure of Dundalk and as such could also be regarded as a tourism facility. The Board will note that a tourist facility is a permitted use within the primary zoning objective for the site.

Finally given the size and scale of the proposed development, it is likely that it will give rise to employment generation, although it is a matter of discussion as to how many jobs will be created at the proposed facility. While the planning application form submitted with the application indicates that 15 persons will be employed at the facility, the applicant's response to the further information request from the Planning Authority indicates that c.50 persons can be employed at the facility. I note that in the case of a similar type facility in Belfast (with a gross floor area of 7,500 square metres) employs approximately 136 persons. It would be reasonable to conclude in my view that the proposed development will

employ somewhere between the above figures. Based on the overall size of the proposed development, in the context of the larger facility in Belfast, it would not be unreasonable in my view to come to the conclusion that the development will employ in the region of 50 persons. The proposal would therefore provide a range of business and employment activities in accordance with the land use zoning objectives.

In conclusion therefore I consider that the unique nature of the proposed development does not lend itself to any specific use classes set out in the Dundalk and Environs Development Plan. However if the Board are to assess the proposed use on its merits, I consider that the use in this instance could be considered compatible with the land use zoning objective in that it could be regarded as a tourist facility or a sports facility which are permitted in principle and open to consideration respectively under the land use zoning objectives. Furthermore the proposal will give rise to appreciable employment activities which is a core principle under the land use zoning objective.

10.2 The Nature of the Outline Planning Permission

The grounds of appeal argue that the proposed development in this instance remains entirely unclear and the information available to the Planning Authority is far from complete and substantive issues remain outstanding particularly in relation to the potential impact on European sites and the traffic implications arising from the proposed development.

The Development Management Guidelines for Planning Authorities, June 2007 do not offer any guidance in relation to the information requirements in the case of an application for outline planning permission. I am satisfied that the proposed development in this instance does not require a Natura Impact Statement. The applicant has submitted an Appropriate Assessment Screening Report and I consider the conclusions reached therein are reasonable in terms of the potential effect of the proposed development on surrounding Natura 2000 sites. The issue of AA is dealt with separately in my assessment below. It is sufficient to state at this stage in the assessment that I am satisfied that the requirement for an NIS has been appropriately screened out and therefore the assertion that an application for outline planning permission cannot be made in this instance because of a requirement for an NIS is unfounded.

With regard to the traffic impact assessment, the grounds of appeal argue that the Planning Authority should not and cannot grant outline planning permission with a condition requiring a traffic impact assessment. A traffic impact assessment should form the basis of any preliminary determination as to whether or not outline planning permission should be granted in this instance. I have some sympathy with the applicant's concerns in this regard however it would be virtually impossible to carry out a detailed robust and comprehensive traffic impact assessment in respect of the proposed development without ascertaining details of the internal layout and the intended uses within the building together with the trip generation associated with these uses. The applicant has submitted a Traffic Impact Report with his response to the grounds of appeal. It indicates, based on a preliminary assessment that the proposal will not have an adverse impact on the surrounding network, contributing less than a 2% increase in traffic volumes on the road network. I have visited the site in question and I noted that:

- (i) The roadway onto which the proposed development accesses is a cul-de-sac and accommodates very low volumes of traffic particularly in the vicinity of the site frontage.
- (ii) The roadways in the vicinity of the site including the road linking the subject site with the R215 are capable of accommodating significant volumes of traffic. My site inspection indicated that these road are currently lightly trafficked and could accommodate significant increases in traffic volumes without undermining the carrying capacity of the roads in question.

What the applicant is seeking to determine at this early stage is whether or not the principle of the proposed use is acceptable on the site in question without having to provide all details and specifications associated with an application for full planning permission. This is a reasonable expectation in my view and provides the *raison d'être* behind the concept of outline permission as set out in the legislation. While the applicant must provide sufficient information to permit a competent authority to adjudicate on the principle of development on a particular site, it is not necessary that every particular detail relating to the application need be provided at this of the application process.

While the appellant makes reference to Section 34(4) and 34(5) of the Planning and Development Act in the submission dated 21st April 2016,

the Board will note that the provisions in respect of outline planning permission are set out in Section 36 of the Act.

