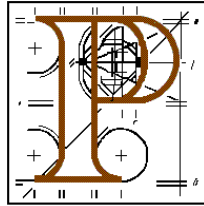


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# An Bord Pleanála



## Inspector's Report

Ref.: PL04. 246269

Development: To construct a new dry goods store  
Kilmagner, Coolagown, Fermoy, Co. Cork.

### **PLANNING APPLICATION**

Planning Authority: Cork County Council

Planning Authority Ref.: 15/04133

Applicant: McDonnell Brothers Limited

Type of Application: Permission

Planning Authority Decision: Grant subject to conditions

### **APPEAL**

Type of Appeal: Third Party v. Decision

Appellant: Kevin Lyons & Others

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 18<sup>th</sup> September, 2015

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## **1.0 SITE LOCATION AND DESCRIPTION**

1.1 The proposed development site is located in the rural townland of Kilmagner, Co. Cork, approximately 650m northeast of the small village of Coolagown and 6.4km east of Fermoy town, where it forms part of the larger and long-established 'McDonnell Brothers Ltd.' agricultural merchants / milling facility situated at the junction of the N72 National Secondary Road with the Coolagown / Conna Road. The surrounding landscape is typically rural in character and is dominated by a rolling patchwork of agricultural fields interspersed with intermittent instances / groupings of one-off rural housing and associated outbuildings. The site itself has a stated site area of 0.786 hectares, is generally rectangular in shape, and presently comprises an open area used for external storage purposes associated with the operation of the wider facility which in turn includes a variety of industrial / commercial buildings related to the milling operations and the sale of agricultural supplies. The existing complex is bounded by the N72 National Road to the north and by the Coolagown / Conna local road to the west whilst the remaining lands to the south and east are in agricultural use. Notably, the roadside boundaries are defined by a combination of mature trees and hedgerows, although the remaining site boundaries to the south and east are simply bounded by post and rail fencing.

## **2.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

2.1 The proposed development, as initially submitted to the Planning Authority, consists of the construction of a dry goods store with a stated floor area of 1,817m<sup>2</sup> and an overall ridge height of 14.48m which is intended to be used for the storage of various agricultural products, including grain, animal feed ingredients, fertiliser and fencing. Associated site development works would seem to include the provision of an external hardcore area and the installation of an associated surface water drainage system which will discharge to an on-site soakaway.

2.2 In response to a request for further information, revised proposals were submitted which provided for an increase in the ridge height of the proposed construction to 14.63m in addition to minor elevational changes as regards the positioning of external doorways. It was also clarified that the proposed open yard area is intended to be used for external storage purposes associated with the continued operation of the wider premises.

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### **3.0 RELEVANT PLANNING HISTORY**

#### **3.1 On Site:**

PA Ref. No. 912717. Was granted on 7<sup>th</sup> April, 1992 permitting McDonnell Bros. Ltd. permission for a warehouse.

PA Ref. No. 921661. Was granted on 19<sup>th</sup> November, 1992 permitting McDonnell Bros. permission for the retention and completion of an office building and car park.

PA Ref. No. 932893. Was granted on 28<sup>th</sup> March, 1994 permitting McDonnell Bros. Agri. Suppliers Ltd. permission for the construction of a grain drier building, grain silos, general stores, relocation of septic tank and retention of part of existing grain store.

PA Ref. No. 952499 / ABP Ref. No. PL04.097695. Was granted on appeal on 17<sup>th</sup> April, 1996 permitting a dry goods store and a new entrance.

PA Ref. No. 005485. Was granted on 11<sup>th</sup> December, 2000 permitting McDonnell Brothers Limited permission for the construction of a bulk products storage building.

PA Ref. No. 007435 / ABP Ref. No. PL04.123879. Was granted on appeal on 3<sup>rd</sup> October, 2001 permitting McDonnell Brothers Limited permission for a development comprising the retention as constructed of the dry goods store (planning register reference number N/95/2499) including elevational alterations and part change of use from store to two-storey office and pumphouse.

PA Ref. No. 02314. Was granted on 30<sup>th</sup> April, 2002 permitting McDonnell Bros. Ltd. permission for a grain store.

PA Ref. No. 034786. Was granted on 30<sup>th</sup> December, 2003 permitting McDonnell Bros. (Agri. Suppliers) Ltd. outline permission for the construction of new dry goods store.

PA Ref. No. 035840. Was granted on 19<sup>th</sup> May, 2004 permitting McDonnell Bros Agricultural Suppliers Ltd. permission for the retention of a yard area and the construction of new yard area.

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PA Ref. No. 087156. Was granted on 2<sup>nd</sup> September, 2008 permitting McDonnell Bros Ltd. permission for a partial change of use of existing dry goods store to retail unit, mezzanine store and first floor offices, construction of new entrance lobby, signage, external pole sign, car parking and associated site works.

PA Ref. No. 105823. Was granted on 14<sup>th</sup> October, 2010 permitting McDonnell Brothers Ltd. permission for the construction of a shed to contain 3 No. animal feed storage bays and erection of a freestanding advertising sign.

PA Ref. No. 124140. Was granted on 27<sup>th</sup> April, 2012 permitting McDonnell Brothers Limited permission for the construction of a new grain store.

PA Ref. No. 156774. Was granted on 8<sup>th</sup> March, 2016 permitting McDonnell Brothers Limited permission for the construction of a new bag area extension to existing mill.

### 3.2 On Adjacent Sites:

PA Ref No. 085431. Was granted on 31<sup>st</sup> July, 2008 permitting Emily & John Feeney permission for an extension to a dwelling house at Knockdromaclogh, Coolagown, Fermoy, Co. Cork.

## **4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION**

### **4.1 Decision:**

Following the receipt of a response to a request for further information, on 25<sup>th</sup> May, 2015 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 11 No. conditions which can be summarised as follows:

- Condition No. 1 – Refers to the submitted plans and particulars.
- Condition No. 2 – Clarifies that the proposed development is to be used solely for the storage of dry goods.
- Condition No. 3 – Requires additional planting along a section of the western site boundary.
- Condition No. 4 – Prohibits the discharge of surface water onto the public road.
- Condition No. 5 – Prohibits the burning of waste materials on site.
- Condition No. 6 – Refers to waste segregation, collection and disposal.
- Condition No. 7 – Requires the use of clean product in any infill / backfill operations conducted as part of the construction activities.

