



An  
Bord  
Pleanála

## Inspector's Report PL15.247997

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<b>Development</b>	(i) Retention of Planning Permission for Sunroom, (ii) change of use from Residential Unit to use as a residence with 5 bedrooms for persons with an intellectual or physical disability or mental illness together with associated modifications.
<b>Location</b>	Branagan's Cross, Collon, County Louth.
<b>Planning Authority</b>	Louth County Council.
<b>Planning Authority Reg. Ref.</b>	16/468.
<b>Applicant</b>	Nua Healthcare Services.
<b>Type of Application</b>	Planning Permission and Retention of Planning Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party -v- Grant
<b>Appellants</b>	(i) Aine Martin, (ii) Glenmore Residents Association, (iii) Eddie Hamilton.
<b>Observer</b>	Senator Ged Nash.
<b>Date of Site Inspection</b>	28 <sup>th</sup> April, 2017.
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

PL15.247997 relates to a number of 3<sup>rd</sup> party appeals against the decision of Louth Co Council to grant retention of planning permission for a sunroom and planning permission to convert an existing garage (c.50 square metres) to habitable use and a change of use in the overall property from use as a dwelling to use as a residence for persons with intellectual or physical disability or mental illness and providing care for such persons. The proposal also involves some internal and elevational modifications to the existing structure on site. The grounds of appeal argue that the proposed development was granted on the premise of local housing need and the proposed development in this instance represents a material contravention of the original grant of planning permission, is also argued that the subject site is inappropriate for such commercial development being located in a rural area.

## 2.0 Site Location and Description

The appeal site is located at Branagan's Cross just off the Cloisters Road which runs eastwards from the village of Collon towards Monasterboice and the M1 Motorway. Branagan's Cross is located approximately 2 kilometres east of the village of Collon. The subject site is located on the southern spur road of Branagan's Cross on the eastern side of the road approximately 50 metres south of the crossroads. The site occupies an area of c.0.29 hectares. A recently constructed dwelling under Reg. Ref. 10/549 is situated centrally within the site. It comprises of a two-storey grey stone clad structure with associated sunroom and garage to the rear. A derelict vernacular type building is also located adjacent to the southern boundary of the site. There are no dwellings to the immediate north of the site, there are however two dwellings located directly south of the subject site. The access road serving the site is characterised by sporadic ribbon development.

The sunroom for which retention is sought links the existing two-storey dwellinghouse with the garage to the rear. The dwellinghouse, according to the plans submitted, currently accommodates four bedrooms at first floor level.

### **3.0 Proposed Development**

Planning permission is sought for the following:

- Planning permission is sought for the retention of the sunroom which occupies an area of 39 square metres linking the main building to the garage to the rear.
- Permission is also sought to convert the existing garage which occupies an area of approximately 50 square metres, to habitable use and planning permission is sought for a change of use in the overall property (granted under Reg. Ref. 10/549) from use as a dwelling to use as a residence for people with intellectual and mental disabilities. The conversion of the garage will result in an increase in the overall number of bedrooms from four bedrooms to five bedrooms. The existing garage area is to be converted into a self-contained unit comprising of a bedroom, shower room and living room/kitchenette. Some minor modifications are also proposed on the external elevation of the garage, namely the removal of a doorway to the garage on the western elevation and the removal of the main roller shutter garage door on the southern elevation and its replacement with new windows to serve the new living area proposed.

### **4.0 Planning Authority's Decision**

#### **4.1. Decision**

Louth County Council granted planning permission for the proposed development on 19<sup>th</sup> January, 2017.

#### **4.2. Information Submitted with the Application**

The planning application was lodged on 11<sup>th</sup> July, 2016. It was accompanied by a wastewater report associated with the existing dwelling which concludes that the current system meets minimum separate distances, is in accordance with the EPA Code of Practice and is compliant with planning conditions associated with the parent permission. It is stated that the system is designed to accept a PE of 10, which is compliant with the number of bedrooms in the existing dwelling.

A planning report was submitted by McGill Planning which sets out the site location and description of the proposed development, the planning policy context and concludes that the location meets the specific needs of clients with intellectual disabilities and it is considered wholly appropriate to meet these needs. It also states that the proposal fully complies with the policies and objectives contained in the Development Plan.

