



An
Bord
Pleanála

Inspector's Report PL07.247257

Development	Retention permission for widening of vehicular/pedestrian access and roadway and all associated works and Planning permission for upgrading and widening of access junction etc.
Location	Barnwellgrove, Mountbellow, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	16/902
Applicant(s)	Patrick Gardiner
Type of Application	Retention Permission and Permission
Planning Authority Decision	Grant Retention and Permission
Type of Appeal	Third Party
Appellants	1. Michael & Maureen Hughes 2. Pine Grove Residents Association 3. Mountbellew-Moylough GAA Club
Observer(s)	None
Date of Site Inspection	23 rd of November 2016
Inspector	Angela Brereton

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1.0 Site Location and Description

- 1.1. The appeal site is located on the western side of Mountbellew in east County Galway, the surrounding area is predominantly residential in character and the site is located on the north side of the N63 Mountbellew to Galway road. The site is located less than 300m west of the Market Square, adjacent to Mountbellew GAA grounds and the Castlegar River is located to the east.
- 1.2. The site is bounded to the east by existing low density housing with the Castlegar river beyond; to the north by agricultural land; to the west by GAA grounds, a playground and club house, agriculture and low density residential uses beyond; and to the south by the public road and a row of detached houses.
- 1.3. While within walking distance of the centre of Mountbellew, the access appears to be outside the 50km/ph speed limit. There are three separate entrances in close proximity. The N63 is a busy fast route in this location, with a footpath on its northern side. There are no traffic lights in proximity.
- 1.4. Access is via a long tree lined avenue off the N63 to the south which runs parallel to the entrance to the GAA grounds to the west. Some of the trees have been cut down and there are grass verges along either side of the laneway. There is unmade pedestrian access to this avenue from the residential cul-de-sac Pine Grove to the east. There is also one domestic garage with gated access to the the south eastern side of the lane.
- 1.5. The northern sector of the access route adjoins a now derelict two storey house with high grassed soil heap in front. While much of the area around the house has been cleared there are mature trees, hedges, shrubs to the south of this house, and an open water filled drain along the eastern boundary. There is farmland to the north of this house. Some open drains were also seen on the side of the access routes in particular in proximity to the gate to the GAA grounds opposite the pedestrian entrance to Pine Grove.
- 1.6. Photographs and maps in Appendix 1 of this Report serve to describe the site and location in some detail.

2.0 Proposed Development

2.1.1. Retention Permission is sought for the following:

- a) Tree/Scrub removal works;
- b) Land Drainage works;
- c) Widening of Vehicular/Pedestrian access and roadway;
- d) Fencing;
- e) Landscaping/Grading works and replanting.

2.1.2. Planning Permission is sought for the following:

- a) The upgrading and widening of Vehicular/Pedestrian Access Junction;
- b) Landscaping/Grading and Boundary Planting;
- c) Boundary Fencing
- d) Widening/Raising of Level of Existing Roadway along existing Right-of -Way;
- e) Provision of galvanised agricultural gate at entrance of site & all Associated Site Works.

Martin Giblin Services, Planning & Engineering has submitted documentation with the application including the following:

- A Report as to the planning history, background and locational context of the development proposed for retention and also a description of those elements proposed for permission;
- A Schedule listing of Drawings;
- A letter from Midlands Garden Centre & Florist regarding planting;
- Letters from the part owners of these lands (John Murphy, Ciaran Gardiner) providing that they support and have no objection to the submission of this planning application;
- Details from NSAI Agrément regarding the BMS Stormbreaker TM System;
- Details regarding the BMS Stormbrake Flow Control system;
- Storm Runoff Attenuation Calculation Sheet.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 24th of August 2016, Galway County Council decided to grant Retention Permission and Permission for the development, subject to 9no. conditions. These are summarised as follows:

- Condition no.1- Development to be retained and completed in accordance with the plans and particulars;
- Condition no.2 – Surface Water Drainage;
- Condition no.3 – Sight distance triangles and visibility splays shall be maintained;
- Condition no.4 – Consultation with the Council’s Roads Department concerning road related requirements;
- Condition no.5 – Concerning design and location for the proposed agricultural/galvinised gate;
- Condition no.6 – Details regarding the proposed main access arrangement at junction with the N63;
- Condition no.7 – An augmented landscaping scheme to be implemented.

3.2. Planning Authority Reports

3.2.1. Planner’s Report

This has regard to the locational context of the site, planning history and policy and to the submissions made. This notes that the development is located on the western periphery of Mountbellew off the national secondary road within 60kmph speed limit restriction zone associated with the town. It is also noted that the application site is not within a flood risk area. Regard was had to Screening relative to AA and the Planner’s Report provides that the development would not have a significant impact on the Natura 2000 network. They have regard to the comments of the TII relative to sightlines, and note that the Councils’ Roads and Transportation Unit do not object to the proposal subject to conditions.

The Report notes that there is currently no LAP for Mountbellow and that the proposal has regard to the policies and objectives of the GCDP 2015 -2021. Their Assessment has regard to the retention and proposed development and to the applicant's justification for the works. They provide that the right of way is a civil matter between the parties involved. They considered that the development is in accordance with planning policy and the proper planning and sustainable development and recommended that permission be granted subject to conditions.

3.3. Other Technical Reports

Transport Infrastructure Ireland (TII)

They consider that the proposal is at variance with official policy in relation to control of development on/affecting national roads, as outlines in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities 2012, as the proposed development by itself or the precedent which a grant of permission would set, would adversely affect the operation and safety of the national road network and they include a reason for this.

Roads and Transportation Unit

They have no objection to the proposal subject to conditions regarding drainage, compliance with relevant standards and consultation with the Area Office regarding the carrying out of the works.

3.4. Third Party Observations

3.4.1. A number of Submissions have been received from and on behalf of local residents. Some of these are subsequent Third Party Appellants including Mountbellew-Moylough GAA Club. Their concerns include the following:

- Concerns regarding unauthorised development and works that have been carried out.
- Civil and construction works have already commenced on the site and the two drains on either side of the roadway have been already piped and covered with hard core fill prior to the previous application.

- Prior to these works the open drain adjoining the GAA Club property was taking surface water from the property.
- They are concerned about drainage and flooding issues and they include details and photographs.
- A large amount of mature trees have been removed prior to the application, photographic evidence is included.
- Right of Way issues relative to Mountbellew-Moylough GAA.
- They do not object to the fencing but only on condition that it was placed in the applicant's property and not infringe on the GAA Club property.
- Inadequate plans have been submitted regarding the upgrading and widening of the access to the site.
- They have no objection to the provision of a galvinised agricultural gate at the entrance to the site and all associated site works for the reasons outlined in the application.
- They have concerns about access and safety issues relevant to the children's playground within the GAA grounds and right of way issues for residents in Pine Grove for access including to this playground
- They note that the entrance has been widened and include photographs. While they would not object to the widening of the entrance they consider that the original entrance with gates could be restored.
- They are concerned that the proposed would not comply with DM Standard 24 of the GCDP 2015-2021 relative to road safety. They consider that in accordance with the national guidance given on Road Safety in the Spatial Planning and National Roads Guidelines for Planning Authorities (DoECLG, January 2012) a TTA and a RSA should have been submitted.

3.4.2. Other local residents including Pine Grove Residents Association concerns include the following:

- They note that similar applications which were invalid have been submitted by the applicant.

- The applicant has carried out much of the development for which permission is now sought as part of this application.
- Retention permission should not now be granted for unauthorised development.
- The planning application does not provide adequate details of road construction, and details are given concerning a number of deficiencies.
- The applicant should be required to reinstate the damage caused to the amenity of adjoining residents.
- The applicant has not justified the need for such a substantial entrance. The development is inappropriate there is no requirement for such a significant access to serve an agricultural entrance.
- Road safety issues concerning the widening and usage of the access junction onto the N63. There is a need for a Road Safety Audit in this case.
- Concerns that the applicant is seeking this entrance to support future large scale development – reference to previous plans for the retirement village PL07.236251 refers.
- They note that in this application, unlike previously proposed it is not proposed to install a fully serviced entrance with footpaths and lighting.
- Separating development proposals into numerous small applications is contrary to the proper planning and sustainable development of the area.
- The development will interfere with the entrance to adjoining property.
- The site is not suitable for development due to its proximity to the local river which overflows in the vicinity of these lands.
- Interference with cultural heritage, lining the existing watercourse which is a dry stone sunken wall being covered over as part of the unauthorised works being undertaken.
- Concerns about existing drainage and flooding risks.
- Adverse impact of loss of mature trees and landscaping to facilitate the widening of the access route.

- The right of way between Pine Grove and the local GAA pitch and playground has been ignored.
- The proposed fencing to be retained poses a health and safety hazard.
- The proposed change will result in an increase in traffic volumes which is inconsistent with the purpose of the route to serve agricultural lands.
- A number of photographs have been submitted with the submissions relative to the impact on the development on landscaping, drainage/ flooding, access and amenity issues etc.

