



An  
Bord  
Pleanála

## Inspector's Report PL17.246510

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<b>Development</b>	Construction of a convenience retail store on lands to the North of the Windtown/Proudstown Link Road, Clonmagadden, Navan, County Meath.
<b>Planning Authority</b>	Meath County Council
<b>Planning Authority Reg. Ref.</b>	NA 151044
<b>Applicant</b>	Targeted Investment Opportunities PLC
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Appellant</b>	Kingscroft Developments Limited
<b>Type of Appeal</b>	3 <sup>rd</sup> Party -v- Grant
<b>Observer</b>	None
<b>Date of Site Inspection</b>	14/6/2016
<b>Inspector</b>	Paul Caprani

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## **1.0 Introduction**

- 1.1. PL17.246510 relates to a third party appeal against the decision of Meath County Council to issue notification to grant planning permission for the construction of a convenience store (464 sq.m) and ancillary works. The main issues raised in the grounds of appeal relate to the validity of the application and the deficiency in terms of detail presented in the application, particularly in relation to traffic impacts and issues relating to sufficient legal interest in the lands in question. There is a concurrent application and appeal to a residential development on adjoining lands (see Reg. Ref. PL17. 246513 attached).

## **2.0 Site Location and Description**

- 2.1. The subject is located on lands to the immediate North of the Windtown Proudstown Link Road, to the immediate west of the main access road serving the overall lands which are subject to the Masterplan and the access road serving the 106 houses proposed under Reg. Ref. PL 17 246513. The application and appeal under PL 17. 246513 is located to the immediate north of the subject site.
- 2.2. According to the Planning Application Form, the site has a total area 1.057 ha and comprises of a field which is currently used for arable farming. A timber post fence runs along the roadside boundary of the site while the remainder of the field is surrounded by mature hedgerows. Open fields are located to the north of the site. A small linear strip of undeveloped land to the north of the Link Road and to the immediate west subject is earmarked for an additional retail unit and a playground under phase two of the Masterplan and it does not form part of the subject application before the Board.

### 3.0 Proposed Development

3.1. Planning permission is sought for a retail unit (referred to on the drawings as the 'Anchor Unit', service yard, internal access roads and 37 car parking spaces on the subject site. The retail unit has a gross floor area of 464.4m<sup>2</sup> (net retail area 349.9). It comprises of a small convenience store and associated storage areas, offices and ancillary areas. The building rises to a maximum retail height of 8.65 sq.m and incorporates a shallow 'v'-shape or inverted pitched roof. The external finishes comprise of a mixture of colour render, selected stone cladding and pre-colour rendered panels. A covered passageway separates the subject retail unit from an adjacent unit which will be the subject of a separate application under Phase 2 of the Masterplan. A service access road and service yard is to be located to the immediate north of the building. Access is to be provided from the northern boundary of the site, from the main distributor road from the Windtown/Proudstown Link Road serving the proposed residential development to the North. The access point serves 37 car parking spaces adjacent to the western boundary of the site and to north of the retail unit. Permission is also sought for 3 advertising signs attached to the building and a 6.8 m totem pole style sign adjacent to the Link Road

### 4.0 Planning Authority's Assessment

4.1. The planning application was received on 6<sup>th</sup> October, 2015. The application submitted was accompanied by the following documentation:

- **A Supporting Planning Statement.** The report sets out the site description and its surroundings and provides details of the planning history. It also sets out the proposed development in detail, including future phasing for the overall Masterplan for the surrounding area of the site. The statement goes on to assess the proposal in terms of its compliance with various policy guidance documents. In particular reference is made to the Regional Planning

Guidelines for the Greater Dublin Area, the Meath County Development Plan and the Navan Development Plan 2009-2015. The Statement evaluates the proposal in relation to retail policy guidance, traffic and transportation issues and car parking requirements. It concludes that the proposal fully accords with planning policy guidance and as such constitutes an appropriate development for the site in question.