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- Condition No. 8 – Refers to the collection / transportation of waste material from the site.
- Condition No. 9 – Prohibits the display of signage, nameplates or other advertising devices etc. externally on the site / structure, save with a prior grant of permission.
- Condition No. 10 – Refers to the permitted hours of construction.
- Condition No. 11 – Refers to the payment of a development contribution in the amount of €29,653.44.

#### **4.2 Objections / Observations:**

A single submission was received from the appellants and the principle grounds of objection contained therein can be summarised as follows:

- The proposed development will detract from the rural character and visual amenity of the surrounding area.
- Detrimental impact on the residential amenity of nearby properties.
- Previous instances of non-compliance / unauthorised development on site.
- The need for and usage of the proposed store
- Devaluation of property
- Concerns as regards the potential for water pollution
- The requirement for appropriate assessment.

#### **4.3 Internal Reports:**

*Area Engineer:* No objection subject to conditions.

*Environment:* No objection subject to conditions.

#### **4.4 Prescribed Bodies / Other Consultees:**

*Irish Water:* No objection subject to conditions.

### **5.0 GROUNDS OF APPEAL**

The grounds of appeal are summarised as follows:

- The applicant's response to the request for further information was not deemed to be 'significant' by the Planning Authority and thus was not the subject of revised public notices which has deprived the appellants of the opportunity to comment on the contents of same.
- The proposed dry goods store will be located directly opposite the appellants' dwelling houses and will protrude significantly above the

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- existing mature tree line which presently defines the roadside (western) site boundary.
- The subject application has not been accompanied by photomontages which demonstrate the visual impact of the proposed development when viewed from the adjoining road.
  - When the Board first granted permission for a dry goods store on the adjacent site under ABP Ref. No PL04.097695, it stipulated that a demarcation be provided between the agri-business and the undeveloped agricultural lands to the immediate south (which included that area opposite the appellants' dwelling houses), however, the necessary robust landscaped buffers to the west and south of that development were never completed.
  - In the assessment of ABP Ref. No. PL04.123879 (which involved the retention of deviations made to the development previously approved under ABP Ref. No PL04.097695), the reporting inspector noted that not all of the measures required to be put in place in order to protect the amenity of neighbouring residents had been fully implemented. He also identified a number of discrepancies with regard to the site boundaries between the two applications with the proposal for retention detailing a site boundary that had been extended a considerable distance southwards. Accordingly, the Board imposed strict conditions as regards the boundary between the agri-business and the remainder of the site which was to be retained in agricultural use. It also applied conditions which required the provision of substantial landscaped buffers to the west and south of the site with the southernmost buffer to extend to 35m in depth.
  - Condition No. 2 of the grant of permission issued in respect of ABP Ref. No. PL04.123879 required the use of the external yard areas to be clarified, however, this condition has been misinterpreted as the applicant has been allowed to store materials external to the existing building(s) despite this involving a material change of use that should never have been agreed under the condition.
  - The necessary landscaped buffer to the south of the site has not been developed and the applicant has utilised this area for external storage purposes without the benefit of planning permission.
  - To permit any further building south of the line previously held by the Board in its determination of ABP Ref. No. PL04.123879 to define the limit of the agri-business and the balance of the remaining agricultural lands would have an adverse and unacceptable impact on the residential amenity of the appellants.

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- Whilst external storage has been allowed to occur in that area to the south of the existing store (contrary to the requirements of An Bord Pleanala and the wishes of the appellants), it is respectfully submitted that said use cannot be used as a justification for the proposed development.
  - It is submitted that the applicant has a past history of failing to obtain planning permission and of not complying with the conditions attached to previous grants of permission.
  - The applicant has shown no regard for the appellants' entitlement to enjoy their properties and to maintain their residential amenity. In this respect it is submitted that whilst there should have been no external storage to the west or south of the existing store, the applicant has nevertheless sought to develop this area further to the detriment of the appellants' residential amenity and has advised that the proposed yard areas will be used for '*more of the same*'.
  - The submitted site plan is lacking in detail as regards external storage, however, the supporting correspondence states that those areas to the south and west of the proposed store will be used for external storage purposes. Notably, a similar lack of detail was apparent in PA Ref. No. 03/5840.
  - Whilst the applicant has agreed to carry out additional landscaping along the western site boundary (if deemed to be necessary), it is submitted that although this planting may assist in screening the storage yard which was developed in that area supposed to have been retained as a landscaped buffer and agricultural land, it will not aid in screening the proposed building due to the height and scale of the construction.
  - The applicant has clearly indicated an intention to develop the site in question further south hence an apparent agreement with the Planning Authority to only erect a timber fence along the southern site boundary on the basis that any future development to the south and east would render any screening / landscaping along these boundaries '*pointless*'. Accordingly, in refusing permission for the subject proposal, the Board is requested to send a clear message that not only will permission not be forthcoming on the application site, but that no further encroachment onto those lands to the south will be permitted.
  - From a review of the relevant planning history, with particular reference to PA Ref. Nos. 00/4734 / ABP Ref. No. PL04.123879, 02314 & 034786, it is apparent that both the Planning Authority and the Board have previously determined that the area opposite the appellants' dwelling houses (which includes the proposed development site) is unsuitable for development.

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- The *'Development Management, Guidelines for Planning Authorities, 2007'* require that all reasonable efforts are made to research the planning history of sites in order to ensure that a consistent approach is taken to planning proposals. They also state that, in the interests of procedural fairness and consistency, decision-makers must be seen to evaluate all material considerations for and against a proposed development in an open and transparent manner. Indeed, this requirement is deemed to be of particular relevance in the preparation of planning reports.