4.0 Planning History

4.1.1. The Planner's Report includes a list of planning applications within 100m of the application site. The following is the most recent planning history relevant to the subject site (i.e included the current access route):

- Reg.Ref.09/1122 – Permission granted subject to conditions by the Council for the demolition of an existing dwelling and shed and the erection of a mixed use residential development comprising a 60 bed nursing home, 10no. 2 bed sheltered housing units, 28no. semi-detached 4 bed houses and 5no. detached 4 bed houses with private wastewater treatment system, raised bed sand polishing filter, paving, landscaping, entrance, access driveway, bin store and all associated site works and services at Barnwells Grove, Mountbellew. This was subsequently refused by the Board (Ref.PL07.236251 refers) for the following reason:

Having regard to scale of the proposed development, to the ground conditions on the site, to the number of stand alone effluent treatment plants in the vicinity and to the proximity of the proposed wastewater treatment plant to the Castlegar River, it is considered that the proposed development, reliant on a further stand alone effluent treatment system, would be prejudicial to public health and would be premature in the absence of planned improvements to the Mountbellew sewerage system. Therefore, the proposed development would be premature by reference to the existing deficiency in the provision of sewerage facilities and the period within which the constraints involved may

reasonably be expected to cease and would be contrary to the proper planning and sustainable development of the area.

Two other applications are referred to by the Third Party Appellants. These are:

- Reg.Ref.15/1519 – This application was for Permission for a material change, upgrade and widening of the existing means of vehicular and pedestrian access and all associated site works.
- Reg Ref.16/282 – Retention of completed works and drainage and full permission for material change, upgrade and widening of existing vehicular pedestrian access and roadway and all associated site works.

Both are related to the works on the subject site and are described on the Council's website as an incompleting/invalid applications.

4.1.2. The following is noted proximate to the subject site:

- Reg.Ref.07/4920 – Permission granted subject to conditions to Mountbellew District Development Association to construct a children's playground and associated works. This development has been constructed and is to the north of the GAA building and is to the west of the application site.
- Reg.Ref.06/4713 – Permission granted subject to conditions by the PA for the construction of a mixed use commercial development to the west of the GAA grounds. There is an access to this development site from the N63 which is to the west of the GAA access. This development has not been constructed. This proposal was subsequently refused by the Board (PL07.223086 refers) for reasons regarding impact on the vitality and viability of the centre of Mountbellew and being contrary to the Retail Planning Guidelines 2005, and being backland development that would fail to integrate with the pattern of development in the area.

Copies of these Board decisions are included in the Appendix to this Report.

5.0 Policy Context

5.1. Galway County Development Plan 2015-2021

Chapter 5 refers to Roads and Transportation.

Section 5.3.1 refers to Strategic Routes i.e: Motorway, National Primary and National Secondary Roads. This notes that the Regional Planning Guidelines for the West Region designates the N/M6 and N17/18 as the main access routes in the region and the N59, **N63**, N83 and N84 as important inter-regional routes as well as the important inter-regional role of the N60, N65, N66 and N67 national secondary roads within County Galway.

Section 5.3.4 refers to Road Safety and provides that Galway County Council will work with relevant bodies and authorities to encourage, develop and improve existing entrances and junctions to restricted routes.

Objective TI 6 – Protection of National Routes and Strategically Important Regional Road Networks i.e: *It is an objective of the Council to protect the capacity and safety of the National Road Network and Strategically Important Regional Road network (listed in DM Standards and Guidelines in Chapter 13) in the County and ensure compliance with the Spatial Planning and National Roads Planning Guidelines (2012). Galway County Council will not normally permit development proposals for future development that include direct access or intensification of traffic from existing accesses onto any national primary or secondary road outside of the 50-60 kph speed limit zone of towns and villages.*

Objective TI 9 seeks to provide car parking facilities in towns and villages and

TI 10 refers to – Traffic and Transport Assessment (TTA) and Road Safety Audits (RSA) and seeks to: *Require all proposed new significant development proposals to be accompanied by a TTA and RSA, carried out by suitably competent consultants, which are assessed in association with their cumulative impact with neighbouring developments on the road network, in accordance with the requirements contained within the NRA's Traffic and Transport Assessment Guidelines, having regard and*

with respect to RSA in NRA DMRB HD19/12 Road Safety Audit (including any updated superseding document).

Objective TI 11 refers to – Urban Street Network and the Design Manual for Urban Roads and Streets and seeks to: *Support the treatment of the route network within the built areas of towns as urban streets that prioritise the needs of pedestrians, that facilitate cyclists wherever possible and that support public and private transport movements, stopping and parking, as appropriate. In this regard, the principles approaches, and standards set out in the Design Manual for Urban Roads and Streets 2013 (including any updated/superseding document) shall be applied to new development as appropriate.*

DM Standard 20 refers to: Sight Distances Required for Access onto National, Regional & Local Roads.

DM Standard 24 refers to : Traffic Impact Assessment, Traffic & Transport Assessment, Road Safety Audit & Noise Assessment.

Chapter 6 provides the policies and objectives relevant to Water, Wastewater, Waste Management & Extractive Industry. This includes regard to water protection, surface and foul water and drainage. Table 6.4 notes that Mountbellew Sewerage Scheme -Contract Name TBC - *Under review by Irish Water.*

Objective WW 7 – Surface Water Drainage and Sustainable Drainage Systems (SuDS) ie: *Maintain and enhance, as appropriate, existing surface water drainage systems in the County, ensure that new developments are adequately serviced with surface water drainage infrastructure and promote the use of Sustainable Drainage Systems in all new developments.*

Section 8.7 refers to Flood Risk Management Policies and Objectives and includes adherence to *The Planning System and Flood Risk Management Guidelines 2009.*:

Objective FL 2 – Surface Water Drainage and Sustainable Drainage Systems (SuDs) *Maintain and enhance, as appropriate, the existing surface water drainage system in the County. Ensure that new developments are adequately serviced with surface water drainage infrastructure and promote the use of Sustainable Drainage Systems*

in all new developments. Surface water run-off from development sites will be limited to pre-development levels and planning applications for new developments will be required to provide details of surface water drainage and sustainable drainage systems proposals.

DM Standard 27 provides the criteria relevant to: Surface Water Drainage & Flooding

Chapter 9 refers to Heritage, Landscape and Environmental Management Section 9.8 refers to Natural Heritage and Biodiversity and includes regard to Natura 2000 sites. S. 9.9 provides the Natural Heritage and Biodiversity Policies and Objectives. Designated Environmental Sites are provided in Map NHB1. It is of note that Policy NHB 4 of the GCDP 2015-2021 refers to the protection of Water Resources.

5.2. Spatial Planning and National Roads Guidelines for Planning Authorities 2012

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in the performance of their functions under the Planning Acts. The guidelines set out planning policy considerations relating to development affecting national roads (including motorways, national primary and national secondary roads) outside the 50/60 kmh speed limit zones for cities, towns and villages.

Section 1.4 refers to need to ensure the strategic traffic function of national road network is maintained and Section 1.5 provides that proper planning is central to ensuring road safety.

Section 2.5 provides the Required Development Plan Policy on Access to National Roads. This refers to the creation of additional accesses. It is noted that the subject site is within a Transitional Zone i.e: *Where the plan area incorporates sections of national roads on the approaches to or exit from urban centres that are subject to a speed limit of 60 kmh before a lower 50 kmh limit is encountered – otherwise known as transitional zones - the plan may provide for a limited level of direct access to facilitate orderly urban development. Any such proposal must, however, be subject*

to a road safety audit carried out in accordance with the NRA's requirements and a proliferation of such entrances, which would lead to a diminution in the role of such zones, must be avoided.

Section 2.6 provides the criteria for Exceptional Circumstances where planning authorities may identify stretches of national roads where a less restrictive approach may be applied, which includes Lightly-trafficked Sections of National Secondary Routes.

Chapter 3 relates to the Development Management of Roads and notes that this is the Key to Plan Implementation. Section 3.6 refers to Road Safety Audits required for a new access or significant changes to an existing access.

Chapter 4 concerns Implementation of these guidelines including by ABP.

5.3. **Design Manual for Urban Roads and Streets 2013**

The DMURS document must be taken into consideration in examining planning applications. Within the DMURS document the application of the principles to existing streets must require a flexible approach. The document calls for a safer more attractive and vibrant street and the creation of a permeable network from a multi-layered process. The process should begin with a site analysis that identifies any constraints the proposal may have on the existing network, including points of access, major destinations and strategic connection (existing and proposed). The street hierarchy in terms of trips generated, access etc.

All new residential development must be designed in accordance with the requirements set out in DMURS. This Manual sets out design guidance and standards for constructing new, and reconfiguring existing, urban roads and streets in Ireland by incorporating good planning and design practice to create low speed environments in urban areas. This includes a definition of Speed (Very Low, Low, Moderate and High) Described within the context of cities, towns and villages as very low(<30km/h), low (30km/h), moderate (40-60km/h) and high(>60km/h). Section 4.4.3 refers to Junction Design and this includes: *Omit deceleration lanes. These are not required in low to moderate speed zones (i.e. up to 60km/h).*

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Three separate Third Party Appeals have been submitted. These are from the following:

- Michael & Maureen Hughes
- Pine Grove Residents Association
- Mountbellew-Moylough GAA Club

In view of the issues raised these are summarised separately below.