- **A Transportation Assessment Report.** This report was carried out by NRB Consulting Engineers. The assessment report confirms that Phase 1 of the development can be accommodated without any significant traffic impact and without requiring off-street junction improvements. However beyond Phase 1 it is acknowledged that there are capacity related restrictions which will likely require some junction improvements. The report sets out details of trip generation, trip assignment and trip distribution. It is considered that there are no significant traffic or road capacity/traffic safety issues that would prevent a grant of planning permission in the case of the retail planning application or the concurrent housing development on the lands to the north proposed under phase 1 of the Master Plan.
- **An Appropriate Assessment Screening Report** notes that the River Boyne and River Blackwater SAC and SPA are located 1.1 kilometre from the subject site. The qualifying interests and conservation objectives associated with the Natura 2000 sites are identified. It is considered that no adverse effect is expected as a result of the proposed development in terms of direct loss of habitats or reduction in water quality due to the proposed water and wastewater arrangements to be put in place on site.
- A separate **Ecology Report** was also submitted. It notes that the proposed development will need to consider bats and bat roosts and other protected rare or vulnerable species that may exist on site. While the proposed development will involve the loss of fields, the degree of impact on local bat populations depends on boundary tree lines. If boundary trees are retained

the potential impact would be low. Various mitigation measures are set out in to address any potential adverse ecological impact.

- A **Site Services Design Report** was also submitted. Details of storm water management and foul sewer design are contained in the report. The report also contains a Water Management and Conservation Plan and a foul sewer condition survey.

#### 4.2. **Initial Assessment by the Planning Authority**

A report from the Public Lighting Department requires a number of conditions to be attached in respect of public lighting to serve the retail unit and along the Link Road.

A report from Irish Water required further details in relation to water supply design issues and further details with regard to the route of the water distribution network.

A report from the HSE, states that there are no objections to the proposed development subject to 13 conditions primarily relating to environmental health issues.

A report from the Roads Design Office, states that the application should not be granted as a standalone application but should only be permitted in conjunction with the proposed housing development on adjoining lands. Further details are also required in respect of the potential traffic impact on the N51. A Road Open Licence will also be required.

A further letter on behalf of the applicant confirms that all land within the application boundary is either owned by the applicant or taken in charge by Meath County Council.

4.3. The initial planner's report considers the key planning considerations to be as follows:

- Planning Principle/Zoning

- Design and Layout
- Site Servicing
- Access Arrangements
- Ecology
- Other Issues
- Appropriate Assessment

4.4. It concludes that the principle of the proposed development is acceptable having regard to the land use zoning objective governing the site. However there are a number of matters in relation to compliance with the Navan Development Plan, external finishes, landscaping and the protection of mature boundary treatment. There are also a number of infrastructure concerns in respect of servicing the development and it was therefore recommended the following information be requested.

- Further details in relation to the Masterplan and the phasing arrangements associated with same.
- Further changes to the overall design of the retail unit.
- Further details in relation to drainage arrangements including details of the proposed soak-away infiltration unit arrangements, rain water harvesting arrangements and a management plan for the operation and maintenance of the attenuation pond facility at the north-west of the site.
- Further details in relation to water supply and foul drainage arrangements to serve the proposed development.
- Further details in relation to the design and layout of cycleway and footpaths associated with the overall master plan. It is also noted that there are no details of traffic counts and PICADY results supplied with the application.

- Full details of an archaeological impact assessment.
- Details of land ownership relating to the site and its surroundings. In the event that the applicants do not own all of the lands within the boundary of the site letters of consent from the relevant landowners should be submitted.
- Finally the applicant is requested to address the concerns raised in the third party submission on file (from the current appellants).

#### 4.5. **Further Information Response**

- 4.6. A further information response was submitted on 4<sup>th</sup> March, 2016 and is briefly outlined below.

Details of a Masterplan document is attached which identifies a level of development proposed in each of the four phases. It provides details of the overall development of the lands in terms of phasing, density, scale, design and services. The cumulative impact from the proposed development (both residential and retail elements) will have a negligible impact in traffic terms.