Subsection 4 states that where an application for permission is made to a Planning Authority consequent on the grant of outline planning permission, the Planning Authority shall not refuse to grant planning permission on the basis of any matter which has been decided in the grant of outline planning permission, provided that the Authority is satisfied that the proposed development is in with the terms of the outline planning permission.

In respect of subsection 5 the Act states that no appeal may be brought to the Board under Section 37 against the decision of a Planning Authority to grant permission consequent on the grant of outline permission in respect of any aspect of the proposed development which was decided in the grant of outline planning permission.

If the Board are minded to grant outline permission for the proposed development in the context of the above subsections it is still open to any third party appellant, the Planning Authority or An Bord Pleanála on appeal to deal with any traffic issues as they might arise on foot of an application consequent on the grant of outline planning permission. Therefore where the Planning Authority or the Board come to the conclusions that the proposed traffic arrangements or trip generation is unacceptable, it is permitted to request further submissions or indeed refuse an application consequent on the grant of outline planning permission. While the principle of land use may have been established under a grant of outline planning permission, it does not prohibit the Planning Authority or the Board to refuse or amend any subsequent application where the competent authority is not satisfied that the proposed development is in accordance with the proper planning and sustainable development of the area. It is incumbent upon the applicant to comply with all requirements in any future application for permission consequent on the grant of outline planning permission.

Having inspected the site I am satisfied that the existing road layout and infrastructure is capable of accommodating increases in traffic volumes associated with the proposed development. Any limits in respect of trip generation and traffic assignment etc. can be assessed on foot of a traffic impact assessment on any subsequent application consequent on the grant of outline planning permission.

10.3 Flood Risk

The grounds of appeal argue that the proposed development is contrary to Policy EN5 which applies a presumption against permitting development within areas at risk of flooding and within floodplains subject to the application of a sequential test or justification test to site selection. Reference is also made to Section 10.4.3 of the Dundalk and Environs Development Plan which state that, in light of the very substantial areas of lands not at risk of flooding within the plan area, the Council will adopt the view that development on lands which might be at risk of flooding or cause flood risk to other lands is unnecessary and only puts life and property at risk, but also opposes an ongoing cost associated with the maintenance of flood defence works that may otherwise not be required.

While the subject lands may be at risk of flooding it should be borne in mind that the subject lands and lands surrounding the subject site are zoned for development purposes and specifically the lands are zoned to accommodate mixed use, strategic and employment uses. There appears to be a clear conflict between Policy EN5 and the zoning objective relating to the Development Plan. The applicant has submitted a flood risk assessment and it is noted that the full site is deemed to lie within coastal flood zone A and is under threat from both coastal and fluvial flooding. In the case of fluvial flooding the threat arises under the 1 in 100 year and 1 in 1000 year flood scenarios. It is noted however that the proposed building on site is located outside the extent of the predicted 1 in 100 year fluvial flooding event. It is proposed to lower the south-eastern corner of the site in order to create a flood attenuation pond with a flood storage capacity of 700 cubic metres. It is also proposed to increase the ground levels in the remainder of the site from between 0.8 to 1.6 metres under the proposed building to protect against flooding. The Planning System and Flood Risk Management Guidelines for Planning Authorities readily acknowledged in paragraph 3.7 that existing urban areas as well as areas which have been targeted for growth under the National Spatial Strategy, Regional Planning Guidelines and various City and County Development Plans (such as the subject site) should be subject to the justification test set out in Box 5.1 of the said Guidelines. In that:

- The subject lands have been zoned or otherwise designated for the particular use or form of development in the operative development plan.

- The proposal has been subject to an appropriate flood risk assessment that demonstrates that the development proposed will not increase flood risk elsewhere and if practical will reduce the overall flood risk.
- The development includes measures to minimise flood risk to people property, the economy and the environment as far as reasonably possible.
- The development proposed can ensure that residual risks to the area can be managed to an acceptable level.

I consider that the proposed application for outline permission has complied with the criteria set out above.

10.4 Potential Impact on the National Road Network

The grounds of appeal argue that the proposed development will undermine the carrying capacity and strategic function of the road network in the vicinity particularly the M1 Motorway particularly having regard to the regional catchment area of the proposed leisure facility. The proposed development is located on lands which are designated for strategic employment generation uses. Any development on the subject site and adjoining sites by their very nature will give rise to traffic and transport generation. It should however be borne in mind that the subject site is not located contiguous to the motorway nor is there direct access between the subject site onto the motorway.