In the subject case, the initial Planner's Report fails to list PA Ref. Nos. 95/2499 & 00/7435, the latter of which is crucial to an understanding of the background to the proposed development, whilst it also does not appear to include a clear assessment of the appellants' original objections to the proposed development. Similarly, the report of the Senior Executive Planner lacks background research and fails to take into account the fact that the site to be developed has largely evolved as a result of unauthorised development with both the Planning Authority and the Board having previously determined that it was unsuitable for further development due to the potential negative impact on the residential amenity of local residents.

- The existing facility has expanded considerably over the years to include a significant agricultural retail element. Accordingly, it was suggested in the original letter of objection to the subject application that the proposed store could be relocated to the area in the eastern corner of the site adjacent to the N72 National Road where outline planning permission was already granted for a store in 2003. In the event that this alternative siting can no longer be developed, it is submitted that the option remains to relocate the agri- / general hardware element of the business to a more suitable location (e.g. on industrial lands within Fermoy) and to return the existing hardware retail store to use as grain storage. This would remove the need to develop a further dry goods store.
- The appellants should not have to suffer a further deterioration in their residential amenity as a result of the continued over-development of the application site.
- The intended use of the proposed store is unclear. In this respect it is submitted that as the original application documentation indicated that the store would be used for the storage of agri-products, grain, animal feed ingredients, fertiliser, and fencing etc., the appellants understandably assumed that it would be used to house much of what is presently stored



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outside on site, however, the response to the request for further information has referred to its use as a grain store and for storage of overflow associated with the dry goods store to the north. Notably, the structure to the north of the proposed building is in fact an agri- / general hardware retail store which would suggest that the subject proposal will give rise to an intensification of use both in terms of grain storage and retailing. Any such intensification would further encroach into the agricultural lands to the south.

- The appellants have no confidence that the proposed store will be operated in accordance with the details submitted, with particular reference to the proposal for all loading / unloading of grain to be conducted indoors. Accordingly, there are concerns that regardless of the imposition of operating restrictions by way of condition, grain will be deposited within the external yard area thereby giving rise to issues of noise, odour and vermin.
- The site access located opposite the appellants' dwelling houses continues to be used for deliveries despite a prohibition on the use of same for such purposes.
- A tributary of the Collatrim Stream crosses the Conna Road adjacent to the appellant's (Mr. Kevin Lyons) dwelling house and extends through that part of the site proposed to be developed. This stream flows from west to east and it is proposed to install an oil interceptor located at the edge of this stream on the eastern boundary of the application site.

Given the nature of the business activity conducted on site (which necessitates the installation of an oil interceptor) and as the Collatrim Stream is a tributary of the River Blackwater which has been designated as a Special Area of Conservation, it is considered that the subject application should have been accompanied by a Screening Report for the purposes of Appropriate Assessment.

- The surrounding river network has been polluted in the past and, therefore, the appellants are anxious to ensure that the storage facilities to be provided on site are designed in such a manner as to minimise the risk of any seepage of contaminants into the river network in the future.
- The subject application was not accompanied by an 'Appropriate Assessment'. Furthermore, it is considered that the Planning Authority in screening the proposal for the purposes of appropriate assessment incorrectly concluded that there is no surface water connection between the application site and the Special Area of Conservation.

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## **6.0 RESPONSE TO GROUNDS OF APPEAL**

### **6.1 Response of the Planning Authority:**

None.

### **6.2 Response of the Applicant:**

- The existing facility on site has traded for 40 years and the applicant enjoys a very good relationship with the local community. It has consistently co-operated with the local Tidy Towns Committee and donated lands free of charge to the Committee at the junction of the Tallow Road with the Coolagown Road. It also donated lands for the provision of the existing 'Bring' facility along the Coolagown Road. Furthermore, the applicant has co-operated with regards to landscaping issues and the maintenance of same on the Coolagown Road along the western boundary of its property.
- It is asserted that contrary to the appellants' allegations, the existing operation on site is fully compliant with all previous grants of planning permission and in this regard the Board is referred to the details submitted by the applicant on 27<sup>th</sup> April, 2015 in response to the request for further information issued by the Planning Authority.
- There is an accepted planning precedent that existing / established industry should be permitted to expand, although it is acknowledged that any such expansion should take account of any potential adverse impacts on either third parties or the wider environment. In this respect it is submitted that the only option open to the applicant is to expand its premises to the south or east and, as previously detailed to the Planning Authority, it should be noted that the proposed dry goods store is intended to be used to store grain after the harvest. By way of further explanation, it is submitted that when grain is taken into the site at harvest time, it is stockpiled within the concrete area to the west of the existing store (and hopefully to the west of the new store) before subsequently being dried and stored for eventual end use in the mill. Accordingly, as the mill and dryers are situated in close proximity to the Coolagown entrance and the weighbridge on the western site boundary, and in order to limit double-handling of the grain, it is considered essential to site the proposed new store as close as possible to the mill. Therefore, it would not be practical to site a grain store to the east of the current developed area.
- The eastern part of the application site is currently in use as a retail area and, therefore, in the interests of health and safety, it is preferable to

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- segregate the retail area and its associated pedestrian / vehicular traffic from that area traversed by grain traffic.
- The suggestion in the grounds of appeal that the applicant has not fulfilled its obligations as regards compliance with conditions pertaining to landscaping previously imposed in grants of permission issued on site is rejected.
  - In their assessment of ABP Ref. No. PL04.123879 the reporting inspector stated the following:

*‘the applicant states the intention to extend the embankment and planting by approximately 35m further south to further screen the site. If this work is carried out, once the landscaping has matured, I consider that there will not be a significant problem of visual amenity for the appellants even if the area of concrete hardstanding were to remain . . . Within this context the visual implications of the unauthorised alterations can be acceptable.*

*However, given the scale of buildings, some consideration should also be given to screening on the east and south boundaries. This can be achieved by condition’.*

In this respect it is of particular relevance to note that the use of the term ‘further’ clearly implies that the 35m distant relates to the existing mounding / landscaping along the boundary.