- 4.7. The retail unit has been redesigned the revisions are indicated on Drawing no. 15-005B-305 Rev B). A landscaping plan for the entire site and in respect of the servicing yard has also been submitted.
- 4.8. The various issues raised in respect of surface water, surface water storage, rainwater harvesting and general water supply and foul drainage issues are addressed in a separate report prepared by JOR Consultant Civil and Structural Engineers.
- 4.9. With regard to footpath and cycleway provision it is stated that the provision of a footpath and cycle path between the proposed residential development and Tailteann Drive is now proposed to be delivered in Phase 2 of the development.



- 4.10. The Masterplan has also been redesigned to address the minor road design issues highlighted by the Planning Authority. A further separate report from NRB Consulting Engineers reiterates and confirms that the provision of 108 dwellings together with the retail unit would have a negligible impact on traffic levels at critical junctions.
- 4.11. In terms of archaeology a separate report from 'Archaeology Plan – Heritage Solutions' is submitted. It notes that a programme of archaeological assessment on the site, a desktop study and a written report together with a programme of archaeological test trenching have been carried out for the previous development on the subject lands and thus the conclusions and recommendations in the 2010 Archaeological Impact Assessment are directly applicable to the current development proposals. It is recommended that a full archaeological excavation of the entirety of the archaeological feature should be carried out in advance of construction of ground works.
- 4.12. The response also addresses the concerns raised in the 3<sup>rd</sup> Party Submissions
- 4.13. **Further Assessment by the Planning Authority**

Meath County Council requested the applicant to publish revised notices in respect of the proposed development.

A report from Irish Water states that there is no objection to the proposed development subject to conditions.

A report from Meath Co. Council Roads Design Office states that the Applicant has successfully addressed all the issues raised in the additional information request with regard to traffic and transportation issues. The traffic impact will not be significant. A special financial levy should be placed on the developer to assist in monitoring the traffic impact.

The planner's report comments on each of the individual aspects of the additional information submission and reiterates that the principle of retail development at this location is considered to be acceptable. The design layout and servicing amendments as made in response to the request for further information are deemed to be acceptable and it is therefore recommended that planning permission be granted for the proposed development. In its decision dated 4<sup>th</sup> April, 2016 Meath County Council issued notification to grant planning permission for the proposed development subject to 30 conditions.

## 5.0 Planning History

- 5.1. No history files are attached. The Board will note however that there is a concurrent application on adjacent lands to the north for a residential development under PL17.246513.
- 5.2. The Supporting Planning Statement submitted with the application in Section 3 sets out the planning history associated with the site. It states that planning permission was granted by Meath County Council for a development comprising mixed use development including 370 residential units, a crèche and office block, 12 shops, a restaurant, a public house, a community centre, a music centre, a nursing home, over 1,000 car parking spaces and 4.8 hectares of public open space.
- 5.3. Under **Reg. Ref. PL17.234056** two third parties appealed the decision of Meath County Council. An Bord Pleanála refused planning permission for the proposed development for the following reasons.

1. *The proposed development would materially contravene Settlement Objective OBJ17 in relation to the FP2 lands as set out in the Navan Development Plan 2009-2015 which would result in development in advance of the timely provision of a distributor link road between the site and the N3.*  
*Notwithstanding Condition No. 49 of the Planning Authority's notification to grant planning permission requiring a payment of a contribution towards the*

*cost of construction this section of distributor road, it is considered that the development would tend to create serious traffic congestion on the inner relief road, in the absence of a second crossing over the Blackwater River for southbound traffic and would therefore be premature. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

*2. The layout of the revised development is unacceptable for the following reasons.*

*(a) The disposition of community/education/commercial uses at the southern end of the site is fragmented and dominated by roads and car parking. The design and public open space and the civic space is fragmented and does not result in the creation of a properly enclosed space which would contribute to the vitality and an appropriate sense of civic importance.*

*(b) The quantum of office use proposed at this edge of town location would be inappropriate and would result in the generation of unnecessary car trips.*

*(c) The provision of car parking spaces for retail units is inadequate and would result in on-street car parking on the access road.*

*The proposed development would therefore seriously injure the residential amenities of future occupants and be contrary to the proper planning and sustainable development of the area.*

*3. The environmental impact statement submitted with the application, together with the revised EIS submitted to the Board is lacking in an appropriate level of detail particularly with regard to baseline information on flora, fauna (including avian species, invertebrates and aquatic species), soil, bedrock and aquifers which may exist beneath the site. In the absence of such detail it is not possible to effectively assess the environmental impact of the proposed development. The proposed development would therefore be contrary to the*

*requirements of Article 94 and Schedule 6 of the Planning and Development Regulations, 2001.*

The Board's decision was dated 27<sup>th</sup> October, 2010.