Traffic entering the site from the M1 motorway was to exit at Junction 18 turn southwards onto the Ballymascanlan Roundabout further southwards along the R125 before taking the third exit off the roundabout to the south and taking a right turn towards the subject site. Traffic from the motorway therefore has to negotiate a circuitous route in order to gain access to the subject site. The preliminary traffic report suggests that the proposal will increase traffic volumes on the national road network by less than 2%.

Furthermore it is anticipated that much of the traffic and trip generation to and from the site will be from the town of Dundalk to the south. Traffic to and from this catchment area will not avail of the M1 Motorway. The Board will note that the wider area of lands surrounding the subject site in the northern environs of Dundalk accommodate a host of land use zoning objectives including mixed use general community services,

residential uses, employment mixed uses and tourism and leisure uses all of which have the capacity to generate significant levels of trip generation. The development plan was the subject of a strategic environmental assessment and these land uses were deemed to be acceptable for development under this assessment.

10.5 Other Issues

10.5.1 The removal of woodland.

The woodland in question comprises of a conifer plantation which is of limited ecological and biodiversity value and this is supported by the Plantation Assessment Report submitted by Kestrel Forestry Consultants. The report confirms that the species accommodated on site is Norway spruce and it does not support the same quantity or variety of flora and fauna as native species. The plantation is overstocked due to the absence of proper forest management and therefore there is little light reaching the forest floor which could support fauna. It is stated that there is nothing significant about the plantation in question. Norway spruce is a common non-native species in Ireland with over 25,000 hectares planted in the Republic alone. Finally it is stated that the plantation is in decline with many trees already dead and many more under serious stress. The overall conclusion therefore is that the plantation is not of good quality.

10.5.2 Archaeology

Notwithstanding the concerns raised in the grounds of appeal, I consider that the applicant has submitted an archaeological impact assessment which indicates there are no recorded archaeological sites within the site boundary and there will be no impact on in-situ archaeological remains from the proposed development works. A report from Department of Arts, Heritage and the Gaeltacht stated that they have examined the archaeological impact assessment and on the basis of the archaeological test excavations and conclusions of the report, there are no further archaeological recommendations in this case. It appears therefore that the Department is satisfied with the conclusions reached in respect of the archaeological impact assessment. If the Board consider it appropriate. A suitable archaeological monitoring condition can be attached to any grant of planning permission.

10.5.3 Commercial Impact

With regard to the commercial impact on other leisure centres in Dundalk this is not strictly a planning consideration and would not form an appropriate basis for refusal. However it is apparent that the nature of the development proposed is somewhat different than existing leisure centres in the Dundalk area and as such will not provide direct competition with existing leisure facilities surrounding the subject site.

10.5.4 Prematurity of the proposed development pending appropriate sewage infrastructure.

Again this issue was raised in the Planning Authority's request for further information. It is clear from the response that there are well developed proposals to construct a large business park on lands to the west of the site. It is also noted from the overall zoning of the surrounding area that public infrastructure services will be required to cater for development in the coming years. A pumping station is proposed so as to collect and pump all foul wastewater to the existing public sewer network which terminates at Dowdallshill approximately 1 kilometre to the south of the site. The response to the grounds of appeal indicates that the landowners have agreed a mechanism to fund the capital costs associated with the provision of a pumping station and rising mains to serve the site and lands in the vicinity. It appears therefore that there are firm arrangements to have a pumping station put in place to service the lands in question. Rather than refuse planning permission for the proposed development based on prematurity I would consider it more appropriate that the Board incorporate a condition requiring that appropriate sewage infrastructure be provided to service the site prior to any commencement of development on site.

11. Appropriate Assessment

Louth County Council requested the applicant to submit an appropriate assessment of the development on any Natura 2000 sites in the vicinity. A report was prepared and submitted in response to the additional information request. It identified the following Natura 2000 sites within a 15 kilometre radius of the subject site.