- Condition Nos. 9 & 10 of the grant of permission issued in respect of ABP Ref. No. PL04.123879 required the applicant to reach agreement with the Local Authority as regards the final details for the implementation of said conditions and it is asserted that the proposals subsequently submitted by the applicant in order to comply with the aforementioned requirements were accepted in full by the Planning Authority (Please refer to the previously referenced correspondence as per the applicant’s response to the request for further information dated 27<sup>th</sup> April, 2015).
- The applicant has always ensured that the landscaping of the southernmost part of the site is addressed through the planting of the property boundary rather than by the carrying out of localised landscaping (as has previously been agreed with the Planning Authority). In this regard, the 35m extension of landscaping to the south is very pertinent. This related to extending the landscaping on the western boundary. Therefore, the appellants are incorrect in their interpretation.

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- By way of clarity, it is submitted that the landscaping requirements of Condition No. 12 of ABP Ref. No. PL04.097695 were implemented in full.
  - Condition No. 17 of the grant of permission issued in respect of PA Ref. No. 03/5840 (which authorised the *'retention of yard area and construction of new yard'*) required the site to be landscaped in accordance with the details submitted to the Planning Authority on 16<sup>th</sup> March, 2004 (Drg No. 23133-4 Rev. A). This drawing clearly shows that the screening / landscaping to the south of the proposed developed area (the external yard storage areas) would be achieved by extending the mounding and planting along the western site boundary.

In fact, the applicant has extended the mounding and landscaping along the western site boundary southwards as far as the end of its property (as demonstrated on the survey drawings submitted in response to the request for further information). Furthermore, these works were undertaken almost 10 years ago and the planting is now mature.

- At the southernmost extremity of the property, there is a 25-30m long section which has been mounded but is not densely planted and thus the applicant has volunteered to augment the planting at this location (as also required by Condition No. 3 of the notification of the decision to grant permission).
- The applicant previously agreed with the Planning Authority that the landscaping of the eastern site boundary (i.e. on the Tallow Road) would be achieved through the provision of additional planting to both sides of the entrance. These works have since been carried out and the planting involved is now mature.
- Drg Nos. 214157-10 & 11 show the plans and sections of the appellants' dwelling houses relative to the proposed development and in this respect it is submitted that the notional sightlines clearly show that the planting will screen those properties from the development proposal.
- With regard to visual amenity, the Board is advised that in their assessment of ABP Ref. No. PL04.123879 the reporting inspector concluded that the visual implications of that proposal were acceptable.
- The applicant has provided extensive landscaping, including planting and mounding along the entirety of the site boundary with the Castlelyons Road, over and above that stipulated by the Planning Authority. It is considered that this screening is effective as evidenced by the accompanying photographs.

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- By way of clarity, and contrary to the appellants' suggestions, there was never any requirement to provide landscaping internally on site along the interim southern boundary of the developed area.
  - It is considered that the existing external storage areas are fully compliant with the previous grants of planning permission issued on site.
  - The grant of permission issued in respect of ABP Ref. No. PL04.123879 gave a clear direction on the situation with regard to the external yards and the use of same. In this respect it should be noted that the inspector's report is of assistance in understanding the final decision and that the Board ruled that the area to the west of the store, a concrete area, was approved for external storage subject to adequate screening. The use of this area was clearly for storage, not access, as all large doors in the western gable of the store were moved elsewhere.

The Board also ruled that the external developed area to the south of the store would be curtailed, such that the site boundaries in such a retention decision would exactly match the original site boundaries permitted under ABP Ref. No. PL04.097695. It is important to understand that the Board did not comment either way in relation to the acceptability of locating external storage to the south of the store. It merely maintained a rigorous mapping discipline in relation to the correct location of the development boundary. The appellants are entirely incorrect in their interpretation that the Board ruled against external storage on the south side of the store.

- The applicant obtained permission under PA Ref. No. 035840 to retain and extend the yard south of the existing store. The development boundaries permitted under that application match exactly the development boundaries on site at present.
- The proposed dry goods store is largely sited on the existing permitted storage area and the subject proposal seeks permission to develop a new external storage area to the south of the proposed store which will approximately match the existing area.
- The external area to the west of the proposed store will be bounded in part by a concrete retaining wall and will be used particularly for the storage of grain during the harvest. In this respect it should be noted that the applicant is responding to the increased intensification in farming methods (such as through the use of larger combine harvesters, lorries, and trailers for grain transportation) which has resulted in the harvest duration becoming more condensed. Accordingly, whilst the overall grain intake at the existing facility has not increased, the pressure for the temporary

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storage of un-dried grain at the height of the harvest has definitely increased (*N.B.* Due to its nature, un-dried grain may not be stored in excess of 3.0-3.5m high because of the danger of it becoming heated). Therefore, extensive flat areas such as that proposed are required for un-dried grain storage.

- The use of the proposed external areas is detailed throughout the application documentation.
- It is considered that the extension of the external yard for grain storage etc. has previously been established as acceptable in principle under ABP Ref. No. PL04.123879.
- The extension of the existing external storage areas southwards to replace that area lost by the construction of the dry goods store will have a minimal impact on the appellants.
- It is considered that the subject application includes for the development of the external storage area given that this would be ancillary to the proposed store.
- Whilst it was initially understood that the qualifying remarks contained in Condition No. 2 as imposed by the Planning Authority related only to the use of the dry goods store, upon review of the Planner's Report it was realised that the condition was intended to prohibit outside storage. Accordingly, it is submitted that the wording of Condition No. 2 is unclear and ambiguous and that the applicant is correct to state that permission has been granted for external storage.
- By way of precedent, the Board is advised that in the case of ABP Ref. Nos. PL04.097695 & PL04.123879 the words 'external storage' were not used to describe the development proposed, however, such external storage was discussed at length by both the Local Authority and the reporting inspector i.e. open storage was deemed to be an ancillary activity included within the application notwithstanding the absence of any specific reference to same.
- With regard to PA Ref. No. 035840, it should also be noted that whilst permission was granted to retain and construct a new yard, no mention was made of the use of said yard, however, it was clear that it was intended for storage purposes.
- In the event that the Board is of the opinion that the subject application does not provide for external storage, it is understood that the Board has the power to request the applicant to re-advertise the application to address the issue. In that instance the use of the external yard for storage purposes could be validly considered and assessed by the Board.