There appears to be no other planning history associated with the subject site.

## **6.0 Grounds of Appeal**

The decision of Meath County Council to issue notification to grant planning permission was appealed on behalf of Kingscroft Developments Limited. The grounds of appeal are outlined below.

### **6.1. Project Splitting**

The applicant has made a separate application for retail planning permission which Meath County Council granted on 1st April, 2016. The current application and appeal before the Board and its associated infrastructure and services will be required to facilitate the proposed retail development. The proposed retail development will therefore be reliant on the implementation of the current development in order to proceed. This scenario is considered to be ultra vires as the developer will be required to acquire lands which are outside his control. Securing the implementation of the proposed development by condition would be in breach of Section 34(4)(a) of the Planning and Development Act, as amended. Thus the above scenario amounts to project splitting. It is however acknowledged that the applicant has addressed the issue by assessing the cumulative impacts associated with the overall development as part of the supporting planning application documentation.

### **6.2. Traffic Safety**

The achievement of appropriate sight lines is considered material and could have a negative impact on the overall access arrangements. To incorporate appropriate

visibility splays the applicant requires lands outside his ownership and within the appellant's ownership.

### **6.3. Insufficient Legal Interest**

The appellants contend that not all the lands incorporated into the access arrangements onto the Windtown/Proudstown Link Road have been taken in charge by the Planning Authority. Figure 2.4 contained in the grounds of appeal presents the extent of lands which is within the appellant's ownership. Specific reference is made to the north-eastern corner of the appellant's lands which are being utilised to facilitate the access arrangements from the main link road to serve the site. These lands fall outside the lands taken in charge by the Planning Authority and thus remain in the ownership of the appellant. The impact on traffic safety is considered material and could have a negative impact through the overall development access arrangements to and from the proposed development. The principle concerns relate to the legality of the application and the entitlement of the applicant to ensure the holistic implementation of the proposed development.

## **7.0 Appeal Responses**

### **7.1. Applicant's Response to the Grounds of Appeal**

A response was received on behalf of the applicant by Bridgedale Management and Development. In the first instance the applicants point out that the grounds of appeal do not object to the principle of the development. While three issues are listed in the grounds of appeal the issue of project splitting appears to be discounted whereas the final two issues relate to land ownership. It is submitted that the latter issues are civil issue. The application has been fully considered by Meath County Council and it considered the development to be acceptable. It is suggested therefore that there are no planning issues to be resolved and it is not a matter for the Board per se to determine this appeal. Reference is made to Section 34(13) of the Planning and Development Act, 2000 where one must have legal

rights to carry out the development and such legal rights are not established through or subject to the planning process. Notwithstanding this point the response goes on to detail the issues raised in the grounds of appeal.

With regard to project splitting it is stated that the retail application adjacent (see Reg. Ref. PL17.246510) is reliant on infrastructure and services associated with the residential application. The applicant refutes this and confirms that it is categorially not the case. Furthermore in respect of the issue of project splitting it is clear that the appellants fully accept that cumulative impacts arising from the proposed development have been addressed. Whilst the applicant intends to implement both developments simultaneously they are applied for separately to ensure maximum flexibility i.e. if one proceeds in isolation it can deliver all services and infrastructure without the new planning permission. Furthermore Meath County Council have attached appropriate conditions to both permissions allowing them both to be developed independently. These conditions include financial contributions and bonds.

In relation to traffic safety it is stated that the applicant agrees that the triangular piece of land to the east of the proposed new entrance is required for visibility purposes. As this land has been taken in charge and maintained by Meath County Council, the visibility splays can be achieved to ensure no traffic safety issue arises.