- Carlingford Lough SPA (Site Code: 004078)
- Carlingford Shore SAC (Site Code: 002306)
- Dundalk Bay SPA (Site Code: 004246)

- Dundalk Bay SAC (Site Code: 00455)
- Stabannan – Branganstown SPA (Site Code: 004091)
- Carlingford Mountains SAC (Site Code: 000453)

The qualifying interests and conservation objectives for each of the Natura 2000 sites are set out. The identification and assessment of potential and likely effects are set out. It is noted that the existence of two streams one of which is located along the northern boundary of the site in addition to field drains etc. provides a direct route and link between the subject site and the Dundalk Bay SAC. However pollution or contamination of these watercourses as a result of the proposed development is not likely to arise. The works to be carried out on site pose a negligible threat to existing water or indeed air quality to the integrity of qualifying interests downstream. Having regard to the nature the works to be undertaken and the incorporation of a 10 metre buffer zone between the construction site and the Raskeagh Stream, I would concur with the conclusion that it is unlikely that any pollution in instance is likely to occur. I therefore consider it is reasonable to conclude on the basis of the information contained on file which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans and projects would not be likely to have a significant effect on any of the European sites or any other European site in view of the site's conservation objectives and a Stage 2 Appropriate Assessment and the submission of an NIS is therefore not required.

However if the Board reach a different conclusion and consider that an NIS is required in respect of the proposed development it shall note that it is precluded from granting outline planning permission for a development where a Natura Impact Statement is required.

12.0 Conclusions and Recommendations

Arising from my assessment above, I consider that the Board should uphold the decision of the Planning Authority and grant outline planning permission for the subject application based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to the zoning objective of the subject site and the nature of the proposed application it is considered that subject to conditions set out below the grant of outline planning permission for the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would generally 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. This outline permission relates solely to the principle of the development on this site and shall not be construed as giving consent to the following matters.
 - (i) The overall heights of the proposed development.
 - (ii) The overall site layout of the development.
 - (iii) Connection of services to facilitate the proposed development.
 - (iv) Details of the proposed entrance from the public road into the site.
 - (v) Details of all refuse bin storage on the subject site.

Reason: In the interest of clarity.

2. Plans and particulars to be lodged for permission consequent of this grant of outline permission shall include:
 - (i) A detailed landscaping plan for the entire site.
 - (ii) Full details of all flood attenuation measures to be incorporated within the site.
 - (iii) Proposals for the retention and reinforcement of existing boundary treatment.
 - (iv) Design proposals which shall have regard to the design and character of the built environment in the vicinity.

- (v) Details of the layout and configuration of surface car parking spaces within the site.

Reason: In the interest of clarity and to define the subject matter for consideration at permission consequent stage.

- 3. Any application for permission consequent of outline permission shall include the full and final intended use of all floor space within the leisure building. Uses permitted within the building shall be compatible with leisure use and any non-leisure use shall be ancillary to the main permitted use.

Reason: In the interest of orderly development.

- 4. Any application for permission consequent shall include a traffic and transport assessment and shall be undertaken in full compliance with NRA Traffic and Transport Assessment Guidelines (May 2014). The applicant is advised that prior to commencing the assessment scoping discussions with the planning authority should be undertaken.

Reason: In the interests of traffic safety.

- 5. Details of the proposed access to the 10 metre wide easement along the Raskeagh Stream shall be agreed in writing with the planning authority.

Reason: In the interest of orderly development.

- 6. The proposed flood risk mitigation measures as detailed in the report submitted to the planning authority (Flood Risk Assessment report) on the 7th August, 2015 shall be implemented in full as part of any future permission consequent on this grant of outline planning permission.

Reason: To adequately address issues of flooding.

- 7. Prior to any permission consequent on this grant of outline permission the applicant shall receive all necessary agreements from Irish Water. The applicant shall submit details of any agreement in relation to the capital provision and any infrastructure required to connect the proposed development to the Irish Water networks.

Reason: In the interest of the proper planning and sustainable development of the area.

8. Any permission granted consequent to the grant of outline planning permission shall be the subject of the terms of the Council's Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The amount of the contribution shall be based on the Development Contribution Scheme in operation at the date of decision to grant permission consequent.

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

**Paul Caprani,
Senior Planning Inspector.**

18th May, 2016.

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