



An
Bord
Pleanála

Inspector's Report PL09.249085

Development	Retention of subdivision and change of use of existing car park, relocation of existing palisade fencing and a waste facility.
Location	Newhall, Ladytown, Naas, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	17/702
Applicant(s)	BOD Vehicle Support Services t/a Naas Nissan
Type of Application	Retention and permission
Planning Authority Decision	Grant permission with conditions
Type of Appeal	Third Party
Appellant(s)	Maureen Creaton
Observer(s)	None
Date of Site Inspection	26 th October 2017
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located to the south-west of Naas, adjacent to junction 10 of the M7 motorway. It is bounded by the R445 road to the north which leads to Newbridge from the M7, and to the south by the access/slip road from Naas onto the M7 (southbound only) known as Due Way. The Newhall Retail Park is to the south-east of the site and agricultural green fields are to the south. A number of one-off houses are located to the north of the site, between the site and the M7 motorway.
- 1.2. The site itself is triangular in shape and is to the west of the large modern car showroom and car rental facility, and is currently in use for parking of cars. The site area is stated as being 0.36Ha within the larger landholding. The site is well screened on sides facing the bounding roads.
- 1.3. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. The development as proposed is described as: a) Retention of sub-division and change of use of part of existing car park from previous use as storage of motor vehicles, to use as a mobilised and immobilised vehicle storage facility, b) relocate existing palisade security fencing, c) carry out all associated site works, and d) a waste facility permit application relating to the site will be submitted separately to Kildare County Council Environment Section.
- 2.2. The development will be laid out as a car park and each space will be marked with thermoplastic road markings. The yard will be finished with a 200mm deep fibre reinforced concrete slab throughout laid to falls. A 2m high security palisade fence will surround the entire site and additional planting will be added to further screen the area. The surface water will tie into the existing surface water drainage system with a Class A oil/water separator. Access to the development is from the existing Naas Nissan and car rental access.
- 2.3. A Stage 1 Appropriate Assessment Screening Report and a Traffic Impact Assessment accompanied the application.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 7 standard conditions. Condition 3 requires the applicant to provide full design details of the lighting, and condition 4 prohibits the stacking of vehicles.

3.2. Planning Authority Reports

3.2.1. Planning Report

There is one Planner's Report on file. In summary, it states:

- Given the previous zoning on the site (NE1 Industry/Warehousing in the Newhall Environs Plan 2011 – 2017) and the nature of existing and adjoining uses, it is considered that the principle of development is generally acceptable.
- Notes the TIA concludes that the section of the M7 to the north of the site upgrade will begin in Q1 2018, and the proposed development will not impact on those planned works.
- Notes comments of objectors in relation to visual impact, noise and light pollution, but concludes that a condition may be included in relation to lighting and planting, and notes that existing hedgerows buffer the site.
- Notes request of Area Engineer for full details of storm water but considers that this can be addressed by way of condition.
- Notes no objection from Transport Infrastructure Ireland (TII).
- Planner recommends a grant of permission.

The decision was in accordance with the Planner's recommendations.

3.2.2. Other Technical Reports

- **Area Engineer:** Further Information requested regarding storm water
- **Water Services:** No objection subject to conditions
- **Transportation:** No objection

- **NRO:** No objection
- **Environment:** No objection
- **CFO:** No observation to make.

3.3. Prescribed Bodies

- **Transport Infrastructure Ireland (TII):** No observations to make
- **Irish Water:** No objection subject to conditions

3.4. Third Party Observations

There were three submissions by third parties. Principle issues raised referred to previous refusals, unauthorised development on the site, inappropriate location – more appropriate in an industrial estate, inadequate sight distances, and impact on residential amenities.

4.0 Planning History

There are a number of planning applications on the site and in the vicinity. In summary, on the overall landholding:

- **KCC Reg. Ref. 14/752:** Permission refused in December 2014 for retention of use of land for the temporary storage of crashed and recoverable vehicles until they are moved to an end-of-life facility, retention of two temporary buildings, fencing, entrance, sale of vehicles on site, retention of storage of motorway equipment, and storage of overnight delivery trucks. Three reasons for refusal related to control of development on/affecting national roads, adversely affecting the national road network and having regard to the proximity of the site to the approved national road scheme, and would lead to a proliferation of entrances onto an existing access road serving the M7 which is already over capacity.
- **KCC Reg. Ref. 11/82:** Permission refused in March 2011 for the construction of a manless truckwash depot, construction of single storey building, toilet facility and convenience shop, and installation of 20 metre wind turbine. Three

reasons for refusal included the adverse effect it would have on the operation and safety of the national road, as well as the fact that it was to be located in an area currently under consideration as a route option for a national road improvement scheme and therefore, the application was considered premature. In addition, due to the location of the site access, traffic turning movements would endanger public safety and would lead to a proliferation of entrances onto a motorway slip road.