With regard to the landownership issue, it is stated that no evidence has been produced supporting the claim that not all the lands incorporated into the access arrangements onto the Windtown/Proudstown Link Road have been taken in charge by Meath Co. Council. The issue was raised at pre-planning stage and the Roads Section of Meath County Council confirmed verbally that the land and public areas adjacent to the link roads have been taken in charge in May, 2015. Given that these areas were taken in charge by the local authority, it was considered by Meath County Council that a letter of consent accompanying the application was not necessary. A map of the land registry folio is contained in the response to the

grounds of appeal. It is stated that the grass verge up to the hedgerow along the link road has been taken in charge and this is sufficient for achieving requisite sightlines. The applicant is not proposing any form of development on the lands in question and the lands will be solely used to achieve the requisite sightlines in an easterly direction. If necessary the applicant is agreeable to maintaining this area until the application site is taken in charge to ensure visibility splays are not obstructed.

## **7.2. Meath County Council's Response to the Grounds of Appeal**

The proposed development includes an access road and entrance which will also access the development proposed under NA/151044 (Reg. Ref. PL17.246510). The applicants have also submitted a Masterplan and this document clearly outlines the extent of development works proposed within Phase 1 of the development (namely 108 residential units and a retail store). The Masterplan establishes the future long term development of the area and lands surrounding the subject site will be developed in various phases.

With regard to traffic safety and sightlines, the Local Authority Senior Executive Engineer of the Strategic Transportation Unit considers that the sightlines at this junction are well within specification and road design standards. This is an urban area and the standard to be used is DMURS. The road is within the 50 kilometre speed limit which requires a sightline of 65 metres in both directions. Sightlines are deemed to be more than adequate. If permitted, then traffic signals will be required at this junction which will reduce the sightline requirement even further. It has also been demonstrated that the proposed residential units and retail development will result in traffic levels below the 5% threshold at critical junctions. The proposed development is therefore not deemed to be premature pending the upgrading of these junctions.

The land located within the red line application site boundary along the Windtown/Proudstown Link Road is taken in charge by the Local Authority.

Correspondence is appended which includes a letter from the Executive Engineer of Navan Civic Offices which clearly states that the lands in question has been taken in charge by the Local Authority.

The Board is therefore respectfully to uphold the decision of the Planning Authority.

## **8.0 Planning Policy Context**

### **8.1. National Spatial Strategy**

Navan is identified as a primary development centre in the NSS. The primary development centres need to aim at a population level that supports self-sustaining growth but which does not undermine the promotion of critical mass in other regions. This suggests an ultimate population horizon of up to 40,000 people for the primary development centres.

### **8.2. Regional Planning Guidelines for the Greater Dublin Area 2010-2022**

Navan is designated as a “Large Growth Town 1”. These designated areas will accommodate significant new investment in transport, in economic and commercial activity and in housing. It is envisaged that large growth towns such as Navan would plan for a growth of up to 50,000 persons.

### **8.3. Meath County Development Plan 2013-2019**

The County Retail Strategy identifies Navan as a Level 2 retail settlement in the retail settlement hierarchy.

CS OBJ 11 identifies Navan as a ‘Primary Economic Growth Town’.

CS OBJ 13 seeks to encourage economic and employment development by encouraging mixed use settlement forms in which employment and residency are located in close proximity to each other and to strategic multi modal transport corridors or corridors served by high quality and high frequency bus services.



#### 8.4. Navan Development Plan 2009-2015

The Navan Development Plan was varied in 2014 to give effect to the implementation of the core strategy of the Meath County Development Plan and to identify the residentially zoned lands to be prioritised for development.

Chapter 3 of the Plan relates to settlement strategy and housing.

The plan notes that in specific areas, a Masterplan must be submitted with any planning application in respect of the lands identified. The Masterplan should illustrate the overall block layout and road layout for the area to be developed in their entirety and the phasing of the development proposed which shall be consistent where relevant with the order of priority set out in the core strategy. The subject site and its surroundings is identified as Masterplan 4 "*lands located to the north of Navan in the Clonmagadden Townland which are zoned for a mix of uses including residential, community, employment and open space*".