6.1.2. Michael & Maureen Hughes

They are local residents who reside at no.10 Pine Grove, Mountbellew the location of which is identified on the drawing enclosed on their Appendix A. They provide that their property is located proximate to the development proposed/partly carried out which interferes with their property boundary, the privacy of their property and exposes their property to security risks. They note that they have made many previous submissions to previous applications in this area and these remain valid in relation to the current application. They reiterate their request that the local authority commence enforcement action. Their grounds of appeal include the following:

- The Planning Authority should not have granted permission for retention of development works which were previously carried out in an unauthorised manner. The PA should have commenced enforcement proceedings in relation to this unauthorised development. They provide a list of unauthorised works that have been carried out.
- There has been damage to mature trees and woodland and resultant safety issues due to the unauthorised works carried out. They have included photographs and mapping in their Appendices.
- The PA should have refused permission, enforcement action should at a minimum require the applicant to reinstate the damage caused to the amenity previously enjoyed by the adjoining properties.

- The development is inappropriate and they provide a list of reasons for this. This includes that the access is over scaled to be an agricultural access and the previous landowner managed to farm the land for many years using the existing access arrangements.
- Safety issues regarding the junction. They are concerned that a TTA or RSA have not been submitted.
- The development will seriously undermine the surface water drainage of the surrounding lands and potentially cause a flood risk. A Flood Risk Assessment has not been submitted.
- The application does not provide sufficient information for a planning decision to be made. This includes adequate details of road construction and drainage management. They note that the Council did not issue a F.I request.
- They are concerned about unauthorised works to the existing drainage system close to their property and Pine Grove. The requirement for drainage to be properly designed by a chartered engineer has been ignored.
- The development has already and will damage residential amenity for the surrounding residents. They include photographs.
- The decision by Galway Co.Co. is flawed and includes conditions which are vague, meaningless and unenforceable and should be overturned on this basis. A discussion is had relative to condition nos. 2, 3, 4, 7 in this regard.
- They consider that it was inappropriate for the PA to grant planning permission for the reasons they have outlined.
- As an alternative should permission be granted, they would request that ABP includes specific and meaningful conditions, requiring the applicant to rectify the damage caused to their property, their surroundings, and to the general character of the surrounding area.
- Such conditions must include rectifying the destruction of the shelter belt trees, rectifying the removal of the open drains, and the provision of a secure and appropriate fence/wall to replace the privacy screening which has been removed. The applicant should be obliged to demonstrate compliance with such conditions before proceeding with further development.

6.1.3. Pine Grove Residents Association

Their concerns include the following;

- They refer to and note the concerns raised regarding the previous planning history relevant to the site. This includes the application in 2015 for a fully serviced road.
- They are concerned about the purpose of the proposed development and the prospect of a larger development associated with the entrance on these lands. They refer to the prospect of project splitting.
- They are concerned about the widening of the vehicular/pedestrian access and consider that the proposed changes will result in an increase of traffic volumes which is inconsistent with the purpose of the road. They consider that an RSA and TIA should have been submitted.
- They believe that these lands are not suitable for development due to its proximity to the local river which floods in the vicinity of these lands. They note that a Flood Risk Assessment has not been submitted.
- Photographs have been submitted showing that pipes are inadequate to accept the volume of water during and after wet weather and of existing open drains.
- The works carried out have resulted in a dry stone sunken wall being covered in clay.
- There is concern about the impact on the environment of the loss of mature trees and landscaping.
- They consider that the Council's conditions including relevant to landscaping cannot be implemented and are not enforceable.
- They include a historic map regarding the existence of a right of way in the location between Pine Grove and the GAA grounds.
- They are concerned about health and safety issues concerning the boundary fencing for retention.

6.1.4. Mountbellew – Moylough GAA Club

They are the owners of the land adjoining the proposed site to the west. They provide that they have a right of way over part of the proposed development site.

Their grounds of appeal include the following:

- They note concerns about land drainage works that have already been carried out and include photographs showing piping and flooding on the access road.
- They are concerned that the pipe sizes used were independently calculated and question the accuracy and method of calculating pipe diameters. They consider that the drainage system is not fit for purpose.
- The drawings submitted with planning applications 15/1519 and 16/282 need to be reconsidered as the drainage has been completed when these applications were submitted.
- They have regard to deficiencies in piping and to volumes of water on site during wet weather. They consider that the risk of flooding caused by the drainage system installed poses a serious health and safety risk.
- They are concerned about insufficient manholes being sited to take the surface water from their property and also from the proposed widened twin carriageway.
- They note implications of the raising of road levels and consider that the Council did not deal adequately with this issue of land drainage works and the raising of road levels. Further investigation of drainage on site before and after the works should be submitted.
- They have regard to the widening of vehicular/pedestrian access and roadway and note that the construction works that commenced on site removed a portion of this wall and submit photographic evidence to show this.
- They do not object to the widening of the vehicular/pedestrian access and roadway for the reasons outlined in the application. However they consider it is premature to deal with this application prior to a determination of the exact location of the proposed road and new entrance walls and piers.

- They provide that part of the new wall is located on the property of Mountbellew-Moylough GAA Club. They believe that this proposed wall and pier will seriously impede the view of all that use the club property.
- The impact of the entrance on visibility and safety of the GAA Club entrance has not been considered.
- They are of the opinion that the works being applied for are a significant development proposal and should be accompanied by a Road Safety Audit and a Traffic and Transport Assessment and have regard to the relevant Guidelines in this respect.
- They note that several trees and shrubs have been removed along their boundary which existed for hundreds of years and no regard was given to this or to the wild life habitat and submit photographs showing this.
- Concerns regarding a historic sunken wall of dry stone construction being covered over during the unauthorised works. The GAA have submitted photographs showing the location of this wall. This demonstrates that no consideration was given to any historical or heritage aspect of this site.
- The GAA Club questions how the applicant applied for permission to carry out the works and permission was subsequently granted by the Council, taking into consideration the unauthorised development and subsequent enforcement works that have occurred on this site.
- Since enforcement notice EN15/222 was issued regarding unauthorised works to access road and associated works, including unauthorised pipe laying and covering of existing drains, further works have commenced on site showing a disregard for planning enforcement.
- The Council requesting that the applicant should not complete/commence works when previous applications were subject to Enforcement does not make sense.
- They also query the change of name of the applicant from that given on previous applications.
- They have submitted that an Oral Hearing should be requested in this case and have enclosed the appropriate fee.

6.2. Applicant Response

6.2.1. McCarthy Keville O'Sullivan have submitted a response to the Third Party grounds of appeal on behalf of the First Party. This has regard to the background, locational context (photographs of the site are included in Plate nos.1 and 2) and includes a description of the development relative to retention and proposed works. Regard is also had to the planning history of the site and to the principle of development. Their response to the grounds of appeal includes the following:

Landscaping and Residential Amenity

- They have regard to to the works that have taken place and to the development proposals and provide that the current proposal contains comprehensive details in relation to landscaping and the necessary controls are in place to ensure that proposals are carried out to the satisfaction of the Planning Authority in the event of favourable consideration.
- The subject works will see the provision of appropriate fencing for the subject site as well as a gated entry point north of the right of way for the remainder of the access road to the north of the right of way .
- Drainage measures and grading works proposed will ensure that there is appropriate and improved surface water drainage on the site.

Right of Way

- They provide that there is no evidence that a right of way exists between Pine Grove and the GAA pitch and playground – Appendix 2 refers. They also provide that this is a civil matter beyond the scope of the planning application.

Road Safety

- They provide that a comprehensive report on the civil design and road design of the subject works has been prepared by Tobin Consulting Engineers and responds to the concerns raised by the appellants in relation to road safety and site drainage and is included as Appendix 3. This Report also includes a Road Safety Audit undertaken by Roadplan Consulting in relation to the proposed alterations to the entrance of the access road to th N63.

- It is provided that the access has been designed in accordance with the relevant standards and practices adjacent to public roads.
- They note that the Council's Road and Transportation Section did not raise an objection and that in the event of favourable consideration they do not object to the imposition of similar condition nos. 2(a), 3 and 4 of the PA decision.

Site Drainage

- They refer to the Report on Civil Design of the subject works prepared by Tobin Consulting Engineers (Appendix 3) and consider that this responds to the concerns raised by the appellants in response to drainage.
- They refer to the submitted drainage drawing PG104 and provide details relative to surface water and storm drainage and attenuation. They provide that drainage works will be carried out in accordance with the current standards and are adequate to serve the proposed development and will not cause water run-off to neighbouring lands. They refer to a number of Appendices enclosed relative to drainage issues.
- They note that condition nos. 2(a),(b),(c) of the Council's permission relate to the disposal of surface water and provide that the proposed development will not present or exacerbate flooding on other lands in the area. They provide that in the event of favourable consideration by the Board they have no objection to the imposition of similar type conditions.

Cultural Heritage

- They have regard to concerns raised regarding the historic wall in the area and note that no record exists of this being included as a P.S or Recorded Monument. As such the wall cannot be ascribed a status of architectural importance. Notwithstanding this they do not object to the imposition of a condition by the Board to maintain the exposed structure.

Enforcement

- They note the Third Party concerns relative to unauthorised development and provide that this application is an attempt to regularise those works (retention)

previously undertaken by the applicant and for permission for the completion of these works.

Future Development

- They note the Third Party concerns relative to future development of these lands and provide this is clearly beyond the scope of this application and its assessment. Any future development will be subject to separate assessment.
- They provide that any attempt to link the subject application to any future application is speculative at best and misleading at worst and should not be a focus of assessment for this application.

6.3. Planning Authority Response

No response has been received from Galway County Council to the grounds of appeal.

