



An  
Bord  
Pleanála

## Inspector's Report PL06F.249301

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<b>Development</b>	Petrol filling station.
<b>Location</b>	Townland of Marshallstown, Swords, Co. Dublin
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	F17A/0393.
<b>Applicant(s)</b>	October Management Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	October Management Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	11 <sup>th</sup> July 2018
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The c.0.8ha appeal site is situated to the south east of Swords town in the townland of Marshallstown. The site lies to the south of the R125, a regional road which connects Junction 3 of the M1 and Swords town.
- 1.2. The site lies to the south west of a roundabout junction on the R125. It is elevated above the public road and is undeveloped. To the west of the site, but removed from it, are two car showrooms facing the R125 and beyond the Airside business park and retail park.
- 1.3. To the north of the site and R125 is a local centre, with a Tesco supermarket, Costa coffee shop and pharmacy. To the east of the site is a local road (a cul-de-sac) which provides access to the Holywell residential area. Duplex residential development faces the appeal site, but it is separated from it by mature landscaping.

## 2.0 Proposed Development

- 2.1. The proposed development comprises a petrol filling station, including:
  - A service building (655sqm) with a net retail floor area of 100sqm (and off-licence of 7.6sqm). This building will have a storage yard to the rear and will contain signs and logos (see drawings).
  - 4 no. food offerings (60sqm; 23sqm; 19sqm; and 15.6sqm).
  - Associated communal seating (205sqm), storage (15.6sqm), back of house (18.8sqm), toilets (42.6sqm) and ATM (3.7sqm).
  - 6 no. pump islands with branded canopy over (and signage to four sides).
  - All associated works including landscaping, outdoor seating, jet wash, brush wash, valet area, recycle building, 40 no. car parking spaces, boundary treatment, informal play area, refuelling point, vents, underground tanks, signage and vehicular entry and exit points (a one-way system is proposed internally).
- 2.2. The largest food offering includes a drive through hatch facility and will involve hot food for consumption off the premises. Proposed opening hours are Monday to

Sunday 7am to 11pm with hatch operating (for fuel and retail only) from 11pm to 7am.

- 2.3. Access to the petrol filling station is proposed via the public road to the east of the site, with a new roundabout junction and spur off this road granted under PA ref. F17A/0392. The roundabout junction will replace the T-junction that provides access to the Holywell development.
- 2.4. Accompanying the planning application and plans for the development are the following:
  - Planning Report.
  - Drainage Design Report.
  - Technical details on rainwater harvesting system.
  - Specifications for Implementation and Maintenance of Landscape Works.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1. On the 29<sup>th</sup> August 2017, the planning authority decided to refuse permission for the development for the following reasons (in summary):
  1. The development, due to its scale and composition of non-fuel related sales area and focus on café/restaurant would materially contravene the land use zoning objective for the site.
  2. The development at the prominent location would be detrimental to the role and function of local centres near the site and the role and function of Swords town centre.
  3. The scale and nature of the development would result in a significant intensity of development, which coupled with the hours of operation, would give rise to significant levels of dis-amenity to neighbouring residential development.
  4. In the absence of satisfactory arrangements for the disposal of foul and surface water the development would be prejudicial to public health.

## 3.2. Planning Authority Reports

### Planning Reports

- 3.2.1. The Planning Report (29<sup>th</sup> August 2017) describes the appeal site, its planning history and the relevant zoning objective for the site. It summarises reports and submissions made and pre-planning consultations (which advised that the application was premature pending the outcome of an ongoing study of the overall future development of the land bank including Holywell, Airside and the surrounding lands).
- 3.2.2. The following points are made in the assessment of the development:
- Suitability of the development – The development is contrary to the GE zoning of the site as it provides food area, and associated seating area, which will serve a much larger market than the local working population.
  - Impact on visual amenity – The retail unit will be elevated above the R125 and, together with proposed signage, the level of lighting required to illuminate the site, will be visually dominant at a prominent location on an important entry to Swords. Landscaping is insufficient to lessen visual impact.
  - Impact on residential amenity – The scale of the development and intensity of activity on the site will give rise to negative impacts on the existing residential amenity of units to the east of the site.
- 3.2.3. The report concludes that the development, by reason of its scale and composition, is considered to be unacceptable in this location and contrary to the zoning objective of the site and would detract from the adjoining LC, Local Centre, lands. It therefore recommends refusing permission for the development on four grounds.