- **KCC Reg. Ref. 10/448:** Permission granted in June 2011 for the sub-division of existing car sales showroom and change of use to wholesale warehouse and offices (Development Contribution appealed to the Board ABP Ref. PL09.238360).
- **KCC Reg. Ref. 10/378:** Permission refused in July 2010 for sub-division of existing site and new double recessed entrance for one reason relating to the proliferation of entrances onto the slip road serving the M7.
- **KCC Reg. Ref. 03/556:** Permission granted in March 2004 for the retention of existing motor vehicle service workshop, erection of extension to previously approved car showroom, offices, canteen etc.
- **KCC Reg. Ref. 00/764:** Permission granted in October 2000 for an extension and alteration to the existing workshop for use as a car sales showroom.
- **UD6178:** Warning letter issued in June 2014 regarding the unauthorised storage/scrappage of cars.

In the vicinity:

- **KCC Reg. Ref. 14/623:** Extension of duration of Reg. Ref. 08/1654 for 3 no. retail units to the south of the site.
- **KCC Reg. Ref. 07/2234:** Permission granted in July 2009 for the development of 12 no. light industrial and warehousing units to the east of the site between the car showroom and the roundabout. Permission has expired and no development has taken place.

5.0 Policy Context

5.1. Development Plan

The site is subject to the policies and objectives of the Kildare County Development Plan 2017 – 2023 (the Plan). The site is not zoned as part of the Plan.

Chapter 6 refers to Movement and Transportation, Chapter 10 refers to Rural Development and Chapter 17 refers to Development Management Standards.

Chapter 6 refers to proposed works. **Policy MT 9** states:

Preserve free from development, proposed public transport and road corridors (including cycle corridors) where development would prejudice the implementation of projects identified by the TII, NTA, DTTS and KCC.

Objective MO1 states:

Complete the development of the third lane in each direction along the M7 including improvement of interchanges as the need arises.

Objective MO3 states:

Complete the upgrade and improvement of the M7 Newhall Interchange (Junction 10) and preserve that area free from development.

Section 10.4.10 of Rural Development refers to Rural Enterprise. While the subject site is not strictly rural in nature, it is currently not zoned in the Plan and will be addressed in the Naas Local Area Plan 2018 – 2024, which is currently under preparation.

Objective REO 1 states:

Continue to support rural development within the county as a contributory means of sustaining the rural economy.

5.2. Natural Heritage Designations

Mouds Bog SAC (Site Code 002331) is c.5.4km to the west and Pollardstown Fen SAC (Site Code 000396) is c. 8.6km south-west.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been submitted. In summary it states:

- The site has been subject to up to 10 planning applications, almost all have been refused. Considers that the site has been operating in a totally illegal manner, and there has been no effort to regularise the situation.
- Activity is likely to increase traffic volumes in the area with the possibility of sales of spare parts. Storage and waste recovery vehicles have not been addressed in any of the planning conditions. There is no mention of operating hours. The road up to the access is two-way and bearing in mind the additional traffic principally HCV's, it is likely to cause a traffic hazard at the entrance. Access to the area is through the same gate and across the Nissan area. Distances do not appear to be anywhere near regulations.
- The site is not zoned and the existing use does not have planning designation. It is partially used as parking.
- There will be more noise. There is no mention of repairs. In the most previous application it was stated that no repairs were to be carried out but a sign showing Ace Autobody Collision Repair Specialist is shown at the site.
- In relation to the Planner's report, it states that "the site shall only be used for the storage of vehicles for repair after assessment. Vehicles classed as ELVs shall be removed from this site within a short period of time to an authorised treatment facility". This clause has not been included in the decision.
- Concludes that while the facility has to be somewhere, this location is not the right place and is more suited to an industrial estate, out of sight of the general public.

6.2. Applicant Response

Consultants on behalf of the applicant responded to the appeal. The response addresses each point made in the appeal. In summary, it states:

- Considers planning history was included in the Traffic Impact Assessment. Refers to Reg. Ref 14/643 which was deemed incomplete. Submits that applicant is eager to regularise the situation. Submits that reasons for refusal relate to roads and access issues. Considers that these reasons have been addressed in the Traffic Report. Submits that the activities and existing overall entrance have been approved by the Council under previous planning application.
- With respect to increase in traffic volume, consider that a full and comprehensive assessment has been carried out. Notes the Council's Transport department had no observation. Considers reference to sight distance being nowhere near the regulations is totally incorrect and has no basis. There are vision lines achievable, c.251m in an eastern direction and c.160m in a western direction from the existing entrance.
- The upgrade works planned for the M7 will have a significant effect on the site, as it will greatly reduce traffic volume on the roadway servicing the site. Submits that this was an influencing factor on the Council's decision.
- With respect to zoning, submits that the site was previously zoned NE1 Industry/Warehousing and that while it is not zoned as part of the current Kildare Plan, the established use of the site is noted. The reason for selecting this site is due to the large site area and existing permitted use on the landholding. Consider regard should be had to existing use.
- With respect to noise, it is submitted that there is no specific noise guidance for storage of vehicles. A noise level of 55dBA will be achieved in daytime, 50dBA in the evening and 45dBA at night time at nearest noise sensitive locations.
- Expect to apply for a Waste Facility Permit/Certificate of Registration upon a grant of permission which will be accompanied by a Noise Assessment prepared by a competent environmental company. States that noise monitoring will be carried out annually at boundary if required. Map included which identifies the location of existing residences in the area indicating 2 houses within 200m, 3 houses within 300m and 6 within 400m. The M7

motorway passes between the houses and the subject site. States that the site is at a much lower level than the motorway and is well screened.

- With respect to repairs, states that Ace Autobody Collision Repair is not located on the application site and has no relevance to the subject application. It is not intended to carry out any repairs on the site.
- Refers to Waste Permit. Restates that there are no plans to repair vehicles after assessment. Vehicles classed as ELVs will be removed from the site within a short period to an authorised treatment facility using appropriate waste collection vehicles.
- Concludes that the applicant applied for retention in good faith in an attempt to address and regularise planning matters, and that much of the appellant's report is subjective with no factual basis.

6.3. Planning Authority Response

The Planning Authority responded stating that they have no further comments.

6.4. Further Responses

The third party was provided an opportunity to respond to the applicant's response to the appeal. In summary, it states:

- Notes that applicant accepts the site has been operating without planning permission for many years, and considers reasons for previous refusals have not changed.
- From physically measuring, sight distance figures cannot be achieved.
- The site is not zoned and present established use is an illegal one and of no legal standing. Use is more suitable to an industrial estate.
- Contend that while Ace Autobody is not on site, they still operate on the adjoining site and their planning status does not appear to be in order.
- Regarding the original permission, no mention was made on the decision to state the observations of the Environmental section of the Council. There

were no restrictions on the number of vehicles that could be held on site at any one time.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Traffic Impact
- Residential Amenities
- Appropriate Assessment

7.1. Principle of Development

7.1.1. The appellant states that the site is not zoned as part of the current Kildare County Council Development Plan 2017 – 2023, and has been operating without the benefit of planning permission.

7.1.2. With respect to zoning, the site was zoned NE1 Industry/Warehousing as part of the Naas Environs (West) Plan 2011 – 2017. The new County Development Plan 2017 – 2023 does not include a section for the Naas Environs; this will be addressed as part of the new Naas Local Area Plan currently under preparation.

Notwithstanding this, it is geographically part of the Naas Town environs and as detailed in Chapter 2 of the Plan, the focus is on achieving critical mass in the key towns and villages including Naas. Policies within the Plan support the strategic growth of Naas, Maynooth, Leixlip and Newbridge and encouraging employment in those areas.

The Newhall area comprises the Newhall Retail Park as well as the land which is home to Nissan Naas, Car Rental facility and Ace Autobody. I consider that the use of this site for storage of mobilised and immobilised cars to be acceptable. The site is to be marked out for cars which will ensure a co-ordinated and coherent parking

scheme and will not result in a seriously negative visual impact normally associated with storage of end-of-life vehicles (EOL). The applicant states that EOL vehicles will only be stored temporarily, until they are removed by appropriate recovery vehicles to locations permitted to deal with such vehicles.

The appellant states that they should be stored in an industrial estate type location. Having regard to my observations above relating to how the site will be marked out, and the assertion by the applicant that there is no permanent storage of EOL vehicles, I consider this use entirely consistent with the activities relating to vehicles that already exists on the site (Naas Nissan and Car Rental facility).

This proposal is acceptable in principle having regard to the policies of the Plan to support growth in the Large Town of Naas, to the pattern of development in the immediate vicinity, and having regard to the previous zoning of the Naas Environs 2011 - 2017 Plan.

- 7.1.3. With respect to the appellant's assertion that the site has been operating without the benefit of planning permission, I note that the applicant states that they are seeking to regularise the situation. I also note that refusal reasons in the past related to (inter alia) the planned upgrade to the M7 and concerns with route selection, as well as the proliferation of accesses onto the motorway slip road. I will address this further below, but I consider that these issues have resolved with the Board's approval for the widening of the M7 motorway from 2 lanes to 3 lanes between Junction 9 and Junction 11 (ABP Ref. MA0012), and the proposed use of an existing access previously granted permission.

Enforcement issues are a matter for the Council with respect to other developments on the site.