6.4. Further Responses

Responses to the First Party response submission have been received from each of the Third Party Appellants. These are summarised separately as follows:

6.4.1. Michael & Maureen Hughes

- It remains their view that the proposed development is inappropriate and unnecessary, for the reasons outlined in their previous submissions and observations. They provide a summary of these reasons which have been noted as part of their appeal submission. They consider that this application should be refused and enforcement action pursued relative to the extent of unauthorised development that has taken place.
- They note their previous concerns regarding conditions being vague, being, non-specific and unenforceable and request that the Board if they decide to grant permission include specific and meaningful conditions requiring the applicant to rectify the damage caused to their property, surroundings and the general character of the area. Also that the applicant be obliged to demonstrate compliance with same before proceeding with further development.

- They have regard to the McCarthy Keville O'Sullivan Report submitted with the First Party response and provide that it seems clear these were not involved in the original submission of the application and are not aware of the extent of unauthorised development.
- They do not consider that the MKO report is comprehensive or meaningfully addresses all the points raised in their appeal including unauthorised development that has occurred and they set out a table providing details including their observations on this and the Tobin Consulting Engineers Civil Works Design and Road Design Report.
- They include regard to unauthorised works that have been carried out, and concerns include proposals relative to works to landscaping including the loss of trees, drainage, and access.
- They consider that the provision of a 7m wide road to serve agricultural lands, even allowing for occasional GAA usage, is not credible.
- Appendix A of their submissions shows that the proposal will not protect the amenity of adjoining properties, including their own. This includes before and after photographs.
- They have specific concerns relative to Condition no.7 of the Council's permission relative to landscaping and consider it vague and meaningless and unenforceable.
- They are concerned that their property which is the closest to the site, is now considerably less secure, having lost its surrounding dense woodland and the added protection of two deep open drains, to be replaced by a light metal fence, only 1.2m high.
- Their concerns in relation to drainage are as set out in their original appeal submission and they stand by these.
- The Report by Tobin Consulting Engineers seems to be prepared after the raising of these appeals and does not clarify who carried out the design and there is no suggestion that the design was carried out by Tobin Consulting Engineers. It remains therefore unclear as to whether the design work was

carried out by a chartered Engineer with appropriate professional indemnity insurance.

- Enforcement proceedings should be initiated by the PA and should at a minimum require the applicant to reinstate the damage caused to the amenity previously enjoyed by the adjoining properties, including their own.
- It is incorrect and illogical to suggest that this response document forms part of the supporting documentation to the planning application when the report was only produced after the appeal process was commenced.
- The MKO's Report has not as suggested 'demonstrated' anything but has simply set out a series of opinions based it would appear on biased and misleading briefing.

6.4.2. Pine Grove Residents Association

Their response is considered under the following headings to correspond with the First Party response:

Landscaping and Residential Amenity

- They note that illegal tree felling has occurred on the lands bordering their properties and on lands not even owned by the applicants. The damage caused to the boundary with Pine Grove properties has not been rectified.
- They query what improved planting and landscaping measures will be and consider that this has not been clarified.
- They maintain that the current use of this site has not been for agricultural use and note that over the last two years articulated lorries and other building construction vehicles have been seen entering and exiting the site on a regular basis. This traffic has impacted adversely on residential amenity.
- The Residents Association wishes to record that in 40 years they have never observed any anti-social behaviour.

Right of Way

- While they acknowledge that the right of way may be a civil matter they dispute that it is beyond the scope of the planning application. They refer to the map in Appendix A and believe that this right of way is a planning issue on

health and safety concerns. They note the usage as a convenient route to the GAA grounds and the community playground. Since works began this right of way is now in an unsafe state.

Road Safety

- There is concern about the use of the site by construction traffic and it is noted that dirt left on the main N63 by large construction vehicles caused problems in wet conditions.

On Site Drainage

- They are concerned about drainage and potential flooding and the impact it would have on Pine Grove estate.
- Before any changes were made on the site, the existing drainage system has never flooded Pine Grove estate. They are now concerned as to what will happen in heavy rain.
- As a voluntary organisation they do not have the funding to obtain independent engineering advice on the drainage measures and grading works proposed in this application.

Cultural Heritage

- They are concerned regarding the applicants stance on this issue. They note that the applicants have actively covered the bawn wall as they laid their boundary post and rail fence in early 2016.

Future Developments

- They reiterate their concerns regarding the future development of this site and refer to the planning history. They are concerned that the purpose of this application is to set up an access precedent for a larger scale development of the site. They note that there is no commitment from the applicant indicating that the land will be used for agricultural purposes in perpetuity.

6.4.3. Mountbellew-Moylough GAA Club

They provide details relative to the background of the present application. Their response submission includes the following:

- They consider that the applicant did not engage in adequate pre-planning consultation and attach correspondence.
- They have regard to the planning history and note issues regarding previous lack of consultation. They consider that some of the information submitted in the current application has been misleading.
- Based on previous history the GAA would not give up its independent access for a combined access, not knowing what development may take place in the future.
- Having regard to the cultural heritage issue they note that the area is practically covered in with land drainage pipes, hardcore and soil.
- In relation to access and safety they have submitted a report from Patrick J Newell Consulting Engineers in Appendix 3 of this submission.
- They note that the RSA recommended slight changes to the entrance to increase available sightlines, and are concerned that the Council granted permission without an RSA. Also, as to how beneficial these amendments will be to the safety of those using the GAA entrance.
- They note their concerns about drainage issues and provides that the site needs to be considered in the context of the planning history as the extended site was also subject to pipe laying in previous planning applications.
- Issues in relation to site drainage are addressed in the report from Patrick J Newell Consulting Engineers in Section 4 of their submission.
- They are concerned about the piping arrangement, increases in the volume of water, change in direction of the drain on the west of the applicant entrance not being addressed in the report provided on behalf of the applicants.
- They enclose a number of appendices relative to their submission.

7.0 Assessment

7.1. Principal of Development and Planning Policy

- 7.1.1. The site is located to the west of Mountbellew town centre within the urban area. It is seen in the context of the urban development to the east and along the road frontage of the N63 and the 2 accesses to the west, which includes access to the Mountbellew-Moylough GAA Club. It noted that the Galway County Development Plan 2015-2021 is the pertinent plan, and that there is no separate Local Area Plan for Mountbellew. Therefore the land while in the urban area and within the transitional 60km/ph speed limit is not zoned. It is noted that Section 2.6.1 of the CDP refers to the Settlement Hierarchy and Mountbellew is included in the 'Other Villages' category, where the population is <1500 and a more limited range of services are provided.
- 7.1.2. As noted in the Planning History Section above regard is had to the background history of this site. Currently it must be noted that there is no permission in place for development or for the works proposed for retention which are unauthorised. The issue for consideration in a retention application is whether the development would be sustainable and permission would have been granted in the first instance in accordance with planning policies and taking into account the character and amenities of the area, if the unauthorised development had not taken place. Regard is also had to the proposed development and to the details submitted including the First Party justification for the works and their response to the grounds of appeal and to the subsequent responses from the Third Parties.
- 7.1.3. It is noted that there is considerable concern about the works proposed for retention and permission and regard is had to the submissions made and the Third Party grounds of appeal. Issues raised include the nature and context of the development relative to justification for the retention of unauthorised works and the proposed development, impact on drainage, flooding, landscaping, boundary treatment, rights of way, access and road safety. Also noted is the concern that having regard to the planning history that the subject application would form the basis for a more future extensive application. Regard is had to these issues including the impact on the amenities and character of the area in this Assessment below.

7.2. Validity and Enforcement issues

- 7.2.1. The Third Parties have raised concerns about the validity of the application and regard is had to the Planning and Development Regulations 2001-2016. They have raised a number of issues in this regard, and relative to incomplete and ambiguous information being submitted and inadequate assessment by the Planning Authority. Regard is being had to the documentation submitted and to the Council's conditions. They consider that the planning application did not include sufficient information to allow it to be properly considered by the PA, or understood and assessed by those affected by it. They provide a list of such deficiencies and consider that consequently planning permission should not have been granted without such further information and is by definition flawed. These concerns have been noted and I am of the opinion that this is a procedural matter for the P.A. to address, a determination on whether the P.A decision is valid or not, would not be appropriate to make here. However it must be noted that this application is now being considered on its merits de novo by the Board.
- 7.2.2. The issue of the need for enforcement action to be taken relative to unauthorised development that has occurred on site has also been raised. The Third Party concerns relative to this issue have been noted. The First Party response provides that this application is an attempt to regularise those site works previously undertaken by the applicant as well as permission for the completion of these works. The Third Party does not consider that adequate consideration has been given in the documentation submitted to the amount of unauthorised development that has occurred prior to the submission of this application and to the impact this has had on the character and amenities of the area. They do not consider that retention permission should be granted in retrospect for these works and consider that such would set an undesirable precedent. They consider that enforcement action should at a minimum require the applicant to reinstate the damage caused to the amenity previously enjoyed by the adjoining properties.
- 7.2.3. While regard is had to the details submitted regarding the significant unauthorised development/works that have taken place and to the concerns regarding the impact on the character and amenities of the area, it is of note that such matters are for the Enforcement Section in the Council, as dealing with unauthorised development and

subsequent enforcement action is not within the remit or a matter for the Board. As noted above this application is now being considered in its entirety on its merits de novo by the Board.