### Other Technical Reports

- Water Services (14<sup>th</sup> July 2017) – Insufficient information provided in respect of surface water design. Recommend further information, including submission of attenuation calculations and incorporation of SUDS in the surface water design.
- Environmental Health (Air Pollution and Noise Control Unit, 3<sup>rd</sup> August 2017) – No objections subject to conditions.

- Environmental Health (8<sup>th</sup> August 2017) – No objection subject to condition.
- Parks Planning (21<sup>st</sup> August 2017) – No objections subject to condition, including provision of a Design Risk Assessment of the playground to ensure that it meets best practice.
- Transportation Planning (16<sup>th</sup> August 2017) – Concerns regarding width of access to site, for additional future side by side access to adjoining lands (in the applicant's ownership) and substandard layout of parking areas, including for the movement of pedestrians. Recommends further information to address these matters.
- Irish Water (4<sup>th</sup> August 2017) – Recommend further information on detailed design of connection to/detailed design of water services.

### 3.3. Third Party Observations

3.3.1. A number of third party submissions were made on the application primarily by residents of Holywell housing development and local councillors. There is also one submission by Tesco Ireland. The following concerns were raised:

- Proximity of the large service station to the M1 and increase in traffic on local roads (which are already congested) and the access route to the Holywell estate, with impacts on the safety of residents. There is no ready access back to the M1.
- Development is inconsistent with Retail Planning Guidelines (development is not near a large convenience store).
- No need for the development, with other petrol filling stations in the area and many other fast food outlets in Swords.
- Lack of clarity regarding size of service building (665sqm or 510.9sqm).
- Anti-social behaviour with 24-hour petrol station.
- Impact on residential amenity with noise and light from 24-hour petrol station.
- Inadequate arrangements for cyclists and pedestrians.
- No record of pre-application meeting.

- Car orientated development (drive-through), inconsistent with the proper planning and sustainable development of the area and policies of the County Development Plan which prioritises walking, cycling and public transport over car use.
- Elevated and prominent nature of the site and visual impact of development.
- Inconsistent with General Employment zoning objective. Whilst a petrol station is permitted, the retail floorspace, car parking and café/restaurant uses should only be at a scale that will serve the local working population. By its size and nature, the development would rely on a much wider catchment for trade than the local working population. The proposed food sales, restaurant, drive-thru take away and play area are of a combined scale that together will act as a destination in their own right and impact on the vitality and viability of Swords town centre.
- The development is premature pending the delivery of a detailed design brief for the overall General Employment lands and it has not been demonstrated how the development will integrate with the surrounding area.
- The development is situated in a 'transitional zonal area' and is contrary to policies of the County Development Plan for such areas which seek to avoid development that would be detrimental to the amenities of the more environmentally sensitive zone (section 11.4).
- Site notices – Erected later than dated.
- Directors of company making application also controlled Albany Homes at the time of construction of the Holywell Estate. Given the serious and outstanding fire safety issues in the estate, it would be inappropriate to grant further permission pending full resolution of these issues.

## 4.0 Planning History

- 4.1. Under PA ref. F17A/0392 permission was granted for a proposed roundabout and access road to serve proposed commercial development lands lying to the south of the R125 and which include the appeal site (see attachments).

- 4.2. Under PL06F.242051 the board granted permission for a petrol station at Mountgorry, Swords and under PL06F.241043 for community and commercial facilities (including a medical centre, café/restaurant and retail units) on land to the north of the appeal site.

## 5.0 Policy Context

### 5.1. Government Guidelines

#### Retail Planning Guidelines

- 5.1.1. The government's guidelines on Retail Planning set out a retail floorspace cap of 100sqm in the interest of protecting the vitality and viability of town centres and ensuring that such developments do not become a destination in their own right.