#### 4.3. **Planning Authority/ Proscribed Body Reports**

A report from the **Environmental Compliance Section** requested additional information in relation to water supply and wastewater treatment.

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

Numerous **letters of objection** were submitted the contents of which have been read and noted.

A report from **Irish Water** states that there is no objection subject to conditions.

The original planner's report recommended that planning permission be refused for four reasons relating to:

1. Contravention of zoning objective in the Development Plan.
2. Material contravention of Section 4.18.3 and Policies 45 and 46 of the Development Plan.
3. Contravention of Condition No. 2 attached to planning permission 10/549.
4. The development will set an undesirable precedent for similar type commercial development in a rural part of County Louth.

#### 4.4. **Further Information Request**

Notwithstanding the recommendation of the initial planning report, Louth County Council requested additional information in relation to the following:

- Details in relation to the healthcare provider in this instance including professional staff.

- Provide details to demonstrate that the proposed development is in line with national policy and how the site selection was undertaken.
- Details in relation to the setting and location of these types of facilities and how the proposal conforms with best practice.
- Details of the corporate policy or plan for the Health Service.
- Details of number of staff, residents and visitors and service deliveries associated with the development.
- Details of the age profile for the unit.
- Details for the range of security measures proposed for the development.
- Further details in respect of the wastewater treatment system to serve the development.
- Details of parking provision to cater for vehicles to and from the site.
- Revised newspaper notices.

#### 4.5. **Applicant's response to Further Information.**

- Further information was submitted on 15<sup>th</sup> December, 2016 by McGill Planning on behalf of the applicant. The information submitted is briefly summarised below.
- It states that the applicant, Nua Healthcare Services is a private company that provides community outreach day services and residential care for persons with intellectual disabilities and other mental health difficulties.
- It is stated that the proposed facility will provide one full-time residential carer to a maximum of six clients. Day services will be provided in a separate location in Dublin, Wicklow or Kildare. All staff will have social care training and qualifications.
- In relation to compliance with Government policy two reports are submitted.
  - A HSE document entitled "*Time to Move On from Congregated Settings – A Strategy for Community Inclusion*".

- *‘A review of good practice models in the provision of housing and related supports for people with disability’.*
- It is considered that the setting and location of the subject site in a semi-rural area yet integrated into community complies with government policies and guidance listed above.
- It is stated that the proposed development fully complies with the National Housing Strategy for People with Disability 2011-2016 and details are provided in the response as to how the proposal complies with the strategic aims.
- It is also stated that the proposal complies with Section 7.3 of the Border Regional Authority Regional Planning Guidelines (2010-2022) and various policy statements contained in the Louth County Development Plan. It is stated that semi-rural locations provide appropriate low intensity, tranquil, restful and homely environments within easy access of services.
- Details of the applicant’s Corporate Policy and Plan (Nua Healthcare Services) are set out.
- In relation to staff requirements, it is stated that it is anticipated that five care staff would enter the premises in the morning replacing the two overnight staff. There would also be occasional staff visits from behavioural team members, auditors and maintenance etc. Visitors, relations and friends of the service are more to difficult to quantify, since this depends on the number of relations and friends of each visitor who are within convenient driving distance of the property.
- In terms of security measures, it is noted that keypad locks will be fitted on all external doors and windows and all clients will be accompanied by at least two members of staff when they leave the facility.
- A separate report was submitted by Daly Hudson in relation to wastewater treatment. It states that a site layout plan has been revised to show the location of a proposed new tertiary treatment system rather than providing a 350 sq. m. percolation area. As a 350 sq. m. percolation area cannot be provided while meeting the minimum separate distances as set out in the EPA



Code of Practice. It is therefore proposed to install a filter pod on a 37.5 sq. m. gravel base which according to the information submitted can cater for a maximum flow of 1,500 litres per day. Based on this design it is stated that all separate distance metres can be met. The closest wells in proximity are a proposed well approximately 45 metres from the proposed new percolation area and an existing well approximately 49 metres from the proposed percolation area.

- In relation to car parking 10 spaces are provided in accordance with Section 7.6 of the County Development Plan.