7.3. Regard to Background and Justification for the current proposal

- 7.3.1. The documentation submitted with the application provides that Patrick Gardiner and others own approx. 36 acres of agricultural land in Mountbellew, and that these lands are currently accessible via the road which is the subject of this application. They provide that the application also serves a vacant house in need of repair in the applicant's ownership. It is noted that the access road is in use by the applicant to access his agricultural lands and is also subject to a right of way by the GAA. Their facilities which include a carpark have their own access point immediately to the west of the access to the current application. However on match days or days of peak use of facilities they provide that an informal traffic management system operates whereby vehicular and pedestrian access and egress to the GAA grounds is made via their own access point and right of way over the current applicant's entrance. The applicants provide that these arrangements work well, but that conflicts arise when the applicant needs to access his property by vehicle or more commonly by agricultural machinery.
- 7.3.2. The details submitted provide that the applicant has carried out works to improve the existing access road, improve drainage and provide fencing details along the access road in the interests of improving accessibility to his lands while also facilitating the GAA's registered (and acknowledged Right of Way). This is shown in yellow on the Site Map submitted. They also provide that the applicant has previously sought to regularise the works that have been carried out on the subject site as well as seeking permission to complete the works required to facilitate the access to his lands for agricultural machinery while also accommodating the existing right of way.
- 7.3.3. In this respect regard is had to the planning history. The most recent decision relative to this site is Reg.Ref.09/122. Reference to this is noted in the Planning History Section above. In that case permission was granted subject to conditions by the Council for a mixed residential development to provide a retirement village including the provision of a nursing home, but was subsequently refused by the Board for a drainage reason.

7.3.4. It is of note that the Board Direction in PL07.236251 also included:

The access arrangements as initially proposed would necessitate improved sightlines along the public road affecting property outside the site. Notwithstanding the single reason given below for refusing permission, the Board also had concerns regarding the junction of the access road with the public road, as amended to include traffic lights, including in relation to the impact on the free flow of traffic on the public road (N63) and in respect of other nearby private entrances.

7.3.5. This showed that the access road now proposed for retention would be the access route from the N63 for the retirement development which was to be sited on the lands to the north east and to the rear of the existing house. This development was also to be sited to the rear of Pine Grove and the site extended to the river to the east. The current application site only refers to the existing access road and does not include the development previously refused. Traffic lights are not included as part of the current proposal.

7.3.6. It is noted that the information submitted provides that the current application clarifies the various elements for which retention and the other elements of the application are sought. They provide that the extent of the proposed works have been scaled back in order to focus the proposed road widening on that portion of the access road which is subject to the right of way. However regard is also had to the Third Party responses which do not consider that the scale and extent of the works for retention and proposed are justified in the context of an agricultural entrance.

7.4. Description of the works relative Retention and Development

7.4.1. Regard is had to the Site Plan submitted which shows that the red line site boundaries show the narrow strip that includes the entrance from the N63 access road and access route northwards to the derelict two storey house. The details submitted with the application provide a summary of of the elements for which Retention Permission and proposed works for which Permission is sought. A number of elements are involved and in the interests of clarity a summary is provided below:

Elements for which Retention Permission is sought:

- Tree/scrub removal works – it is provided that these have been removed on both sides of the access road in order to allow construction vehicles to carry

out works and to facilitate the upgrading of drainage works which have been carried out on site. The site layout plan submitted indicates the location of tree/scrub works.

- Land drainage improvement works – existing land drains which were in place along the sides of the access road have been subject to improvement and culverting. The location of the relevant drainage works are shown on the Drainage drawings submitted.
- Widening of vehicular/pedestrian access junction and roadway – as shown on the drawings this had been widened at the entrance to the site through the removal of a pillar and the provision of additional facilitating works along the access road between the junction with the public road and the right of way into the neighbouring GAA grounds.
- Fencing – has been erected along the site boundary. It is provided that different types of fencing appropriate for the location and function of the boundaries have been provided and their specifications are detailed on the submitted layout plan and set out on the drawing – Layout of drainage pipes and fencing.
- Landscaping/grading works and replanting – they provide that in combination with the provision of fencing, improvement of drainage and other works for which retention is sought, re-grading of the topsoil and a certain amount of replanting of hedgerow boundaries has occurred on site and details of this are shown on the ‘Existing and Proposed Planting Scheme’ drawing.

They provide that the works for which retention permission is being applied are seen as essential maintenance and improvement works to the existing entrance and roadway. They consider that these works amounted to minor landscaping, boundary treatment and drainage improvements along the existing roadway which had previously seen a considerable amount of overgrowth in this urban location due to lack of maintenance in previous years.

Elements for which Planning Permission is sought:

- Upgrading and widening of vehicular/pedestrian access junction of the site. They provide that the extent of road widening will run from the access

junction along the extent of the right of way and slightly beyond up to the location of the new agricultural gate as labelled on the site layout plan.

- Landscaping/grading and boundary planting – permission is sought to complete the grading planting and landscaping works that have been carried out to date in accordance with the plans submitted.
- Boundary fencing – this is to include a portion of additional boundary fencing along the applicant’s boundary with the GAA lands to the west as shown on the drawings submitted. They provide that in the interests of clarity the fencing will be placed within the applicant’s landholding and will not in any way impinge on the GAA landholding nor will it impede or restrict the right of way.
- Widening/raising of level of existing roadway along the right of way to allow vehicles to exit at times of peak usage, while also facilitating access to the site by agricultural machinery and vehicles. It is provided that the widening will extend from the entrance along the access road up to the turn off for the GAA facilities.
- Provision of Galvanised Agricultural Gate to the north of the right of way along the access road to ensure that access to the agricultural lands from the right of way area within the site can be controlled and safe.

The First Party provide that the proposed works for which permission is sought are required to complete the works that have been initiated and will facilitate the safe vehicular use of the access road for the uses which are currently in place. This includes that the fencing, planting and landscaping works are proposed to ensure that the amenities of neighbouring properties are protected, They submit that the current application is being submitted to ensure vehicular and pedestrian safety while also facilitating the applicant’s safe access to his agricultural lands as well as respecting the right of way.

7.5. Regard to Justification for the development

- 7.5.1. The First Party response to the grounds of appeal provides that the subject works amount to minor landscaping, boundary treatment and drainage improvement along

the existing roadway which has seen a considerable overgrowth due to a lack of regular upkeep and maintenance in previous years. The provide that the proposed works make provisions for the improvement of the access and access route, including regard to landscaping and drainage issues. Also, that given the scope of the subject works amount to essential maintenance and security of the site, there is no intensification of current use or the introduction of a new land-use on the site which may impact on the residential amenities of adjoining properties.

- 7.5.2. There is Third Party concern that the 7m wide access and the access route is over scaled to be an agricultural access. Also that this proposal is project splitting and that this application be viewed in the context of the overall planning history and the future development potential of the site. That it is an attempt to set an access precedent to the larger site, thus enabling future applications for more extensive works served by the proposed changes to the road and entrance. There is concern raised by the Pine Grove Residents Association that building and construction traffic has been seen entering and exiting the site on a regular basis. They note that the applicant has made no commitment indicating that the land will be used for agricultural purposes in perpetuity.
- 7.5.3. Relative to this on my site visit while tree felling, road widening and drainage works had occurred, I did not observe that any building or construction work is being carried out on this or adjoining the site. This clearly would not be relative to or in the spirit of the agricultural usage relative to the current application. It is provided by the First Party in response to concerns raised regarding this being an access for any future development of the agricultural lands being proposed, that this will be subject to a separate planning application which will have to be assessed on its own merits. This is not the subject of the current application and it is recommended that in the interests of clarity, if the Board decides to permit that it be conditioned that such a permission is relevant only to the subject application and that any future proposals are subject to a separate application.

7.6. **Landscaping issues**

- 7.6.1. There is concern that as seen on site a large number of trees along the boundaries have been felled and removed to facilitate the widening of this access route and that this has had an adverse environmental impact on the area, in particular having

regard to loss of screening for adjoining lands not in the ownership of the applicant. The main impact of this has been on the site boundaries with adjoining properties in Pine Grove to the east and the GAA grounds to the west. It is also provided that the applicant has removed a significant tract of mature woodland with serious detrimental effect on the area, for no obvious reason. This impacts adversely on the local environment and is a loss of amenity for local residents and environmental habitats. It is of note that Appendix A of the Hughes response includes before and after photographs and an aerial photograph showing the impact of tree and vegetation removal that has taken place. The Third Party consider that the removal and damage to these trees and consequent affect on their remaining root structure and on the soil surface with further alter the surface water flow paths in the area and will increase the risk of flooding. The First Party response provides that the drainage measures and grading works proposed on this site will ensure that there is appropriate and improved surface water drainage on the site, irrespective of whether tree felling has occurred.