Specifically to Masterplan 4 of which the subject site forms part, the Plan should provide for

- a secondary school as part of the education campus,
- a medical centre,
- local shopping facilities shall be appropriate in scale and do not unduly interfere with the predominant community, recreational and educational land use, and
- pedestrian and cycle linkages from the site to the adjoining residential areas.

The development of these lands should be on a phased basis in accordance with the land use zoning maps. The Planning Authority shall have regard to the outcome of the transport assessment required pursuant to INF OBJ8(c) in permitting the release of lands identified as Phase 1 residential lands and other non-residential lands.

Under the Navan development plan the subject site is zoned C1 (Mixed Use) with the objective to “provide for and facilitate mixed use residential and business uses”.

Section 4.5.5 of the Navan Development Plan specifically relates to Local / Neighbourhood Shopping Facilities. RET DEV OBJ 8 seeks to “*Designate specific Neighbourhood Centres (at indicative locations on the Development Objectives Map) within major residential areas, to enable convenience needs to be better met locally and to encourage the provision of local convenience in residential areas where there is a clear deficiency of retail provision, subject to the protection of residential amenity.*”

## **9.0 Planning Assessment**

### **9.1. Introduction**

Having visited the site in question and having particular regard to the detailed policy statements contained in the various planning policy documents referred to above, particularly the Navan Development Plan, the detailed requirements for a Masterplan on the subject site and its surroundings and RET DEV OBJ 8 of the said Plan, I consider that the proposed development is acceptable in principle and fully accords with the zoning objectives relating to the site. I furthermore consider that the overall layout and design has been appropriately assessed by the Planning Authority and any deficiencies in the original layout have been identified and amended in the additional information submission by the applicant on the 4th March, 2016. Finally I note that the grounds of appeal in this instance do not object to the principle of development on the lands in question but rather seek the Board to address specific issues in relation to projecting splitting, traffic issues and landownership issues. Therefore I consider that the Board, in assessing the application and appeal before it, can restrict its deliberations to the issues raised in the grounds of appeal and these are detailed below.

## 9.2. Project Splitting

The grounds of appeal contend that the applicant before the Board in this instance represents project splitting on the grounds that separate applications have been made for retail development under the current application and residential development under a separate application on lands to the immediate south (see Reg. Ref. PL17.246513). It is suggested that the developer in this instance will be required to acquire rights which is outside his control and securing the implementation of the proposed development by condition in contravention of Section 34(4)(a) of the Planning and Development Act, 2000. It is not altogether clear from the grounds of appeal as to how the proposed in this instance constitutes project splitting. To my mind project splitting is a process whereby separate applications are made in order to circumvent a requirement to provide information which would most normally be associated with a larger type application. For example splitting an overall project into constituent parts in order to fall below the thresholds in order to circumvent a mandatory requirement to carry out EIA. The application in this instance falls considerably short of the development threshold which would require EIA (construction of a shopping centre with a gross floor area in excess of 10,000 sq.m or an urban development in excess of 10 hectares). Even where both developments were assessed as one application, the development of the nature proposed would still fall short of EIA requirement under the thresholds referred to above.

Furthermore in relation to this issue I note that the applicant has assessed the potential cumulative impact which is likely to arise with the development of the entire Masterplan site. The main potential adverse impact arises in respect of traffic and this is acknowledged in the assessment submitted with the original application to the Planning Authority. Furthermore the grounds of appeal acknowledge that cumulative impacts arising from the proposed development have been identified and assessed in the current application.

I therefore consider that there is no merit in the issues raised in the grounds of appeal with regard to the issue of project splitting. To my mind the appellant in making reference to Section 34(4)(a) which relates to conditions for regulating the development or use of any land which adjoins, abuts or is adjacent to the application site relates to landownership matters as opposed to matters concerning project splitting. Issues in relation to landownership are dealt within in more detail in the final part of this planning assessment.