#### 4.6. **Further Assessment by the Planning Authority**

A report from the **Environmental Compliance Section** states that the information submitted is adequate and it is concluded that there will be no threat of environmental pollution from the proposed development. It is therefore recommended that a grant of planning permission be issued.

Further **letters of objection** from third parties was submitted, the contents of which have been read and noted.

A further **planning report** notes the further information submitted and notes the additional letters of objection contained on file. It is concluded that the application has adequately demonstrated that national policy supports care in a community setting. Furthermore, it is considered that a rural location would be advantageous to clients/residents for a number of reasons including the peaceful countryside setting. Parking provision on site is adequate to cater for the number of staff and visitors and it is therefore considered that the proposal will not result in a traffic hazard. Louth County Council therefore granted planning permission for the proposed development subject to 8 conditions.

## 5.0 **Planning History**

- 5.1. Details of one planning history file is attached. Under Reg. Ref. 10/549, Louth County Council granted planning permission on the 30<sup>th</sup> May, 2011 to construct a storey and a half dwellinghouse, garage, wastewater treatment system and new entrance on the subject site. The decision was subject to 13 conditions.

5.2. Condition 2 of the grant of planning permission is relevant and is set out below.

- (a) *The proposed dwelling, when completed shall be first occupied as a place of permanent residence by the applicant or his or her heirs and shall remain so occupied for a period of at least seven years thereafter unless consent in writing is granted by the planning authority for its occupation by other persons who are eligible under appropriate qualifying criteria for the area. The applicant shall enter into a written agreement with the Planning Authority under Section 47 of the Planning and Development Act, 2000 to this effect.*
- (b) *Within two months of the occupation of the proposed dwelling, the applicant shall submit to the Planning Authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation, together with a signed Section 47 Agreement as required by paragraph (a) above.*
- (c) *This condition shall not affect the sale of the dwelling by a mortgagee in possession or a person deriving title from such a sale.*

**Reason:** *To ensure that the proposed house is used to meet the applicant's stated housing need and that the development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.*

## 6.0 Grounds of Appeal

The decision of Louth County Council to issue notification to grant planning permission was the subject of three separate third party appeals by:

- Eddie Hamilton.
- The Glenmore Residents Association.
- Aine Martin.

The issues raised in the three third appeals are summarised briefly below:

- The conditions in the original planning permission, including Condition No. 2, which related to occupancy, were not adhered to. The proposal to provide a care centre within the existing dwelling is therefore in direct contravention of the

parent permission. It is also argued that the applicant in the case of the original application for a dwellinghouse (Reg. Ref. 10/549) did not comply with the criteria in respect of housing need nor did he adequately demonstrate housing need in order to obtain planning permission for a house in the first place.

- Issues were also raised in relation to the validity of the planning permission granted under Reg. Ref. 10/549.
- One of the grounds of appeal argues that the site has been the subject of enforcement proceedings on the grounds that the building was not constructed in accordance with the plans and particulars lodged. Specifically, reference is made to the fact that the existing cottage on site has not been demolished. A significant level of misinformation has been submitted in respect of the size of the house and the site size etc. It is stated that the size of the house is excessive and not in accordance with the limitations set out in the development plan with regard to house sizes (less than 200 sq.m) in the case of houses in Development Zone 5.
- It is noted that the original planner's report recommended a refusal of planning permission.
- The subsequent planner's report does not adequately assess the information submitted by way of additional information in a clear, accountable and transparent manner. Furthermore, the final planner's report does not adequately deal with the concerns raised in the original planner's report and does not provide justification for overruling the recommendation in the original planner's report.
- The commercial development is located on development plans zoned "Zone 5" in the Development Plan which allows for local rural housing need in exceptional circumstances subject to compliance with eligibility criteria. The proposed development does not meet any of the qualifying criteria set out under the Development Zone 5 and therefore should be refused.
- It is argued that such facility should be located in towns and villages close to amenities and public services. The proposal is located in an isolated rural location with no footpaths or public lighting and as such the site is not appropriate for a facility of this nature.