- 7.6.2. The GAA are concerned about the removal of planting and landscaping that has taken place along the western boundaries of this access route and note that replacement planting and landscaping has not taken place. They provide that any hedge planting along the boundary with the GAA property should be allowed on condition that the remaining trees are not removed and appropriate hedging planting that blends in with existing trees.
- 7.6.3. The First Party response notes that felling of trees and removal of scrub has taken place due to lack of maintenance and upkeep. They provide that the proposed works make provision for improved planting and landscaping measures that will provide adequate screening and shelter for adjacent properties. They also provide that they will comply with the Council's condition no.7 relative to landscaping. The Third Party concerns regarding the ambiguity and enforceability of this condition are noted. They consider that the planting and landscaping scheme proposed as part of this application, will fall significantly short of reinstating the damage caused as part of the unauthorised tree removal by the applicant and that the loss of trees and landscaping have had a considerable impact on their residential amenities. Regard is had to the issues raised and it is considered that there has been considerable removal and damage to trees and landscaping on site to facilitate the works. It is

recommended that if the Board decide to permit that a more detailed landscaping condition relevant to the context of the site be submitted, this would include reinstating and augmenting tree planting. However the issue is would this have been originally permitted if such works had not taken place.

7.7. Boundary fencing

- 7.7.1. This has also been raised as an issue by local residents. They believe that the existing fencing to be retained poses a health and safety risk and is an inadequate boundary between a residential area and a road, which they contend purpose is unknown. They are concerned that the nature of the fencing is an attraction to young people to climb and play on the fencing.
- 7.7.2. The First Party response provides that the subject works will see the provision of appropriate fencing on site. A key rationale for the subject works is to ensure the security of the applicant's private lands and property, where anti-social behaviour and trespassing has occurred recently. These contend that these measures will greatly improve security for the applicant's lands and by association any bounding properties to the site.
- 7.7.3. In response the Third Party refutes the reference to anti-social behaviour and is concerned that the fencing erected as unauthorised development is entirely inadequate to replace the secure boundaries previously provided by the original dense planting. There is concern that the development will not protect the amenities of adjoining properties. Regard is had to the before and after photographs shown in Appendix A of the submission from Michael and Maureen Hughes of no.10 Pine Grove in this respect.
- 7.7.4. While these concerns are noted regard is has to the drawing submitted showing colour coded the different types of fencing/boundary treatment. It is recommended that if the Board decide to permit that a condition be included to provide further details of boundary treatment/fencing prior to the commencement of any further development on the site, and that this be considered alongside a landscaping scheme relative to boundary planting.

7.8. Regard to Cultural Heritage

- 7.8.1. It has been noted that during the civil and construction works that took place on the drains before and after planning application 15/1519 was submitted (subsequently declared invalid) a historical sunken wall of dry stone construction was partially covered in when the drain was piped, covered with hardcore and then covered with soil, the location of this wall can no longer be seen on the site. Known locally as a 'bawn wall' it is a historical and heritage feature around the perimeter and in close proximity to this site. It is provided that it is clearly evident on the GAA Club property and the southern side of the N63 carriageway opposite the entrance to the property for which planning is sought. The GAA have submitted photographs showing this, noting that the location of this wall can no longer be seen on site. They contend that this demonstrates that no consideration was given to any historical or heritage aspect of this site.
- 7.8.2. The First Party response notes that no documented record of this wall exists in the Galway County Council Record of Protected Structures, the National Monument Service database or the National Inventory of Architectural Heritage. As such they consider that the wall cannot be ascribed a status of historical or architectural importance. However, notwithstanding that the exposed wall is not afforded a protection status, the applicant does not raise any objection to the imposition of a condition by the Board to maintain the exposed wall. The Third Party response notes that the applicant does not indicate how this can now be proposed considering that it is practically covered in with land drainage pipes and soil. I would recommend that if the Board decide to permit that the preservation of the exposed sections of the old bawn wall be included as part of a condition which would also have regard to archaeological monitoring.

7.9. Right of Way issues

- 7.9.1. It is provided that Mountbellew-Moylough GAA Club and the owners of the land adjoining the proposed site to the west and have a right of way over part of the proposed site. The existing right of way extends from the public road (N63) adjacent to the southern boundary to the access to the GAA grounds (to the west of the proposed site) and is as indicated on the land registry map contained within

Appendix A of this Civil Design Report submitted as part of the applicant's response to the grounds of appeal. This is not in contention and is as shown in yellow on the drawings submitted with the application.

- 7.9.2. However, there is concern that there is a right of way between Pine Grove residential estate through to the local GAA pitch and playground, which it is provided local residents have used for the past 40 years, has been ignored. The Pine Grove residents have submitted historic mapping to show this. There is no provision shown on the plans submitted for the residents of Pine Grove residential estate to exit by foot onto the existing right of way to the GAA Club grounds or the children's playground. The drawings show a continuous hedge and fence along this boundary. It is noted that a children's playground is also located within the GAA grounds and is described by the Third Parties as a very popular amenity and used by children and their parents in the local catchment area. The Pine Grove Residents Association note that their safety also needs to be considered and that the existing route is now unsafe due to the works that have occurred. On site it was noted that local residents from Pine Grove use this access as a short cut to gain access to the GAA carpark to the playground further to the north west of the lane. This is not taken into account in the subject application.
- 7.9.3. In response the First Party provide that upon the examination of the Property Registration Authority folio map of the subject property, there is no evidence to suggest that there is a right of way as described by the Pine Grove Residents Association. Appendix 2 provides a copy of the said folio map, which illustrates the registered right of way on the subject property relative to the southern part of the access route and not the entrance to Pine Grove. They also provide that notwithstanding this, such matters are of a civil nature and beyond the scope of this planning application, and they point to the provisions of section 34(13) in this regard i.e: *A person shall not be entitled solely by reason of a permission under this section to carry out any development.*
- 7.9.4. It is of note that the Fifth Schedule of the Planning and Development Act 2000 as amended provides a list of conditions which may be imposed on the granting of permission to develop land, without compensation. This includes no.24 i.e: *Any condition for preserving any existing public right of way.* Permeability is considered to be an important issue relevant to sustainable development. Therefore if such a right

of way is established it would be in order for the Board to include a condition relative to its retention.

7.10. Access and Road Safety

- 7.10.1. The site is located in Mountbellew and bounded to the south by the N63 national secondary road and is within the 60kmph speed limit restriction zone associated with the outskirts of the town. This proposal concerns the retention and upgrading of the existing vehicular/pedestrian entrance and access road. Regard is had to the relevant drawings submitted. The access has already been partially widened as shown on the photographs submitted the prior removal of a pillar and a portion of the wall. There are multiple road access points in this area also including two entrances onto the N63 to the west of this property. There is concern that these have not been shown clearly on the plans submitted. The most proximate and significant entrance being for Mountbellew -Moylough GAA Club.
- 7.10.2. While Mountbellew-Moylough GAA Club consider that the plans submitted relative to the upgrading and widening of the access are inadequate and that insufficient measurements are shown to determine the exact location of the proposed road and new walls and piers. They are concerned that part of the 'proposed new block wall and piers capped and plastered' is on their property. Also that it would be premature to determine this access without accurate plans being submitted. They are concerned that the proposed wall and front pier will impede the view the significant use of the club property which includes members in all grades in football, hurling, camogie, ladies football and handball and that their safety will be compromised when they exit the property from the huge number of trainings and games that are played on club grounds. They consider that it will impact on road safety in particular relative to visibility from the much used GAA entrance. While they would not object to the widening of vehicular/pedestrian access and roadway and a new pillar similar to the remaining four pillars should now be reinstated where a portion of the wall has been removed. They provide that this would eliminate the need for further demolition and the old gates could be hung to restore the entrance, which has been a feature on this road for well over fifty years.
- 7.10.3. It is provided that this junction is to be used by the applicant to access his private/agricultural lands. There is concern that the applicant has not demonstrated

that a safe junction with the N63 is capable of being constructed in this location, having regard to sightlines, compliance with NRA guidelines etc. Also, that this proposal will result in an increase in traffic volume which is inconsistent with the said purpose of the road, i.e to service agricultural land. Therefore it is contended that the development is inappropriate in that there is no requirement for such a significant access to serve agricultural land and an unoccupied dwelling.

7.10.4. It is of note that Transport Infrastructure Ireland (TII) considers that the proposal would be at variance with national policy in relation to control of frontage development on national roads, as outlined in the DoEHLG Spatial Planning and National Roads Guidance for Planning Authorities (January, 2012). They strongly recommend that (i) a Traffic and Transport Assessment (TTA) be carried out to assess the impacts of the proposed development in accordance with the guidelines outlined in the NRA Traffic and Transport Guidelines 2007, and (ii) a Road Safety Audit (RSA) should be carried out in accordance with the NRA DMRB. They also recommend that the developer be responsible for the costs of both assessment which shall be undertaken by an independent qualified engineer. They advise that any recommendations arising be incorporated in the proposed development by amendment to the existing planning application or as conditions of the permission, if granted. Also that any additional works required as a result of the TTA and RSA be funded by the developer.

7.10.5. It is of note that Mountbellow – Moylagh GAA Club have significant concerns regarding the safety implications relative to the entrance. They consider that the works being applied for are a significant development proposal and should be accompanied by a Road Safety Audit and a Traffic and Transport Assessment. In this regard DM Standard 24 of the GCDP 2015-2021 provides: *All significant development proposals, or those that the Planning Authority consider would pose a safety risk or traffic impact shall be accompanied by road safety audits and transport and traffic assessments. This shall include a consideration of the cumulative impact of development on the road network.*

7.11. Regard to Road Safety issues

7.11.1. In response to the Third Party concerns the First Party has submitted a Report on Civil Design and Road Design prepared by Tobin Consulting Engineers in relation to

road safety and drainage and included in the Appendix 3 of their Report. This report also contains a Road Safety Audit undertaken by Roadplan Consulting in relation to the proposed alterations to the entrance of the access road to the N63 is contained in Appendix C of this Report. It is provided that all recommendations of this Report have been considered and are reflected on the drawings contained within Appendix B.