### 9.3. **Traffic Issues**

Again the traffic issue raised specifically in the grounds of appeal relates to inadequate sightlines at the access from the site into the Windtown/Proudstown Link Road (Clonmagadden Road). I have visited the site in question and assessed the sightlines available in both directions at the proposed access point. I consider that adequate sightlines are available in both directions (see Photographs 6 and 7 attached to this report). Again the road and traffic safety issues raised in the grounds of appeal appear to primarily relate to landownership issues and whether or not the applicant has sufficient legal interest in the lands in question to maintain adequate sightlines in both directions. There can be no question in my view that adequate sightlines are available. The Planning Authority's response to the grounds of appeal includes a memorandum from Meath County Council's Roads Design Office which indicates that the sightlines at this junction are well within specification for a 50 kmph speed limit and are fully in accordance with the standards set out in DMURS. It is also noted that the development of the lands that form part of the Master Plan, will necessitate a signalised junction at this access. This will further reduce the need for requisite sightline provision.

Again the issues with regard to sightlines and traffic safety raised in the grounds of appeal appears primarily to be predicated on landownership issues and in particular whether or not the applicant has sufficient legal interest to maintain the sightlines in question. Both the applicant and the Planning Authority in this instance have submitted information which indicate that Meath County Council have 'taken

in charge' the strip of land along the section of roadway to the east of the access point. It appears from the documentation submitted, and in this regard I specifically refer to the letter dated 16th November, 2015 from Meath County Council to the applicant which states "*the grass verge on the northern edge of the L34094 Road located between the road and the fence/hedgerow which forms part of the Clonmagadden Road is in the charge of the local authority*".

I would therefore conclude that the concerns raised in the grounds of appeal with regard to inadequate sightlines and the maintenance of adequate sightlines are not a material issue in determining the application before the Board. I consider that the applicant has demonstrated that adequate sightlines are available and can be maintained as the lands in question appear to have been taken in charge by Meath County Council.

#### **9.4. Legal Ownership Issues**

Finally the grounds of appeal contest the suggestion that the portion of land located to the north of the Clonmagadden Road to the east of the proposed access has been taken in charge by the Planning Authority. It is argued that the lands in question are still under the ownership of the appellants. In response to this issue I would state the following:

Firstly issues in relation to landownership are not a planning matter but are a matter for a court of law when a dispute arises between the parties concerned.

Secondly there can be no doubt having regard to the information contained on file, that the applicant has sufficient legal interest to make the planning application in question. The dispute in this instance relates to a small linear strip of land located to the eastern side of the access road. As already stated any dispute between the parties concerned in respect of the ownership of this land should be determined in a court of law.

Thirdly I consider that the applicant in his response to the grounds of appeal and Meath County Council have submitted sufficient information to indicate that the land in question has been taken in charge by Meath County Council and is no longer in the ownership of the appellant. However I would reiterate that any such conclusion would need to be confirmed in a court of law. The legal dispute in respect of the small strip of land in question should not in my view form the basis of any determination to refuse planning permission in this instance.

## **10.0 Appropriate Assessment**

I note that an Appropriate Assessment Screening Report was submitted with the original application. It correctly identified the nearest Natura 2000 sites that could potentially be impacted upon as a result of the proposed development namely the River Boyne and River Blackwater SPA (Site Code 004232) and SAC (Site Code 002299). The qualifying interests and features of interest associated with these Natura 2000 sites include alkaline fens, alluvial forests and a number of aquatic species including River Lamprey, Salmon and Otter. Only one species of bird has been identified as a feature of interest as part of the River Boyne and Blackwater SPA - the Kingfisher. The proposal being located outside the designated Natura 2000 sites would not result in any direct loss of habitat listed in the qualifying interests associated with the SAC or SPA. The only other potential adverse could arise in respect of the reduction of water quality. Construction activities have the potential to impact on water quality with the release of suspended solids, chemical pollutions or hydrocarbons. Any such spills on the sites in question will be collected in Meath County Council's urban drainage system and therefore will not migrate towards the Natura 2000 sites in question. Likewise during the operational phase any foul water, storm water or surface water drainage will also be discharged into the public network. I can only conclude therefore that on the basis of the information on file, which I consider to be 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 European Site No. 002299 or 004232 or any other European Site in view of the site's conservation objectives, and a Stage 2 Appropriate Assessment and a submission of an NIS is not therefore required.