- The current application cannot be compared with other decisions made by An Bord Pleanála to grant planning permission for a change of use from a house to a residence for persons with intellectual disabilities as a completely different set of circumstances prevail under the current application.
- The existing wastewater treatment system cannot cater for the number of persons to be employed/residing at the facility. The “filter pod system” is unsuitable and could adversely impact on the environment.
- The commercial nature of the development will give rise to significant traffic and parking issues. The applicant has failed to achieve the required sightlines at the site entrance.
- The further information submitted did not adequately deal with the issues raised by the Planning Authority.
- The proposal sets a controversial precedent for other applications of this nature.
- It is questioned whether or not the proposal meets the conditions and limitations set out under the various exempted classes of development contained in the Planning and Development Regulations, 2001, as amended.

#### **6.1. Observations**

One observation was submitted by Senator Ged Nash. As in the case of the grounds of appeal, it raises concerns in relation to the planning status and the enforcement status of development on the subject site specifically in relation to housing need and compliance with Condition No. 2 which relates to occupancy.

The observation goes on to argue that services such as that proposed should be located within urban or suburban areas close to public services and amenities.

### **7.0 Appeal Responses**

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

A response was received from Nua Healthcare and is briefly summarised below:

- In respect of the original application for planning permission it is noted that this decision was not appealed therefore objections on the basis of the original application must be deemed irrelevant.
- The current application is intended to address all issues associated with unauthorised development.
- As Louth County Council decided to grant planning permission it implies that the proposal fully complies with the policies and provisions contained in the Development Plan.
- The current application is neither a nursing home nor a care institution therefore planning policies as set out in the Development Plan may not be strictly applicable to Nua Healthcare buildings.
- To state that there will be 27 people in the house at any one time is a gross overestimation.
- The siting of the house in this location greatly benefits the residents and significantly improves the quality of their lives. It is not a requirement to have all services required in the immediate vicinity of the houses.
- In terms of traffic and sightlines, it is stated that the existing entrance was deemed suitable for the granting of planning permission for a dwellinghouse. Sightlines can be achieved in both directions. However, as a last resort the applicant would be prepared to improve sightlines at the vehicular entrance by relocating it on site with the owner's agreement.
- Objections in respect of the wastewater treatment system have been addressed by the applicant's consultant during the grounds of appeal. The applicants were only made aware of the discrepancy in the actual boundary of the site at objection stage. The applicants have submitted a revised site plan (which does not appear on file) and is committed to changing the location of the wastewater treatment system due to this boundary change.
- The basic premise of the application is a change of use from a house which the owner cannot currently occupy for various reasons into a home for people in need of care. The proposal would provide valuable services for the region

and will also provide local employment. For these reasons the Board are requested to uphold the decision of the Planning Authority.

**7.2. Louth County Council submitted the following response to the grounds of appeal.**

- The Planning Authority is satisfied that the development is not considered to be exempted under the Exempted Development Regulations.
- The Planning Authority is satisfied that the nature and extent of the development was adequately advertised in accordance with the Regulations.
- Reference is made to the various policies set out in the Development Plan and it is stated when making a decision to grant planning permission the Planning Authority relied on government national policy and residential care and it is considered that the proposal generally complies with national policy.
- The further information submitted shows a large percolation area and this is considered to be satisfactory to cater for the anticipated additional loading.
- Parking provision on-site is adequate to cater for members of staff and visitors and will not result in a traffic hazard.
- All other matters which have been raised in the appeal statements are fully addressed in the planner's report dated 17<sup>th</sup> August, 2016 and 29<sup>th</sup> August, 2016 and the addendum to same dated 30<sup>th</sup> August, 2016 and the final planner's report of 16<sup>th</sup> January, 2017.

**8.0 Development Plan Provision**

8.1. The subject site is located in an area designated as "Development Zone 5". The objective for the area is to *"protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resourced based and location specific developments of significant, regional or national importance. Critical infrastructure projects of local, regional and national importance will also be considered within this zone"*.

8.2. Chapter 4 of the Development Plan specifically relates to residential and community facilities.

8.3. Section 4.18.3 specifically relates to nursing homes and analogous services.

It states that the demand for nursing homes and analogous services has grown over the last number of decades. Advances in the field of medicine as well as improved nutrition and quality of life have increased average life expectancy.