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- If the Board agrees with the Planning Authority and is of the opinion that a separate planning application is necessary for the external yard storage, it is nevertheless requested under this appeal to adjudicate on the merits or otherwise of allowing external storage on both the western and southern sides of the proposed new store.

## **7.0 RESPONSE TO CIRCULATION OF APPLICANT'S SUBMISSION**

### 7.1 Response of the Planning Authority:

None.

### 7.2 Response of the Appellants:

- Contrary to the applicant's assertions, it is the recollection of the appellants (Mr. John Feeney) as a member of the local Tidy Towns Committee that the lands at the junction of the Tallow and Coolnagown Roads were cleared in order to improve visibility and that subsequent landscaping of that area was undertaken by the Tidy Towns Group.
- The Tidy Towns Committee never requested land from the applicant and there was never an offer of lands from the applicant to the local community in order to permit the carrying out of any landscaping or other works.
- It was the Tidy Towns Group that instigated the bring centre which is also understood to be located on the public road and not within the applicant's property.
- No lands have been donated by the applicant and it has never contributed to the works undertaken by the Tidy Towns Group despite benefitting from the visual improvements.
- The Tidy Towns Committee has previously been complemented on its efforts to soften the visual impact of the applicant's business premises.
- Whilst it is accepted that the existing construction on site is planning compliant, this has been achieved by the applicant seeking permission to retain various unauthorised developments, including the retention of a large portion of the site to be developed as a storage yard. The failure to develop this area and the adjoining storage as a landscaped boundary is in contravention of Condition No. 10 of the grant of permission issued for PA Ref. No. 007435 / ABP Ref. No. PL04.123879.
- There is no 'planning precedent' which would allow a permitted development to continue to expand.
- There is no objection to the expansion of the applicant's business, however, the appellants have difficulties with regard to the location of the

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proposed expansion. In this respect whilst the applicant has claimed that it is not practical to develop the premises to the east for operational reasons, it should be noted that outline planning permission was previously granted for a large grain store on those lands. Furthermore, it is considered that it would not be insurmountable to overcome conflicts between retail customer traffic and the movement of grain. Indeed, whether the grain is stored to the south or east, it will nevertheless still have to be moved through the retail area.

- It is accepted that the roadside site boundary was required to be landscaped with an extended embankment (including planting) and that these works have been largely completed, however, it was also a specific requirement that the southern site boundary be landscaped and these works have not been carried out.

In correspondence to the Planning Authority dated 13<sup>th</sup> November, 2001, the applicant advised that it would not be landscaping the southern site boundary as required by ABP Ref. No PL04.123879 and would instead extend the roadside boundary embankment and planting from 35m to 41m. Subsequently, in a letter dated 5<sup>th</sup> April, 2002 the Planning Authority confirmed that the aforementioned proposals were acceptable. In this regard, it is submitted that the Council would appear to have acted beyond its powers in agreeing certain conditions i.e. the Planning Authority cannot remove the need for the developer to comply with a particular planning condition (Condition No. 10) of the grant of permission issued in respect of ABP Ref. No. PL04.123879. In support of the foregoing, the Board is referred to the case of *Treacy v. An Bord Pleanala [2010] IEHC13* which emphasises that a Planning Authority, in agreeing points of detail, is confined to implementing what has already been decided in the parent permission; in this case the provision of a landscaped buffer along the entire southern boundary of the site. Therefore, the boundary of the site has been extended southward in direct conflict with the previous requirements of the Board.

- The suggestion that the proposed building will be adequately screened is rejected as it will be highly visible from the appellants' property. Indeed, the 35m landscaped embankment will play no role in screening the development from the appellants' property and will have little impact on screening those views available from the south.
- The applicant has referred to the '*interim internal southern boundary of the developed area*' and has stated that there was never any requirement to



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landscape same, however, it is this boundary which was not landscaped in contravention of Condition No. 10 of ABP Ref. No PL04.123879.

- With regard to the '*external storage area*', it is considered that if the appellants have misunderstood the Board's intention as to the use of the access road to the south of the existing building, then the applicant has not served to clarify same. In response to Condition No. 4 of ABP Ref. No. PL04.123879 (which required the use and hours to be stipulated and agreed), the applicant merely stated that it would comply with same. However, any use which would have resulted in traffic movements and noise would have conflicted with the intention of the Board when it refused permission for an entrance on the southern elevation of the permitted building and imposed a condition to protect the amenity of residents. In this respect it is submitted that most storage uses would generate traffic movements and, therefore, any such storage use would likely have been unacceptable to the south of the building. In any event the applicant ignored the terms of the permission by extending the access road to form a storage yard and then applied to retain it.
- The external yard area is presently being used to store bulk fertilisers, timber, building materials, piping, old oil tanks, pallets and waste, whilst it is also used for the parking of bulk haulage vehicles. The traffic movements and noise associated with this usage causes a nuisance to local residents and is not considered to be the type of use / level of activity envisaged by the Board for the access road to the south of the storage building.
- The public notices for the subject application do not include for the provision of external storage whilst the submitted plans only refer to a new hardcore area and not to a particular use.
- The applicant's claim that there is an on-site precedent for ancillary external storage assumes that the area of hardstanding to the west (and the access road to the south) of the store permitted under ABP Ref. No. PL04.123879 would be used for storage purposes. In that application the applicant stated that, in order to carry out the then proposed development, it would be necessary to remove old equipment to still work on the grassland to the south (taken to refer to agriculture). It was further stated that all of this material would be removed and the site cleaned up. Accordingly, there was no intention to store material to the south of the building.
- The storage that arose to the south of the store permitted under ABP Ref. No. PL04.123879 was the subject of a planning application for retention (PA Ref. No. 03/5840) which also included for a further '*new yard area*' the

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use of which only became apparent in response to a request for further information. The absence of any reference in the subject application, and the applicant's response to the grounds of appeal, serve to suggest that it is proposed to develop external storage space without a grant of planning permission.