- 7.11.2. Section 2 of this Report has regard to Road Safety. This notes that the access roadway is 7 metres in width for the extent of the existing right of way over these lands. It is provided that this width is required to allow agricultural vehicles accessing the applicant lands to the north to pass by vehicles accessing or egressing the GAA grounds via the right of way without causing traffic congestion at this point. The roadway to the north of the agricultural gate is reduced to 4m in width and is intended to be used by the applicant to facilitate private agricultural access to his lands. It is provided that the proposed access has been designed not to impede on sightlines from the proposed access or any neighbouring access points.
- 7.11.3. Regard is had to DM Standard 20 of the Galway CDP which outlines the requirements for sight distances. This requires 90m in either direction for the Y distance on National Primary and Secondary Roads within a speed limit of 60km/ph. They provide that as indicated on the drawing in Appendix B the required 90m sightline has been achieved at the entrance. In order to achieve this required 90m sightline the pillar to the east of the development has been set back slightly so as not to impede on sightlines. Sightlines from the GAA access to the west are also shown. They provide that as indicated on the associated drawings the proposed development does not impede on sightlines for the proposed entrance or any neighbouring entrances.
- 7.11.4. A Road Safety Audit Stage 2 has been provided in Appendix C. They note that the comments from the RSA that have been addressed in the design, with the exception of the abrupt narrowing to the north of the right of way, but consider that this is acceptable as the access is for private use and not public use. I would concur with this in view of the agricultural usage, as a further widening of the lane would result in the loss of more trees and planting along this part of the avenue. They conclude that as demonstrated in these Reports the access has been designed in accordance with the relevant safety standards so as not to impede on sightlines at the entrance or sightlines of neighbouring access points.

- 7.11.5. The First Party note that the Council's Roads and Transportation Section did not object to the scheme and provide that in the event of favourable consideration that they do not object to the imposition of Condition nos. 2(a), 3 and 4 of the Council's permission. It is of note that the Third Party consider that these conditions are vague and meaningless and unenforceable. It is recommended if the Board decide to permit that conditions relative to access and road safety issues be included. This should include that all works regarding the entrance are constructed within the lands owned by the applicant and compliance with the recommendations of the Reports submitted in the First Party Response.
- 7.11.6. It is of note that in reponse to the information submitted as discussed above the GAA Club have submitted a Report from Patrick J. Newell, Consulting Engineers in Appendix 3 of their response submission. They are concerned that the slight amendments to the entrance proposed does not indicate to their satisfaction how beneficial this will be for the safety of those that use the GAA entrance. This Report considers there are some inaccuracies in the McCarthy Keville O'Sullivan Report and in the Tobin Civil Design Report submitted relative to access and drainage issues. This includes that the RSA prepared by Roadplan does not appear to be complete and does not mention the location of the site within a transitional zone and the implications of this.
- 7.11.7. They also note that the GAA uses the subject access during match days, so that some of their relative traffic maybe through this access. They have regard to the DM Standard 20 (GCDP) for sightlines relative to access in a 60km/ph speed limit and note that no map or drawing has been submitted showing in entirety the 90m sightlines being available in either direction. Therefore there is concern that it is unclear if the requirements of the appropriate TII standards and the GCDP are being met. There is also concern that the RSA fails to adequately assess the proposed alterations to the entrance being retained particularly having regard to safety issues.
- 7.11.8. They provide that the formation of a linear car park at this location i.e. along either side of the widened access road would be totally at variance with DM Standard 22: Parking standards of the GCDP 2015-2021. In this regard Section 4.4.1 of the DMURS refers to carriageway widths. This includes that narrow carriageways are one of the most effective design measures that calm traffic. Although it is noted that the roadway is private and is not a public carriageway, the design rationale for

sustainable urban street design (DMURS) is still applicable. There is concern that the width of the roadway is excessive and it is noted that 7m is the preferred width for arterial and link streets frequently used by larger vehicles (Fig.4.55 refers). It is noted that the Auto Track Analysis submitted shows that the entrance and access route will be suitable for such larger vehicles. Having regard to all these issues it is not considered that adequate justification has been provided as to why it is necessary to provide a road of this width to serve as a cul-de-sac entrance to the agricultural lands and derelict house to the north.

7.12. Drainage and Flooding issues

7.12.1. Regard is had to the drainage issue. It is provided that through the years the drains that existed on either side of the roadway were always adequate to accommodate the volumes of water even when the general locality was subject to flooding. It is contended that the works for retention and proposed have upset this balance and have led to drainage problems and issues with surface water flooding along parts of the access route and proximate adjoining property in particular the GAA grounds to the west. There is concern that sufficient details have not been submitted regarding the road drainage measures to be provided. This includes road gullies or other means of collecting surface water from the proposed road, regard to provisions and location of petrol interceptors and discharge arrangements for drainage from road surface. It is contended that the proposed development which has included the removal of mature trees will seriously undermine the surface water drainage of the surrounding lands, and will potentially cause a flood risk. There is concern that a Flood Risk Assessment has not been carried out and in view of location and to the proximity to the river to the east.

7.12.2. It is provided that the issue of flooding is greatly exasperated as a pipe has been installed under the road from the GAA boundary to the Pine Grove boundary, joining two previously independent drains together. This work to combine the flows from two separate drains (one on either side of the road) discharges into a single open drain immediately adjacent to the boundary with their property. They contend that loss of natural surface water drainage from their property and other properties in the area is an increased flood risk. The Patrick J. Newell Consulting Engineers Report

submitted with the GAA response notes that the drains never converged prior to culverting the works.

7.12.3. The GAA is concerned that the piping of the drain between the property for which planning is sought and the GAA Club property has directly interfered with the direction of the natural flow of water and has caused a backup of water in the drains on the GAA Club property. They consider that the piping installed does not match up and is substandard and not fit for purpose and that the risk of flooding from these drains poses a serious health and safety issue as the GAA property caters for a large number of players and the site is also the location of a community playground. Also they note that the new pipe-work is now diverted to the nearby river which overflows onto the lands of the applicant which is in a possible flood plain. It is noted that while the site visit coincided with a drier period photographic evidence has been submitted by the Third Parties showing unfinished piping and flooding in the area of the access route. However the piping and open drain proximate to the gate to the GAA grounds from the access route was seen.

7.12.4. There is concern that the raising of level of the existing road may cause flooding in the area around the right of way gate. They also note the absence of manholes in this area. Regard is had to the drainage plans submitted. This includes that the current application has positioned four proposed manholes on the portion of the property that concerns Mountbellew – Moylough GAA Club and they consider that this would be totally inadequate to take the surface water from their property and also from the proposed widened twin carriageway. There are also concerns about the implications of the raising of road levels for drainage and flooding and in particular relative to the impact on the road frontage.

7.13. Regard to Response to Drainage issues

7.13.1. The First Party response includes regard to Site Drainage and refers to the Report on Civil and Road Design prepared by Tobin Consulting Engineers which they provide responds to the concerns raised by the appellants in relation to site drainage. This notes that previously the site contained two open drains, running east and west of the access road and converged into one open drain and subsequently discharged to the nearby Castegar River, which runs to the east. They provide details of the culverting of these open drains and refer to the drainage drawing

PG104. They note that gullies have also been provided – Appendix A of their Report relates. It is provided that the site drainage proposals have been designed in accordance with the *Recommendations for Site Development Works Housing Areas*, in providing one gully per 200m² of imperious or paved areas. Also, that the proposed works are designed so as to prevent surface water from the subject site flowing onto neighbouring lands. Details of Micro Drainage Outlets for the pipe designs and associated long sections are outlines in Appendix D of their Report. All surface water from the proposed development is to be collected in the proposed perforated drains and discharge to the existing open drain via an oil interceptor, attenuation tank and hydrobroake restrictor. Details including capacity of the attenuation tank are given in the Appendices to this Report.

- 7.13.2. It is provided that the storm drainage for the entire development has been designed using appropriate software in accordance with the Recommendations for Site Development Wokrs and also the recommendations for the Greater Dublin Strategic Drainage Study (GDSDS). Also, that the storm drainage has been designed to cater for surface water from hard surfaces in the proposed development (including the roadway). Discharge from the proposed development to the existing open drain will be restricted using a hydrobroake flow restricter.
- 7.13.3. They note that the application site is not within a flood risk area. Condition nos. 2(a), 2(b) and 2(c) of the Council's permission relate to the disposal of surface water. These conditions stipulate that surface water shall be disposed of within the site and shall not be discharged onto the road or the adjoining property. In addition they provide that the development shall incorporate Sustainable Drainage Systems (SUDS) in the management of storm water, with the design and construction of soakaways to comply with the requirements of BRE Digest 365.
- 7.13.4. In conclusion it is provided in this Report that there are adequate measures proposed and safeguards in place to ensure that the proposed development will not present or excarbate flooding on other neighbouring lands in the area. In the event of favourable consideration by the Board they provide they have no objection to the Board imposing conditions similar to condition nos. 2(a), (b),(c) of the Council's permission. The Third Party concerns relative to this condition are noted. However it is considered that the details and recommendations of the Tobin Consulting Engineers Report must now be taken into consideration. It is recommended that if

the Board decide to permit that a drainage condition which includes regard to surface and storm water drainage be included.