The Planning Authority considers that nursing homes/analogous services should be located within Dundalk, Drogheda, Ardee, Dunleer and the Level 3 Settlements where:

- Public utilities such as water and sewage facilities are available.
- Opportunities for greater social inclusion and integration to the community exists.
- Accessibility by means of public transport is available.
- Visitors can combine trips to see patients and relatives with other trips such as shopping and worship.
- There is a presumption against nursing home development/analogous services in the open countryside for reasons relating to unsustainability, poor accessibility, social inclusion and visual intrusion.

In assessing planning applications for nursing homes and analogous services the Planning Authority will have regard to the following:

- The zoning objectives for the area
- the site size, shape and adjoining buildings and its compatibility with other uses in the area.
- Accessibility.
- Design and layout.
- Amenity.
- Utilities.

The following policies are also relevant,

- Policy RES45 to require that nursing homes/analogous services are located within Dundalk, Drogheda, Ardee, Dunleer and Level 3 Settlements. In

exceptional circumstances where a suitable reuse of existing buildings can be considered.

- RES46 to ensure that all applications for nursing homes/analogous services comply with the guidelines outlined in Section 4.18.3 above.

## 9.0 Planning Assessment

I have read the entire contents of the file and have had particular regard to the issues raised in the grounds of appeal. I have also visited the site and its surroundings and I consider the following issues are pertinent in determining the current application and appeal before the Board.

- Validity of permission granted under Reg. Ref. 10/549.
- The carrying out of development in accordance with the permission granted.
- Compliance with condition no. 2 of Reg. Ref. 10/549.
- Material contravention of the development plan.
- The suitability of the wastewater treatment plant to serve the development.
- Traffic and parking considerations.
- Exempted development regulations.

### 9.1. Validity of Permission Granted under Reg. Ref. 10/549.

All three appellants argue that the applicant in the case of the original application did not comply with the eligibility criteria in respect of housing need as set out in the Development Plan and as such, planning permission should not have been granted for the original residential dwelling on site. Whether or not the applicant complied with the eligibility criteria in respect of housing need as set out in the Development Plan is not strictly pertinent to the current application before the Board. Planning permission was de facto granted for a dwellinghouse on the subject site. The Board for the purposes of the current appeal could not revoke any previous decision made by the Planning Authority in respect of an application on the subject site. The housing need for the applicant was already determined by the Planning Authority



under the previous application and cannot be revisited for the purpose of the current appeal before the Board.

#### **9.2. The Carrying Out of Development in Accordance with the Permission Granted.**

All three appellants also raised concerns that the original planning application was not carried out in accordance with the plans and particulars submitted with the original application. In this regard reference is made to the fact that the original cottage on site was not demolished as part of the application, the size and scale of the dwellinghouse was larger than that represented in the drawings submitted with the application, and as such the dwellinghouse exceeds the maximum size permitted for Development Zone 5 under the Development Plan. It is also suggested in the various grounds of appeal that issues arise in respect of the size of the garage and the unauthorised sunroom constructed on site. While I acknowledge there appears to be a number of discrepancies in relation to the planning permission granted and what was constructed on site, any matters regarding the non-compliance of the original grant of planning permission are a matter for Louth County Council as the enforcement authority. Furthermore, it appears that many of the matters raised in respect of non-compliance are being addressed under the current application before the Board.

Concern is also expressed in the grounds of appeal that the actual site area is less than that stated in the application form (0.23 hectares as opposed to 0.29 hectares). The Board will note that the revised site notices erected on foot of further information makes reference to the size of the site at 0.29 hectares.

If the Board are minded to grant planning permission for the proposed development it might seek to investigate further the size of the site. From my analysis it appears that the overall site has an area closer to 0.23 hectares than that specified on the public notices (0.29 hectares). Additional information seeking clarity on this issue could be requested from the applicant should the Board deem it appropriate.