- It is clear that the proposed store cannot function without an external storage area and that this will be primarily located to the south of the proposed building. This will result in the overall extent of the applicant's agri-business being extended approximately 50m southwards beyond the site boundary previously set by the Board.

## **8.0 RESPONSE TO CIRCULATION OF APPELLANT'S SUBMISSION**

### **8.1 Response of the Planning Authority:**

None.

### **8.2 Response of the Applicant:**

- It is considered that the various points raised in the appellants' submission have previously been addressed by the applicant in its response to the grounds of appeal.
- Whilst the appellants have accepted that the 35m of further planting related to the western site boundary (as set out in Drg. No. 23133-4 Rev. A), they are now insisting that additional screen / buffer planting be provided along the southern site boundary.
- The internal boundaries within the applicant's lands are considered to be of a temporary nature.
- With regard to the southern and eastern site boundaries, details were submitted to the Planning Authority which proposed that screening to the south could be achieved through the provision of landscaping along the western site boundary whilst views from the east could be screened by landscaping around the main site entrance on the northern site boundary. These proposals have been accepted in full by the Planning Authority. It is further submitted that the planting along the site boundaries fully complies with the intent of the Board as regards screening of the development to the south and east. It is also considered that the Board issued general guidance and that the details were left to be agreed with the Planning Authority.
- The Board is requested to note that the applicant has since completed the planting at the southern end of the western site boundary.

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- It is submitted that the intention of the Board's previous decision was never to limit the further development of the application site in a southerly direction, but was rather to ensure that the site was screened from the south. This screening is now in place as a result of planting undertaken along the western site boundary.
  - In the subject application for a dry goods store it was assumed that external storage would be an ancillary activity. Indeed, storage is shown in all external areas on Drg. No. 23133-4 Rev. A.
  - The Board is advised that additional external storage, particularly on the western extent of the site, is urgently required in order to temporarily store un-dried grain at harvest time.

## **9.0 DEVELOPMENT PLAN**

### **Cork County Development Plan, 2014-2020:-**

#### **Chapter 6: Economy and Employment:**

##### *Section 6.3: Employment Strategy*

##### *Table 6.1: Employment Hierarchy: Rural Areas:*

- Support agriculture, fishing & food processing sectors.
- Encourage rural diversification (especially tourism but also on and off farm employment activities such as processing of agricultural produce, manufacturing of crafts and specialist farming) and support innovation in indigenous enterprise.

##### *Section 6.7: Rural Economy*

##### *Section 6.8: Agriculture and Farm Diversification*

##### *Section 6.9: Business Development in Rural Areas*

### **Fermoy Electoral Area Local Area Plan, 2011 (Second Edition, Jan. 2015):**

#### *Section 2: Local Area Strategy*

## **10.0 ASSESSMENT**

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development

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- Previous instances of non-compliance / unauthorised development
  - Overall design and layout / visual impact
  - Impact on residential amenity
  - Procedural issues
  - Appropriate assessment

These are assessed as follows:

**10.1 The Principle of the Proposed Development:**

10.1.1 The proposed development involves the expansion of the existing 'McDonnell Brothers Limited' agricultural merchants / milling complex at Kilmagner, Coolagown, Fermoy, Co. Cork, through the construction of a new dry goods store (floor area: 1,817m<sup>2</sup>) and in this respect it is of relevance to note that the applicant has indicated that the proposed construction will be used as a grain store during the harvest season with the stored material then being used to feed the adjacent milling operations conducted on site. In addition, it has been clarified that once the grain has been exhausted (typically by early springtime) the store will be used to house a variety of other animal feedstuffs imported to the site for end use in the mill. Alternatively, it has also been detailed that part of the new store may be utilised for the storage of any overflow of miscellaneous agricultural goods from the existing dry goods store on site to the immediate north. Notably, it has also been asserted by the applicant in response to the grounds of appeal that the proposed store will not be used to facilitate any increase in the overall intake of grain on site and that the necessity for the new construction has arisen as a result of continued improvements in farming practices (e.g. more efficient harvesting techniques through the use of larger combine harvesters and lorries / trailers for transportation) which have served to shorten the duration of the harvest thereby giving rise to a more condensed period of activity i.e. the improved storage capabilities will not result in any increase in the intake and associated processing of grain within the mill complex. Accordingly, notwithstanding the site location in an unserved rural area, having regard to the planning history of the site, its established use as an agricultural merchants / milling facility, the general provisions of Policy Objective ZU 2-5: 'Non-Conforming Uses' of the County Development Plan which states that the reasonable intensification, extension or improvement of non-conforming uses will be permissible subject to normal planning considerations, in addition to the nature and extent of the development proposed, I am satisfied that the submitted proposal will not give rise to any significant intensification of use on site and instead represents an appropriate and ancillary expansion of the existing facility which is acceptable in principle.

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### **10.2 Previous Instances of Non-Compliance / Unauthorised Development:**

10.2.1 In relation to the appellants' concerns as regards previous instances of unauthorised development on site and alleged non-compliance with several of the conditions attached to earlier grants of permission, it should be noted that the Board has no function in respect of issues pertaining to enforcement and that the pursuit of such matters is generally the responsibility of the Planning Authority. Furthermore, with regard to the planning history and alleged past failures to comply, it would appear that following consideration of same the Planning Authority did not deem it necessary / appropriate in this instance to invoke the provisions of Section 35 of the Planning and Development Act, 2000, as amended. In any event, it is my understanding of the legislation that the provisions of Section 35 are not applicable to the Board and therefore I do not propose to comment further on this matter.

10.2.2 At this point, it is of benefit to review the planning history of that part of the application site relevant to the subject proposal with specific reference to the area of land to the immediate south of the existing dry goods store which is presently used for the external storage of various materials and other equipment associated with the operation / functioning of the wider facility. From a review of the available information, it would appear that those grants of permission issued on site pursuant to ABP Ref. Nos. PL04.097695 & PL04.123879 with regard to the development of the existing dry goods storage building on site (i.e. that structure located to the immediate north of the proposed development) sought to protect the visual amenity of the rural area in general (and the amenities of adjoining residential properties) through the provision of various planting along the site boundaries, including the extension of a landscaped buffer. Notably, it would seem that the appellants have interpreted the inclusion of the foregoing as effectively amounting to a limitation on the further expansion of the existing facility southwards into the adjacent agricultural lands and, therefore, concerns have been raised as regards the planning status of the current use of part of the application site (beyond the site boundary detailed in ABP Ref. No. PL04.123879) for external storage purposes, in addition to the proposal to extend same as part of the overall development.