### 5.2. Fingal County Development Plan 2017 to 2023

- 5.2.1. The appeal site is zoned GE – General Employment under the current Fingal County Development Plan, the objective of which is to *'Provide opportunities for general enterprise and employment'*. The vision for the zone is *'Facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment. General Employment areas should be highly accessible, well designed, permeable and legible'*. A petrol filling station is permitted in principle under the zoning objective.
- 5.2.2. Section 11.4 of the Plan deals with transitional zonal areas and states that *'it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land use zones...In dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zone. For instance, in zones abutting residential areas... particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of residential property'*.
- 5.2.3. Section 12.9 of the Plan deals with Enterprise and Employment, including petrol stations (page 450). The Plan acknowledges that petrol stations have the potential to cause disturbance, nuisance and detract from the amenities of an area. Policy



DSM 109 therefore requires that proposals for petrol stations address a number of matters including that noise, traffic, visual obtrusion, fumes and smells and forecourt lighting will not detract unduly from the amenities of the area and sensitive land uses; be of high quality design; be accessible by foot and bicycle, provide proper access for delivery vehicles; and generally, restrict retail floorspace to 100sqm.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. There is one first party appeal against the decision to refuse permission. The following matters are raised:

- Preliminary Matters:
  - Opening hours – Clarify that the proposed opening hours of the food offers are the same as the shop (7am – 11pm). Between 11pm and 6am a hatch service will operate which will provide a restricted night time service (as acknowledged by the Board under PL06F.245472).
  - Transportation and Water Services/Foul sewer – Submit further information to address the matters raised by the planning authority/Irish Water in the planning authority’s assessment of the application. State that the changes to site layout, to address the concerns raised, could be conditioned by the Board.
  - Parks – Consider that the matters raised could be addressed by condition, but that the requirement for a Design Risk Assessment is particularly onerous for an ancillary play facility.
  - Environmental Health – Applicant has no objection to the conditions recommend. Baseline noise survey has been completed (attached to appeal).
  - Material Contravention of Zoning – Argue that the reference to material contravention has been used incorrectly. A petrol filling station is permitted under the GE zoning. It is only reasonable that any ancillary uses associated with the primary use are also allowable. The Council

are relying on a separate land use (restaurant) to refuse permission. By its very nature a petrol station serves passing motorists, the majority of which will not be local. If the Board consider that the reference to material contravention is correct, the Board are in a position to grant permission having regard to criteria 37(2)(b)(ii) and (v) of the Act on the grounds that (a) it is the primary use, not an ancillary use, that should form the basis for determining whether a land use is acceptable or not, and (b) the Board granted permission under PL2.F.342051 for a similar development (Mountgorry petrol station with food offerings, communal seating, external seating and retail area) at a similar distance from Swords town. There is no definition of 'local working population'. The Airside area of Swords contains a significant working population. The Mountgorry filling station, was permitted on land zoned Metro Corridor but which allowed for land uses in the GE zoning matrix. The Board's Inspector noted the petrol stations were permissible in the zoning, did not separately consider the proposal under 'restaurant' land use and considered that the development would make a contribution to the provision of services at the location.

- Reason no. 1 – The size of the proposed development and its offerings/services are similar to a that granted by the Board in Mountgorry, Swords under PL2F.242051, and as modified by under PA ref. F14A/0317 (see comparison table on page 11 of report). The main difference between the proposals is the back of house area and circulation area, which are immaterial in terms of the concerns raised. Mountgorry petrol station is on another approach to Swords, and is a prominent building, but on the outbound side of road.
  - Most motorway service stations are larger than the proposed development. The nearest MSA are at Lusk and Castlebellingham are substantially in excess of the proposed service station building (Lusk, gfa 1,582sqm) and Castlebellingham (gfa 1,260sqm).
  - There is no CDP policy identifying the R125 as of particular importance and the road runs through a commercial area. Accept that the site is in a prominent location and in this regard the development is high quality

in design and landscaping. The Mountgorry development was considered to be an attractive building.