#### **9.4 Compliance with Condition No. 2 of Reg. Ref. 10/549.**

It appears clear and unambiguous that the original grant of planning permission has not been complied with on the grounds that the applicant has not adhered with

Condition No. 2 in that, the subject house has not been a place of permanent residence by the applicant for a period of at least seven years subsequent to the house being completed. In fact, it is not altogether clear based on my site inspection as to whether or not the house has ever been occupied as a permanent place of residence. Planning permission was granted on 30<sup>th</sup> day of May, 2011 and the dwelling was obviously completed sometime after that. It is clear therefore that the occupancy clause set out under Condition No. 2 has not been complied with in the case of the current application. It is very apparent therefore that this condition has been contravened and neither the Planning Authority nor the applicant in this instance has offered any justification as to why this condition should not be complied with. As a non-compliance arises in the case of the parent application, the existing development on site can be deemed to be unauthorised. It is inappropriate in my view to grant planning permission for a change of use from a development which is unauthorised to use as a care home. I therefore consider that the third reason for refusal cited by the original planner in the report dated 29<sup>th</sup> August, 2016 (report by Patricia Hughes, Executive Planner) is applicable in this instance and should be used as justification to refuse planning permission for the proposed development on the basis of non-compliance with the parent permission.

#### **9.5 Contravention of Planning Policy**

I consider that the proposed development is not in accordance with the policies and provisions contained in the current Louth Development Plan as they relate to nursing homes and analogous services. While the proposed development does not constitute a nursing home, I consider that many of the policies and provisions set out in the Development Plan under Section 4.18.3 would be equally applicable to a care centre of the nature proposed. It is clear that the Planning Authority considers that nursing homes and similar type services should be located within existing built-up areas where public utilities are available. Opportunities for greater social inclusion and integration within the community exist and accessibility to public transport is available. The subject site is located in a rural area a considerable distance (c.2 kilometres) from the village of Collon with poor infrastructural links between the site and the village. Louth County Council in issuing notification to grant planning permission placed emphasis on national guidance documents including the HSE published document “*Time to Move on from Congregated Settings – A Strategic for*

*Community Inclusion*". I do not agree with the conclusions reached by the applicant in its response to the additional information request that this document provides justification for moving such services out into rural areas. It appears from the above document that the objective aims to move the model of care from people with intellectual and physical disability from traditional congregated settings to a more community based model. This in itself does not in my opinion provide any justification for moving such facilities out into rural areas and away from urban/suburban environments. I consider that the rationale behind the national guidance seeks to move people away from large scale institutionalised facilities into a model which integrates to a greater extent with the existing local communities. It does not in my view in any way justify moving such facilities into more isolated rural areas. I can only conclude that national policy on the whole is silent in respect of the locational requirements of such services but in general seeks to encourage greater emphasis on appropriate community based housing and such housing is more appropriately located within urban and suburban communities where greater access to services are available. It is also apparent in my view that the proposed development contravenes many of the requirements set out in the Louth County Development Plan.

#### **9.6 The Suitability of the Proprietary Wastewater Treatment Plant to Serve the Development.**

I note the information submitted with the original application and with the further information furnished to the Planning Authority and specifically the report prepared by Daily Hudson in relation to the suitability of the on-site wastewater treatment plant to serve the proposed development. The applicant in the response to the grounds of appeal acknowledges that the site is confined and unsuitable for the accommodation of a 350 sq.m. percolation area in accordance with the EPA Code of Practice. It is therefore proposed to install a tertiary type treatment system referred to in the information as a "filter pod" on a 37.5 square metre gravel base. This is based on a PE of 10 and a loading rate of approximately 40 litres per sq.m. per day. I have a number of concerns in relation to the proposed method of on-site treatment.

Firstly, I am not satisfied based on the information submitted that the maximum number of persons within the care home at any one time would be limited to 10. The

figures indicate that there will be five service users on site at any given time along with five staff. In addition, there is likely to be visitors including behavioural specialists, psychologists, psychiatrists and visitors on site. While I fully acknowledge that it is unlikely that all such persons will be on site all of the time it is very likely that the minimum number of 10 persons on site will be exceeded for much or even some of the time. It is likely that in excess of 10 persons would be on site at any given time. The proposed proprietary wastewater treatment system and polishing filter has been designed to cater for a maximum of 10 persons on site.