10.2.3 Accordingly, on the basis of the foregoing, a key aspect of the grounds of appeal concerns the specific authorised extent of the existing facility and the overall acceptability of permitting any further expansion of same having regard to the planning history of the wider site. In this respect, I would suggest in the first instance that whilst the appellant is correct in that certain conditions were

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imposed in previous grants of permission on site which sought to protect the amenities of surrounding properties, these should not be interpreted as providing for an outright prohibition on any further expansion of the existing site operations. Secondly, whilst I would acknowledge that the submitted proposal provides for an extension of site area / curtilage of the wider operation, it should be noted that the site boundary would seem to have been previously extended in part as a result of subsequent grants of permission issued by the Planning Authority. Indeed, this matter would seem to have arisen during the reporting inspector's assessment of ABP Ref. No. PL04.123879 wherein it is noted that *'it appears that the site boundary has been extended by Cork County Council (N/00/5485)'* and that *'This enlarged site boundary has been carried forward into the planning application lodged with Cork County Council (N/00/7435), which is the subject of this appeal'*. More notably, in that assessment, the reporting inspector also concluded that as the issue then under consideration related to the retention of works (which were unauthorised in that they departed from a previous appeal decision), and as he had no evidence that would have enabled him to take a view on the fact that neither the description of development nor the site notice drew attention to an enlarged site, it was appropriate to base his recommendation on the 'original' site boundary as had previously been restricted by condition, without prejudice to any planning permission which had since been granted by Cork County Council. Therefore, it would seem that the Planning Authority had already permitted an extension of the site area pursuant to PA Ref. No. 00/5485 during the Board's assessment of PA Ref. No. 007435 / ABP Ref. No. PL04.123879.

10.2.4 In addition to the foregoing, from a review of the relevant planning history it would appear that the overall site boundary of the existing agri-merchants / milling facility has been extended further in the intervening period between the determination of ABP Ref. No. PL04.123879 and the lodgement of the subject appeal and in this regard I would refer the Board in particular to PA Ref. Nos. 035840 & 08/7156. For example, the grant of permission issued in respect of PA Ref. No. 035840 permitted the retention of a yard area and the construction of a further yard area on lands which form part of the subject application site. Similarly, it is of relevance to note that the site layout plan approved under PA Ref. No. 08/7156 also details an *'existing external storage area'* on a significant proportion of the subject site area. Accordingly, in my opinion, it is clear that during the course of the development of the wider facility it would seem that the extent of the site area occupied by same has been incrementally increased by way of a number of grants of permission, although I would concede that this may not have been overtly evident from the various development descriptions. Nevertheless, the current situation on site would seem to be that the existing

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facility has been permitted to expand its overall site area / boundary beyond that previously authorised under ABP Ref. No. PL04.123879 and that part of the subject site has already been approved for external storage purposes.

10.2.5 Therefore, in light of the planning history relevant to the application site, it is my opinion that the proposed development will not materially contravene the terms or conditions of any previous grant of permission issued on site and that the proposal should be assessed on its merits.

**10.3 Overall Design and Layout / Visual Impact:**

10.3.1 The proposed development involves the expansion of an existing agri-merchants / milling facility into the adjoining lands and the key aspects of the works include the construction of a new dry goods store and an associated concrete / hardcore yard area which is also intended to be used for external storage purposes. Accordingly, concerns have been raised as regards the visual impact of the proposal on nearby residential properties and the wider landscape character of the surrounding area.

10.3.2 In terms of assessing the visual impact of the proposed development it is of relevance in the first instance to note that the wider landscape type within which the subject site is located has been classified as '*Broad Fertile Lowland Valleys*' In addition, it is of particular relevance to note that the site is not located within any designated '*High Value*' landscape nor will it be readily visible from any scenic route identified for preservation in the County Development Plan.

10.3.3 In a local context, whilst the existing mill facility occupies a somewhat prominent location given its positioning alongside the N72 National Secondary Road at the junction of same with the Coolagown / Conna Road, it should be noted that the development site itself is situated to the rear of the existing complex and thus the proposed dry goods store will be screened from view to the north / northwest for the most part by existing construction (notwithstanding its overall height). Furthermore, given its siting within an existing complex of buildings, I am inclined to suggest that although the proposed store and the associated external storage area (the provision of which will necessitate the raising of ground levels) will be readily visible from localised vantage points along the N72 to the northeast, the overall additional visual impact on the surrounding area will be somewhat limited due to the site context. In addition, the provision of suitable landscaping along the northern / north-eastern site boundaries would serve to further reduce this visual impact (particularly that of the external storage area).

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10.3.4 With regard to the potential impact of the proposed development on views available from along the Coolagown / Conna local road to the immediate west of the application site, it is my opinion that the extent of existing mounding and mature landscaping along the site boundary is sufficient to adequately screen the development from wider view. In addition, it should be noted that the views available from the appellant's property (in addition to those from surrounding properties) over the subject site and the surrounding landscape are not of public interest nor are they expressly identified as views worthy of preservation in the relevant Development Plan. They are essentially views enjoyed by private individuals from private property. A private individual does not have a right to a view and whilst a particular view from a property is desirable it is not definitive nor is it a legal entitlement and, therefore, I am of the opinion that the proposed development would not seriously injure the amenities of the appellants property (or that of any other properties in the vicinity) simply by interfering with their views of the surrounding area.