- No concerns are raised by the planning authority regarding additional traffic volumes that would be generated. Traffic will not be attracted off the M1 as the development is too far from the motorway (1km) to be convenient, there is no direct access back to the motorway and there is no signage to inform motorists of the site. The development is a local petrol filling station, not a motorway service area.
- If the Board have concerns over the quantum of floor area devoted to food/beverage the applicant includes a revised design reducing the floor area devoted to food (Drawing No. P2662-A001 Rev 1) from 117.6sqm to 101sqm, with only two no. food/beverages and communal seating increased from 205sqm to 218sqm. The applicant would accept a condition relocating the external play area into part of the communal seating area, if they consider the communal seating area is too large.
- Reason no. 2 – The nearest centre is occupied by a Tesco supermarket. Acknowledge that there is permission for a café/restaurant but the volume of custom accessing the supermarket would more than sustain it. Any beverage or food offered in the filling station is unlikely to materially affect it. The café/restaurant in the local centre has a high profile on the R125. The food offerings in the filling station would only be visible to customers accessing the service station. The Mountgorry petrol station was not considered to have an adverse impact on the town centre. Quick serve type food offers do not compete with sit down table service offers provided in Swords town centre.
- Reason no. 3 – There are numerous examples of petrol filling stations operating around the country which directly adjoin residential properties without any issues arising e.g. Applegreen filling station in North Main Street, Swords (PA ref. F12A/0340). The site is elevated, but the duplex units in Holywell Rise are also elevated and well screened from the development. The proposed landscaping will further add to existing planting and provide a strong barrier in respect of noise and lighting. The Board granted permission

for an upgrade of a filling station with separate drive-thru restaurant in Cork City (PL28.241382) which was 58m from the nearest dwelling. The Board's Order referred to the '*isolated position of the site distant from dwellings*'. The proposed development is 44.3m from the nearest dwelling, which still represents a significant distance and could be described as isolated. The Board are referred to a noise report which provides a baseline for the development and states that the applicant would be happy to provide the Board with another noise study of the development once operational and introduce any mitigation measures if noise exceeds that stipulated by the EHO.

- Reason 4 (disposal of foul and surface water) – Water Services did not recommend a refusal but sought additional information. Attached to the appeal area full details of foul and surface water arrangements, which have been agreed with the planning authority, subsequent to their decision.

## 6.2. Planning Authority Response

6.2.1. The planning authority respond as follows:

- The proposed development is significantly weighted to non-fuel related retailing. Restaurant/café use is permitted in GE lands where it is provided to serve a local working population. The proposed development, by virtue of its location and composition, will serve a significantly larger population than that locally employed. Remain of the view that the development, notwithstanding the amendments proposed, would contravene materially the zoning objective of the site.
- The development granted permission under PL06F.242051 was on land zoned for ME Metro Economic Corridor. This zoning allowed uses under GE – General Employment which would not compromise the vision of the ME zoning. A petrol station was permissible under the zoning but the underlying ME zoning permitted restaurant/café use with no restrictions on scale/catchment. The floor area of the development permitted was significantly below that currently proposed.

- The provision of extensive food outlets in close proximity to designated centres, in particular to an existing newly developed centre north of the site at Holywell (PL06F.241043) would be detrimental to the role and function of such centres.
- The appeal refers to an Applegreen filling station in North Street Swords and its proximity to residential units. The context of the proposed development is not comparable to the subject site. The existing filling station occupies a central location within an existing urban environment, zoned MC Major Town Centre and located in close proximity to numerous commercial facilities.
- The technical issues in relation to foul and surface water can be resolved by the applicant.

### 6.3. **Observations/Further Responses.**

6.3.1. None.

## 7.0 **Assessment**

7.1. I have read the appeal file and inspected the site and the surrounding area. I consider that the key issues arising in respect of the appeal comprise the following.

- Consistency with zoning objective.
- Impact on local centres/town centre.
- Impact on residential amenity.
- Discharge of foul and surface water.

### 7.2. **Consistency with Zoning Objective**

7.2.1. As stated above, the appeal site is zoned for General Employment, with the objective of the zoning to provide opportunities for general enterprise and employment. The Vision for the zone is to facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment, with GE areas highly accessible, well designed, permeable and legible. Petrol stations are permitted in principle within the zone, as are retail (local, less than

150sqm nfa), and restaurant/café uses, with both latter uses required to ‘*serve the local working population only*’.