- 7.13.5. In response on behalf of the GAA Club, Section 4 of the Patrick J Newell, Consulting Engineers Report provides a discussion on drainage related issues. The GAA response has regard to the planning history relative to pipe laying and is concerned that the volume of water the pipes are expected to carry has not been taken into consideration when designing pipe sizes or where drains are now linked together. Also the changes in direction of the drain on the west of the applicants entrance has not been addressed in the report provided.
- 7.13.6. The Report notes that serious concerns have been raised in relation to the alterations to the surface and groundwater drainage at the site. They provide that rather than perforated land drainage pipes used to drain lands by allowing water to percolate to underlying soil, rainwater should be transmitted from gullies to a hydrocarbon interceptor using solid pipework. They note that the existing land drains to the east and west of the roadway provided land drainage and surface water attenuation for the Mountbellew-Moylough GAA roadway, the applicant's roadway, the housing development to the east of the site and the other adjoining lands. They include photographs showing the extent and note volume of the water in the drains and provide that the new pipes are far too small to accommodate this volume.
- 7.13.7. They provide a detailed discussion of the altered piping arrangement. They are concerned that account has only been had of the 'hard surfaced' areas on the applicants site and does not address the catchment of the existing land drains which were removed, was significantly larger and acted as land drainage for a number of neighbouring properties. They provide that there is no analysis provided where it is clearly shown that the land drainage pipes that have now been installed have the capacity to sufficiently drain the lands affected. In this respect regard is has to the criteria in DM Standard 27 Surface Water Drainage & Flooding (GCDP) and to the use of SUDS. They provide that the replacement of swales for filter drains is not seen as an upgrade to the SuDS system and cannot be viewed as a like for like replacement. Also that none of the maintenance measures have been undertaken as part of the works. They provide that the filter drains that have been installed at the site do not meet the requirements of SuDS design and that there is no evidence to

show that the requirements of BRE Digest 365 have been met and include details relative to this issue.

- 7.13.8. They have regard to OPW PFRA Flood Mapping and to drainage problems and consider that there is a significant potential for flooding at this site and that a comprehensive flood risk assessment should have been carried out. They are also concerned that the levels of new drains on either side of the roadway are between 0.5m and 1m above the level of the roadway and that this will lead to the formation of a ditch thereby impeding the flow of surface water and possibly leading to flooding of the applicant's own property and neighbouring lands especially the GAA grounds where extensive drainage of the pitch has been carried out. Having regard to attenuation they provide that given the depth of the tank it may not be possible to outfall from this tank to the Castlegar River, and also that Condition no.2(a) states that all surface water generated by the development be disposed of within the site.
- 7.13.9. They are concerned that the drainage design submitted as part of the McCarthy Keville O'Sullivan response does not properly take account of the principles of SuDS and that there is a deficiency in the drainage information submitted and the design is not in accordance with the proper planning and sustainable development of the area. Having regard to all the issues raised it is not considered that adequate information has been submitted to provide certainty relative to drainage works or that the extent of drainage works to be retained/provided are justified to serve a private access road, albeit with right of way of part usage for the GAA and land relative to the provision of an agricultural entrance.

7.14. Screening for Appropriate Assessment

- 7.14.1. The Planner's Report notes that the site is located within an area designated as (Rkc) Regionally Important, conduit karst aquifer, development potential limited. The area is drained by the Suck River. The development site is located within a 15km radius of the following Natura 2000 designations:

- Levally Lough SAC
- Lisnageeragh Bog and Ballinastack Turlough SAC
- Lough Lurgeen Bog/Glenamaddy Turlough SAC

- Shankill West Bog SAC
- Lough Corrib SAC
- Carrownagappul Bog SAC
- Camderry Bog SAC
- Curraghlahanagh Bog SAC
- River Suck Callows SPA

Carrownagappul Bog is c.1.5kms to the north of the site. It is noted that the Castelgar river is in closer proximity to the northern perimeter of the site and the Council provides that surface waters are envisaged to discharge to same which flows away from the destination. Furthermore it is provided that the drainage system on the site will need to be BRE compliant. They provide that having regard to the aforementioned significant adverse impacts on the Natura network can be ruled out.

7.14.2. The Patrick J Neville Consulting Engineers Report submitted on behalf of the Third Party the proximate GAA Club have raised concerns in relation to environmental considerations. They have regard to DM Standard 40 Environmental Assessments (GCDP) relative to the issue of Appropriate Assessments. They note that the site is located c.1.9km to the south of Carrownagappul Bog SAC (001242) . They consider that given the proximity of the proposed development to the SAC and the type of works that have been undertaken, namely changes to the drainage at the site and removal of mature vegetation, it is essential that the impacts direct or indirect be assessed as per this standard and that a Natura Impact Statement be undertaken. They consider that that taking into account the lack of an NIS and the proximity of the site to the Carrownagappul Bog SAC, it cannot be assumed that there will be no direct or indirect impact on the protected site from the development.

7.14.3. Carrownagappul Bog SAC (001242) is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive [7110] Raised Bog (Active), [7120] Degraded Raised Bog, [7150] Rhynchosporion Vegetation. A copy of the Site Synopsis and Conservation Objectives are included in the Appendix to this Report. As provided on the NPWS website, The Conservation Objectives are as follows:

- *Raised Bog: To restore the favourable conservation condition of Active raised bogs in Carrownagappul Bog SAC. A list of attributes and targets is given in the NWPS Conservation Objectives.*
- *Degraded Raised Bog - The long-term aim for Degraded raised bogs still capable of natural regeneration is that its peat-forming capability is re-established; therefore, the conservation objective for this habitat is inherently linked to that of Active raised bogs (7110) and a separate conservation objective has not been set in Carrownagappul Bog SAC.*
- *Rhynchosporion Vegetation - Depressions on peat substrates of the Rhynchosporion is an integral part of good quality Active raised bogs (7110) and thus a separate conservation objective has not been set for the habitat in Carrownagappul Bog SAC.*

7.14.4. While the SAC is some distance from the application site a source-pathway-receptor chain has not been identified between the proposed development and the Natura 2000 site. However this has not been investigated. Nor has it been ascertained that Policy NHB4 relative to protection of Water Resources is being/will be complied with or what if any cumulative impact the proposal will have. While it is considered unlikely that this development would have a significant adverse impact on the conservation objectives of the site, in view of the drainage/flooding issues, the precautionary principle should apply and it is considered that a comprehensive AA Screening Report should have been submitted with this application.

7.15. **Other issues**

7.15.1. It is noted that Mountbellew-Moylough GAA Club requested that in view of all the issues raised in their grounds of appeal that an oral hearing be made under Section 134 of the Planning and Development Act 2000 and enclosed the appropriate fee.

7.15.2. The Board considered this request and in accordance with section 134(3) of the Planning and Development Act 2000 and decided to determine the appeal without an oral hearing. They concluded that the appeal can be dealt with adequately through written procedures.

8.0 Recommendation

- 8.1. Having regard to the documentation submitted, including the grounds of appeal and responses and submissions made, the site visit and to the assessment made it recommended that retention permission and permission for the proposed development works be refused for the reasons and considerations below.

9.0 Reasons and Considerations

1. It is not considered that sufficient justification has been given in the documentation submitted relative to the scale and extent of the unauthorised works that have been carried out and is now the subject of this application relative to the retention and the proposed works required for permission for this widened entrance and 7metre wide access route on unzoned land outside the centre of Mountbellew to serve agricultural lands, a derelict house and provide for occasional use of the right of way at the southern end of the access route by the Mountbellew-Moylough GAA Club. The Board is not satisfied based on the documentation submitted that the proposal for this scale of access road would not be premature in this location. It is considered that the development proposed for retention and permission has and would have an adverse impact on the character and amenities of the area and would be contrary to planning policy and the proper planning and sustainable development of the area.
2. It is considered that this proposal would not comply with national policy in relation to control of frontage development on national roads, and in particular section 2.5 relative to *Transitional Zones* as outlined in the Department of Environment Heritage and Local Government 'Spatial Planning and National Roads Guidance for Planning Authorities' (January, 2012) and would be excessive relative to the guidelines which include promoting lower speeds on narrow roads in urban areas and referring to Carriageway widths as given in Section 4.4.1 and as shown on Figure 4.55 of the Department of Transport 'Design Manual for Urban Roads and Streets' 2013. The development proposed for retention and permission would conflict with the said Ministerial

Guidelines and would be contrary to the proper planning and development of the area.

3. The Board is not satisfied that it has been clarified in the documentation submitted that appropriate drainage measures are or will be in place to service this retention and proposed development and to ensure that the proposal would comply with Objective WW7 *Surface Water Drainage and Sustainable Drainage Systems (SuDS)* of the Galway County Development Plan 2015-2021. It also has not been ruled out that the proposed development would not cumulatively have an impact on groundwater in the area. Therefore, the Board is not satisfied based on the documentation submitted that the proposed development would comply with Policy NHB4 of the said plan and would not impact adversely on water resources in the area or Natura 2000 sites.

Angela Brereton,
Planning Inspector

20th of January 2017