## **11.0 Conclusions And Recommendations**

Arising from my assessment above therefore I consider that the decision of Meath County Council should be upheld in this instance. The issues raised in the grounds of appeal primarily relate to landownership issues. I am satisfied that the applicant in this instance has sufficient legal interest to make the application on the lands in question and that any dispute arising in respect of a small strip of land to the west of the proposed access road are legal matters and should be determined in a court of law.

## **12.0 Decision**

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

### **Reasons and Considerations**

Having regard to the mixed use zoning objective relating to the subject site, it is considered that the proposed development subject to conditions set out below 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 accepted in terms of traffic safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the plans and particulars received by the planning authority on 4<sup>th</sup> day of March and the 9<sup>th</sup> Day of March 2016 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. Prior to the commencement of development the developer shall submit all details of the proposed materials, signage and lighting etc. to be used to delineate between vehicular and pedestrian and bicycle movements. All design requirements shall ensure that pedestrian and cycle movements have priority. Details shall be the subject of the written agreement with the planning authority prior to the commencement of development.

**Reason:** In the interest of sustainable transport.

3. Details of the materials, colours and textures of all external finishes to the proposed retail unit and any signage etc. shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The proposed pre-coloured render parcel shall not be permitted.

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



4. The developer shall provide litter bins outside the retail unit in accordance with the requirements of the planning authority.

**Reason:** To prevent litter.

5. The provision of internally illuminated projecting sign or box fascias shall not be permitted unless otherwise agreed with the planning authority.

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

6. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

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

7. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

8. All planting/landscaping required to comply with the specification of the landscaping scheme submitted to the planning authority on the 3<sup>rd</sup> of March 2016 An Bord Pleanála shall be maintained, and if any tree or plant dies or is otherwise lost within a period of five years, it shall be replaced by a plant of

the same species, variety and size within the planting season following such loss.

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

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

**Reason:** In the interest of public health.

10. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

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

11. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, kerbs and dishings shall comply with the detailed standards of the planning authority for such works.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

12. Parking for the development shall be provided in accordance with a detailed parking layout which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. All car parking spaces shall have minimum dimensions of 2.5 x 5 metres.

**Reason:** In the interests of orderly development

13. Details in respect of all surface water management issues including details of the attenuation pond facility, permeable paving and rain water harvesting butts to be installed shall be agreed in writing with the planning authority.

**Reason:** In the interest of orderly development.

14. Public lighting shall be provided in accordance with a scheme, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

**Reason:** In the interest of amenity and public safety.

15. During the construction phase the applicant shall:

(a) Provide details for the collection, storage and disposal of all foul sewage effluent arising during construction activities.

(b) Provide details of the proposed on-site parking and site compound arrangements. No overspill car parking onto the adjacent local road network from the construction phase of the development shall be permitted.

**Reason:** In the interest of traffic safety.

16. Site development and building works shall be carried out between the hours of 0800 hours to 1900 hours Mondays to Fridays inclusive, and between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and 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.

17. Prior to the commencement of development precise details of all boundary treatment shall be submitted for the written agreement of the planning authority.

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

18. The recommendations of the tree report and tree protection study as submitted to the Planning Authority on the 4<sup>th</sup> of March 2016 shall be implemented in full.

**Reason:** In the interests of visual amenity

19. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

20. The developer shall pay to the planning authority a financial contribution of €10,644 (ten thousand six hundred and forty four euro) in respect of the provision, refurbishment, upgrading, enlargement or replacing of public roads at public transport infrastructure 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. 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

21. The developer shall pay to the planning authority a financial contribution of €3,308 (three thousand three hundred and eight euro) in respect of the provision and extension of social infrastructure (open spaces, recreational and community facilities, amenities and landscaping works) 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. 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

22. The developer shall pay to the planning authority a financial contribution of €432 (four hundred and thirty two euro) in respect of the provision, refurbishment, upgrading, enlargement or replacement of surface water infrastructure by the Council 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. 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

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**Paul Caprani**

**Senior Planning Inspector**

**21<sup>st</sup> July, 2016.**

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