- 7.2.2. In this instance, the proposed development comprises a large petrol filling station, with substantial floorspace in particular associated with the four food offerings and internal and external seating areas. I would accept that the development is not of a scale of a Motorway Service Station, which typically have a substantially larger floor area, food offerings and seating areas. I would also accept the appellant’s argument that the development should be judged on its primary use, not its ancillary ones. However, in this instance, the ancillary uses are substantial and effectively compete with the principal use of the site and therefore also merit consideration in their own right i.e. the development provides 4 food offerings, one of which is a drive through restaurant, and has c.107 internal seats associated with the food offering and c.100 external seats (including 44 associated with the play area/picnic area).
- 7.2.3. The GE zoning of the site limits restaurant and café uses to those serving a local population. While I do acknowledge that the term ‘local working population’ is not defined in the Plan, it is reasonable to consider that this would serve the immediate needs of the population working near the site, perhaps within ready walking or cycling distance of the site. The proposed development is situated to the south of a large working population at Airside. However, the site is not directly connected to it, requiring use of the R125 for access. Further, it would be highly visible from the R125, and likely to attract through traffic, and with its scale, food offerings, drive through restaurant and substantial capacity to accommodate patrons, it is likely to become a destination in its own right and serve a much wider population than the local business population. It is difficult, therefore, to reconcile this use with the zoning objective of the site which clearly limits restaurant/café uses (and retail uses) to serve the local working population only. I consider, therefore, that the development, would materially contravene the zoning objective of the site.
- 7.2.4. The appellant refers to the petrol station granted permission at Mountgorry to the north of Swords (see photographs), granted originally under PL06F.242051 and revised under PA ref. F14A/0317. This development has a smaller floor area (c.66% smaller), three food offerings (at the time of site inspection), no drive through, internal seating of c.72 plus a smaller area of external seating (see photographs). In my view it is substantially smaller than the proposed development.

- 7.2.5. Notwithstanding this, the Mountgorry petrol station lies on a site at the edge of Swords town, but this site is low lying with the petrol station somewhat cut into the topography. At the time when permission was granted the site was zoned ME 'Metro Economic Corridor' in the Fingal County Development Plan 2011-2017. A map based local objective in the Plan allowed consideration of GE uses on their merits and subject to the development not compromising the overall vision for the zone. As argued by the planning authority, the underlying ME zoning permits restaurant/café use with no restrictions on scale/function and the proposed development was adjudicated on within this specific policy context and deemed to be acceptable.
- 7.2.6. In this instance, there is no underlying or wider policy context for the GE zoning of the site and a clear restriction on the scale and function of restaurant/café uses within the zone. The policy context for the proposed development is therefore not comparable to that for the Mountgorry development.
- 7.2.7. In the appeal made, the applicant proposes reducing the floor area devoted to food, with only 2 no. food/beverage offers provided with a floor area of 101sqm (from 117.6sqm) and an increase in communal seating from 205sqm to 218sqm. The applicant also states that he would be willing to relocate the external play area into the communal seating area. (For comparison see Proposed Floor Plan, Drawing No. P2662-A001, with application, and P2662-A001, Rev 1, with appeal). From the plans submitted, it is evident that the appellant proposes combining food offerings nos. 2 and 3, with no reduction in floor area, and omitting food offering no. 4 (15.6sqm) and replacing it with additional seating. However, even with such alterations, I would be of the opinion that the development remains one with a substantial restaurant/café use, which is inconsistent with the zoning objective of the site.

### **7.3. Impact on Local Centre/Town Centre**

- 7.3.1. The appeal site is situated to the south of lands designated as a Local Centre at Holywell, the objective of which is to protect, provide for and/or improve local centre facilities.