The applicant has provided no information demonstrating that the subject site can cater for a hydraulic loading of 40 litres per square metre. Work undertaken by the EPA in respect of 'Authorisations for Discharges to Groundwater' (specifically I refer to Table E2 of Appendix E sets out the approximate relationship between T values, permeability and long-term acceptance rates). It suggests that sites incorporating T values of 3 to 20 could cater for long-term acceptance rate of approximately 20 litres per square metre per day. The original percolation test carried out with the parent permission (Reg. Ref. 10/549) indicate T values of c.52 and P value of 27. The inherent infiltration rates in the soil therefore would suggest that the in situ soils on site are incapable of accommodating such high loading rates. Based on the information provided therefore that the hydraulic loading associated with the wastewater treatment plant would give rise to ponding.

Finally, in relation to the suitability of the wastewater treatment proposals, I would refer the Board to drawing no. FI-001 submitted to the Planning Authority on 15<sup>th</sup> December, 2016. It indicates that the direction of groundwater flow is in a north-westerly direction and that there is an existing domestic well on site approximately 45 metres to the north-west of the subject site and there is also a proposal to locate a new well to the north-west of the subject site under Reg. Ref. 15/306, approximately 50 metres away. There are therefore two domestic wells located in the direct path of groundwater flow within 50 metres of the proposed percolation area. There is in my view therefore significant potential to pollute wells in the vicinity of the subject site.

In conclusion therefore I do not consider that the proprietary wastewater treatment system proposed is adequate to cater for the hydraulic loadings associated with the proposed commercial development and that the percolation area constitutes a

potential threat to groundwater quality and sources of water supply in the immediate vicinity of the site.

## **9.7 Traffic and Transport**

It is argued that the proposed development will give rise to a traffic hazard on the grounds that the existing access incorporates restricted sightlines and that the proposed commercial development will generate inappropriate levels of traffic to and from the site. I have assessed the sightlines at the proposed entrance to the dwelling and I consider it generally to be adequate. I note that Louth County Council in granting planning permission for the original dwellinghouse on site had no concerns in respect of restricted sightlines at the entrance.

While the proposed development will give rise to increased levels of traffic generation over and above that associated with a domestic dwelling, I do not consider that the traffic generated by the proposed development would be so significant as to give rise to traffic problems in the area. I would not anticipate that trip generation to and from the site would be insignificant given the nature of the activities to be undertaken on site. I therefore do not consider that the proposed development should be refused on traffic grounds.

## **9.8 Exempted Development Regulations**

Section 6 of the appeal submitted by Aine Martin raises a number of questions as to whether or not the proposal meets various conditions and limitations set out under the Exempted Development Regulations. I do not consider the arguments put forward in this section of the grounds of appeal to be relevant in this instance. The applicant is not seeking any exemption under the Exempted Development Regulations but is applying for planning permission under the current application. Issues in relation to conditions, limitations or restriction on the Exempted Development Regulations are therefore not pertinent in the adjudication of the current application and appeal.

## 10.0 Conclusion and Recommendation

Arising from my assessment above, therefore I consider that the decision of Louth County Council should be overturned and planning permission should be refused for the proposed development based on the reasons and considerations set out below.

## 11.0 Reasons and Considerations

1. The proposed development would materially contravene Condition No. 2 of planning permission Reg. Ref. 10/549 which stipulates that the proposed dwelling when completed shall first be occupied as a place of permanent residence by the applicant or his or her heirs and shall remain so occupied for a period of at least seven years thereafter, unless consent in writing is granted by the planning authority for its occupation by other persons who are eligible under the appropriate qualifying criteria for the area. The condition has not been adhered to, the proposed development is therefore contrary to the proper planning and sustainable development of the area.
2. The proposed change of use from a dwelling to use as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons in a rural area is contrary to the provisions of Section 4.18.3 which seeks to locate nursing homes and analogous services within Dundalk, Drogheda, Ardee, Dunleer or other Level 3 Settlements where public utilities, accessibility to public transport and opportunities for greater social inclusion and integration within the community exist. The subject site located in a rural area would be contrary to the above statements contained in the Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

3. The Board is not satisfied on the basis of the information contained on file that the subject site is of sufficient size and is suitable to permit the adequate treatment and disposal of effluent arising from the proposed commercial activity. The proposed development is therefore considered to be prejudicial to public health and is therefore, contrary to the proper planning and sustainable development of the area.

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Paul Caprani,  
Senior Planning Inspector

17th May, 2017.