**10.4 Impact on Residential Amenity:**

10.4.1 Concerns have been raised in the grounds of appeal as regards the impact of the proposed development on the residential amenity of the occupants of nearby housing along the Coolagown / Conna Road with particular reference to the likelihood of increased noise levels and general disturbance arising from the loading / unloading of grain deliveries etc. and the use of the external storage area. In addition, reference has been made to the possible odour impact arising as a result of the external storage of grain and the possibility of increased vermin activity in the surrounding area, notwithstanding the imposition of operating restrictions by way of condition.

10.4.2 Notably, in response to the request for further information issued by the Planning Authority wherein concerns were expressed as regards the possible detrimental impact of the proposed development on the residential amenity of those properties situated along the Coolagown / Conna Road, the applicant submitted amended proposals which omitted the previously proposed vehicular entrance doorway from the western gable of the dry goods store and replaced it with a new doorway positioned at the westernmost end of the northern elevation. By way of further explanation, it was also submitted that the main doorway to the store needed to be positioned towards the western end of the structure in order to accommodate ready access for vehicles / machinery transporting the stored grain etc. to the milling facilities located within the north-western part of the site thereby avoiding the double-handling of materials. In addition, it was clarified that



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all loading / unloading activities would be conducted from within the structure and that the extraction plant etc. associated with the aeration of the grain store would be positioned on the eastern gable of the building away from nearby housing.

10.4.3 Having reviewed the available information, whilst I would acknowledge the legitimacy of the appellants' concerns as regards the potential for the proposed development to have a negative impact on the residential amenity of nearby properties due to the likely increase in noise levels etc. arising from the additional vehicle movements etc. conducted in close proximity to the western site boundary, I am inclined to suggest that cognisance must be taken of the specific site context with particular reference to the existing operations conducted within the wider facility in addition to the presence of an intervening public road between nearby housing and the application site. In my opinion, the foregoing factors are already contributing to the prevailing noise environment in the surrounding area and thus the case could be made that the proposed development will not result in the introduction of any new noise sources which are not already experienced in some part in the area. Furthermore, it would seem that the landscaping / planting alongside the western site boundary has matured noticeably from that in place during the assessment of ABP Ref. No. PL04.123879 and thus provides effective screening of the application site.

10.4.4 Accordingly, on balance, I am inclined to conclude that in light of the foregoing considerations, in addition to the separation distances between the proposed development and nearby housing, the extent of landscaping along the western site boundary, and the actual nature of the development proposed (i.e. storage), the submitted proposal is unlikely to result in any significant additional impact on the residential amenity of the occupants of surrounding properties.

**10.5 Procedural Issues:**

10.5.1 With regard to the decision of the Planning Authority not to deem the further information submitted by the applicant on 27<sup>th</sup> April, 2015 as 'significant' thereby precluding any further third party observations on same, in my opinion, such procedural matters are generally the responsibility of the Planning Authority which in this instance took the view that the documentation in question was not of such significance as to warrant the publication of revised public notices. It should also be noted that the Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of the subject application and, therefore, I do not propose to comment further on this matter other than to state that the Planning Authority's actions have not infringed the appellants' right to appeal.

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### **10.6 Appropriate Assessment:**

10.6.1 From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that the proposed development site is located outside of any Natura 2000 site with the closest examples of any such designations being the Blackwater River (Cork / Waterford) Special Area of Conservation (Site Code: 002170) and the Blackwater Callows Special Protection Area (Site Code: 004094) which are both situated approximately 1.77km north of the application site (*N.B.* The River Flesk which also forms part of the Blackwater River (Cork / Waterford) Special Area of Conservation (Site Code: 002170) is also located approximately 5km south of the site). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Objective No. HE 2-1: '*Sites Designated for Nature Conservation*' of Chapter 13 of the Cork County Development Plan, 2014, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

10.6.2 Having reviewed the available information, including the screening exercise undertaken by the Planning Authority as appended to the initial Planner's Report prepared in respect of the subject proposal, and following consideration of the 'source-pathway-receptor' model (with particular reference to the potential for the discharge of contaminated waters etc. to the Collatrim Stream and onwards to the River Blackwater (i.e. the Blackwater River (Cork / Waterford) Special Area of Conservation), it is my opinion that given the nature and scale of the development proposed, the site location outside of any Natura 2000 designation, the limited ecological value of the lands in question, the absence of any direct discharge to a watercourse, and the separation distances involved between the site and the Blackwater River (Cork / Waterford) Special Area of Conservation and the Blackwater Callows Special Protection Area, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 sites. Therefore, I am inclined to conclude that the proposed

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development would not be likely to significantly affect the integrity of the foregoing Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.

10.6.3 Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site and, in particular, specific Site Codes: 002170 & 004094, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

## **11.0 RECOMMENDATION**

Having regard to the foregoing I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations set out below:

### **Reasons and Considerations:**

Having regard to the planning history of the site, the established and permitted use of the wider site, the nature, design and use of the proposed development, and the provisions of the Cork County Development Plan, 2014, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would not give rise to an undue risk of water pollution. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 27<sup>th</sup> day of April, 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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**Reason:** In the interest of clarity.

2. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

3. Prior to commencement of construction of the development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority. The external finishes shall be the same, in colour and texture, as those of the existing structures on the site adjoining the proposed development.

**Reason:** In the interest of visual amenity.

4. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual and residential amenity.

5. The proposed development shall be used solely for the storage of dry goods only. No change of use shall occur without a prior grant of planning permission.

**Reason:** In the interest of residential amenity.

6.
  - a) Noise from the development shall not give rise to sound pressure levels (Leq 15 minutes) measured at noise sensitive locations which exceed the following limits:

55 dB(A) between the hours of 0800 and 1800 Monday to Friday inclusive (excluding bank holidays) and 45 dB(A) at any other time.

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- b) There shall be no clearly audible tonal component or impulsive component in the noise emission from the development at any sensitive location.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

7. No signage of any kind shall be erected on the exterior of the proposed development without a separate grant of planning permission.

**Reason:** In order to permit the planning authority to assess the impact of any such signage on the visual amenities of the area through the statutory planning process.

8. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with

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the Development Contribution Scheme made under section 48 of the Act  
be applied to the permission.

Signed: \_\_\_\_\_

Robert Speer  
Inspectorate

Date: \_\_\_\_\_