7.3.2. Having regard to the conclusions I have drawn above, that the proposed development would not be restricted to a local working population, it follows that the development, with its substantial food offering and drive-through restaurant and proximity to the adjoining Local Centre lands, would be detrimental to the role of and function of this centre. In addition, the development at the proposed scale and including substantial food offerings, communal seating and a drive-through restaurant on an elevated and widely visible site at the entrance to Swords town, could reasonably draw trade from other designated retail areas within the town, including the town centre, again undermining their role and function.

#### **7.4. Impact on Residential Amenity**

7.4.1. The appeal site lies to the west of the Holywell residential estate, with duplex residential development facing the appeal site. This land is zoned RS to provide for residential development and protect and improve residential amenity. The zoning adjoins the GE zoning of the appeal site, and Policy objective Z04 therefore applies, i.e. to have regard to development in adjoining zones, in particular more environmentally sensitive zones, in assessing development proposals for lands near zoning boundaries.

7.4.2. The proposed development will introduce built structures, noise, human activity and urban lighting to the appeal site, and additional traffic movements on the public road serving Holywell. Further, the site is elevated above the public road and will be very visible locally, and given the proposed hours of operation, impacts will occur over long periods of the day.

7.4.3. Notwithstanding this, the development is proposed in a busy urban area, with substantial background noise arising primarily from traffic on the R125 (see appellant's baseline noise report). It would be situated c.40m from the nearest duplex units, and separated from them by the public road, existing mature landscaping along the Holywell boundary, and proposed landscaping along the eastern side of the appeal site (native hedgerow mix and semi-mature trees).

7.4.4. In an urban environment, I do not consider such a level of separation to be generally unreasonable. However, in this instance, given the elevated nature of the site, the visibility of the structures on site (including lighting), the specific uses and scale of



development proposed, the long trading hours and the traffic likely to be associated with the development, I would accept that the proposed development would detract from the residential amenity of the Holywell development and conflict with Policy Z04 of the Plan.

## **7.5. Discharge of Foul and Surface Water**

- 7.5.1. The planning authority's fourth reason for refusal relates to the absence of satisfactory arrangements for the disposal of foul and surface water arising from the development. Revised details have been submitted in respect of these matters with the appeal, and the planning authority has accepted that these can be resolved by the applicant. Having regard to the nature of the concerns originally raised by the planning authority and the further information provided by the appellant (which includes details of rainwater harvesting system, on-site off-line attenuation tank and hydrobrake control device and revised arrangements for access and car parking), I would recommend, if the Board are minded to grant permission for the development, that the matter be dealt with by condition (i.e. details to be agreed with the planning authority).

## **8.0 Recommendation**

- 8.1. Having regard to the above, I recommend that permission for the proposed development be refused for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. The subject site is situated on land zoned for General Employment in the Fingal County Development Plan 2017-2023. Such zoning permits, in principle, petrol stations and restaurant/cafes to serve the local working population. Having regard to the scale and form of the proposed development, which includes the provision of a drive-through restaurant, extensive food offerings and communal dining, it is considered that the proposed ancillary uses would compete with the principal use as a petrol station, and would provide a restaurant/café which would extend substantially beyond the local working population. The proposed development, would

therefore, materially contravene the land use zoning objective of the site and would not be in accordance with the proper planning and sustainable development of the area.

2. The proposed development is situated on an elevated site at a prominent location at the entrance to Swords town. Having regard to the scale and form of the proposed development, which includes substantial food offerings, communal seating and a drive-through restaurant, it is considered that it would undermine the role and function of the nearby Local Centres and detract from the role and function of Swords Town as the primary retail centre. The proposed development would not, therefore, be in accordance with the proper planning and sustainable development of the area.
3. The proposed development is situated on land adjoining a residential area. Policies of the Fingal County Development Plan 2017 to 2023 require development in adjoining zones to have regard to more environmentally sensitive zones. Having regard to the elevated nature of the appeal site, the scale and nature of the proposed development, which includes the significant level of food offerings, communal seating and drive through restaurant and extended opening hours, it is considered that the development would seriously injure the residential amenity of the adjoining residential area and, therefore, be contrary to the policies of the County Development Plan and to the proper planning and sustainable development of the area.

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Deirdre MacGabhann

**Senior Planning Inspector**

30<sup>th</sup> July 2018