- 7.1.4. In conclusion, I consider that the subject proposal is acceptable in principle having regard to the pattern of development in the area, the sites location within a cluster of employment related uses, as well as proximity to the Newhall Retail Park, and having regard to the policies and objectives for growth in Naas as expressed in the Kildare County Council Development Plan 2017 – 2023.

7.2. Traffic Impact

7.2.1. The planned upgrade to the M7 motorway in this general area is due to get underway in Q1 2018. I note that the Roads and Transportation Section had no objections to the scheme, and Transport Infrastructure Ireland commented that they had no observations to make.

7.2.2. The TIA which accompanied the application stated that the retention of the proposal will not generate new trips to the site. It states that future traffic levels on Due Way are significantly affected by the construction of the upgrade scheme which will remove access from Due Way onto southbound M7, which will greatly reduce traffic volume on the roadway serving the site. I consider this to be important both in terms of the traffic volumes and the sight line concerns expressed by the appellant.

The M7 is being widened from two lanes to three lanes, between junction 9 and junction 11, and the Newhall interchange is being modified. Reviewing the drawings of the planned motorway upgrade, the direct slip road of Due Way onto the motorway is being closed. This will significantly affect the numbers of vehicles using this road. Furthermore, there is no new access to the site being planned. Therefore, I am satisfied that the proposed development will not add to traffic volumes currently experienced on this road, nor will it result in a new access onto the road. These were reasons for refusal of permission by the Planning Authority in the past. I further note that once the motorway upgrade work is complete the volume of traffic along this road will reduce significantly. I am satisfied that the proposal will not constitute a potential traffic hazard, nor endanger public safety.

7.3. Residential Amenities

7.3.1. The appellant refers to noise concerns by virtue of its use which will have a large effect on the people living in the surrounding houses. The appellant's address is not in the locality, and there is no mention of specific dwellings or which particular houses are of most concern. The nearest houses are located on a parcel of land roughly triangular in shape, which is bounded by the R445 to the south, the M7 motorway to the north, and M7 junction 10 access to the east.

7.3.2. I note that no information has been provided by the applicant with respect to operating hours, noise levels or lighting levels.

I consider that lighting levels can be subject to a condition of planning should the Board consider granting permission, to ensure there is no light spill from the site.

- 7.3.3. I noted during my site visit that the site is well screened from the R445 and the slip road with reasonably mature trees and hedgerows. The R445 screening could be affected by the construction activities of the motorway upgrade, and I consider that a condition to agree a landscaping plan having regard to the disruption over the next few years, should be agreed with the Planning Authority, in the event of the Board considering a grant of permission.

Internally it is proposed to mark out the car parking spaces and I consider that this will minimise impact on visual amenities. Furthermore, I note that it is not intended to store EOL vehicles and that these will be removed to an authorised facility. I would recommend that stacking of vehicles should be prohibited by condition, should the Board consider granting permission.

- 7.3.4. Noise levels are suggested by the applicant in response to the appeal. Having regard to the location of the site, I consider that noise levels can also be subject to condition. The site is surrounded by roads on all sides and I consider that the background traffic noise will exceed any noise from the subject site.
- 7.3.5. The applicant states that they will apply to Kildare County Council for a Certificate of Registration or a Waste Facility Permit. This activity is now carried out by the National Waste Collection Permit Office in Offaly. As stated in Section 34(13) of the Planning and Development Act 2000 as amended, a person shall not be entitled solely by reason of a permission to carry out any development.
- 7.3.6. In conclusion, I do not consider that the subject site will have a seriously negative impact on the residential amenities of dwellings in the vicinity. I consider conditions can be applied to ensure that residential amenities are not seriously impacted.

7.4. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the nature and extent of the development for which retention permission and permission is sought, the existing uses and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the development would not seriously injure the amenities of the area and would be acceptable in terms of traffic safety. The development for which retention permission and permission is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained, and carried out and completed, in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with the planning authority within three months of the date of this order.

Reason: In the interests of residential amenity

3. (a) A scheme indicating boundary treatments shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order. This boundary treatment scheme shall provide a screen

along the boundary with the R445 and Due Way, consisting predominantly of trees, shrubs and hedging. The planting shall be carried out in accordance with the agreed scheme and shall be completed within the first planting season.

(b) Any plants which die or become seriously damaged or diseased, within a period of five years from the grant of permission, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development, in the interest of visual amenity.

4. All storage of vehicles shall take place within the perimeter of the site and within the designated individual parking spaces. There shall be no stacking of vehicles on site.

Reason: In the interest of traffic safety and the visual amenities of the area.

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

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

6. The noise level shall not exceed 55 dB(A) rated sound level (that is, corrected sound level for a tonal or impulsive component) at any point along the boundary of the site between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior within three months of a grant of permission.

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

Ciara Kellett
Inspectorate

6th November 2017