



An  
Bord  
Pleanála

## Inspector's Report ABP-300505-17

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<b>Development</b>	The erection of extension to existing building, proposed new fencing, all with associated site works.
<b>Location</b>	Moyne Upper, Enniscorthy Rural, Co. Wexford
<b>Planning Authority</b>	Wexford County Council
<b>Planning Authority Reg. Ref.</b>	20170727
<b>Applicant(s)</b>	FRS Solutions Group Society Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Pat Doyle
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	23 <sup>rd</sup> April, 2017
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

1.1. The proposed development site is located in the townland of Moyne Upper. Co. Wexford, approximately 2km north of Enniscorthy town centre, within the Kilcannon Business Park to the east of the N11 National Road. The surrounding area is characterised by industrial / commercial type developments and includes a variety of uses such as car service / sales premises, electrical goods outlets, wholesalers and lower order retail sales. The site itself has a stated site area of 0.2405 hectares, is rectangular in shape, and is presently occupied by a two-storey, front-gabled building which trades as a Farm Relief Services premises with a secure storage yard to the rear of same that includes 2 No. storage units / containers. There is an existing laneway within the confines of the site alongside the northern boundary which provides vehicular access to the rear of the premises in addition to the adjacent property to the west. To the immediate south the site adjoins a car sales showroom / service outlet with a combination of kerbing and a steel mesh fence serving to define the intervening site boundary.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a partial single storey ('double height') / two-storey extension (floor area: 372m<sup>2</sup>) to the rear of an existing two-storey building and will provide for a new storage area, shop floor, and associated office accommodation. The overall scale of the proposed extension is substantial when compared to the existing building and will extend beyond both the side elevations of the main construction as well as above the ridge line.
- 2.2. It is also proposed to erect a new steel mesh / paladin-type fence line along the southern site boundary whilst a new gateway will be opened onto the existing laneway which passes alongside the northern site boundary.
- 2.3. Surface water runoff from the proposed development will be collected via a new drainage network before being directed to a surface water percolation area / soakaway to the rear of the site as previously approved under PA Ref. No. 20160948.

2.4. In response to a request for further information, amended details were submitted which detailed the provision of a bunded tank within the spray storage area of the proposed extension.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

Following the receipt of a response to a request for further information, on 24<sup>th</sup> November, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 7 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Requires the payment of a development contribution in the amount of €2,232 towards the provision or improvement of public roads in the functional area of the Planning Authority.

Condition No. 3 - Requires the payment of a development contribution in the amount of €1,488 towards the provision or improvement of community facilities in the functional area of the Planning Authority.

Condition No. 4 – Refers to surface water drainage.

Condition No. 5 – Refers to the storage of chemicals on site and states that the bunded tank proposed under the extension is to be impermeable and capable of retaining a volume equal to 110% of the chemicals stored.

Condition No. 6 – Refers to the procedures to be implemented in the event of an accidental spillage or release of chemicals on site.

Condition No. 7 – Requires a copy of the Material Safety Data Sheet for each chemical to be held on site.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports:

An initial report notes the site location on lands zoned as '*Industrial, Commercial and Related Uses*' in the Enniscorthy Town and Environs Development Plan, 2008 and proceeds to state that the extension of the existing use is acceptable in principle. The report further states that the floor area proposed is acceptable within the overall context of the surrounding industrial area, although it raises concerns with regard to the existing and proposed arrangements on site for the storage of chemicals. In relation to the on-going boundary / property dispute between the applicant and the neighbouring property owner (i.e. the appellant), the report notes the applicant's comments as regards ownership of the site and states that any disputes with regard to property rights etc. are matters for resolution under civil law. The report subsequently concludes by recommending that further information be sought in respect of the proposed chemical storage arrangements.

Following the receipt of a response to a request for further information, a final report was prepared which concluded that the additional details were acceptable and recommended a grant of permission, subject to conditions.

### 3.2.2. Other Technical Reports:

*Disability Access Officer:* States that a Disability Access Certificate will be required for the proposed works in accordance with Part IIIB, Article 20D of the Building Control (Amendment) Regulations, 2008, S.I. No. 351 of 2009, and notes that the following external design features would need to be addressed at planning stage:

- The extension itself complies with the Building Regulations.
- Adequate sanitary facilities complying with Part M must be provided for people within the extension or, alternatively, within an appropriate travel distance from the extension.
- To provide an independent approach and access to or modify the existing approach and access to the extension that complies with Part M.
- General items:
  - Colour contrast throughout the building.

- Lighting levels (internal and external).
- Switches and controls.
- Signage (internal and external).

*Senior Executive Scientist (Environment):* An initial report recommended that further information should be sought with regard to the nature and quantity of materials (chemical) to be stored in the proposed extension, the submission of a Remedial Action Plan in the event of any accidental leakage or spillage, and the provision of details of any bunding to be installed in the proposed extension (including drawings and sections).

Following the receipt of a response to a request for further information, a further report was prepared which recommended a grant of permission subject to conditions.

*Chief Fire Officer:* States that the applicant should be advised that a Fire Safety Certificate will be required in respect of the proposed development pursuant to Article 12 of the Building Control Regulations, 1997-2015, and that no works should be carried out in the absence of such a certificate.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

A single submission was received from the appellant and the principle grounds of objection contained therein can be summarised as follows:

- There are concerns that the existing / proposed development has breached the long-established boundary line between the objector's property and the application site.
- Legal action has already been commenced by the objector in respect of damage purportedly caused to his property by works undertaken by the applicant pursuant to the grant of permission issued in respect of PA Ref. No. 20160968.

- The proposed development will impact on the objector's property by way of the removal of several mature trees.
- It is the objector's understanding that the underground power supply serving his property is located beneath the proposed building.
- The proposed works will require working space outside of the site boundary.
- The site layout plan details a separation distance of 324mm between the proposed extension and the site boundary and, therefore, there is a need to submit a structural drawing which will show that the application site is large enough to accommodate the proposed development.
- The site notice has been improperly located and is not visible to members of the public travelling towards Enniscorthy.

## 4.0 Planning History

### 4.1. On Site:

PA Ref. No. 20160948. Was granted on 30<sup>th</sup> November, 2016 permitting FRS Solutions Group Society Ltd. permission for the retention of 2 No. stores and permission for the erection of an extension to the existing store and the relocation of a mobile store with associated site works.

PA Ref. No. 20160968. Was granted on 30<sup>th</sup> November, 2016 permitting FRS Solutions Group Society Ltd. permission for a new car parking layout with vehicular entrance and associated site works.

### 4.2. On Adjacent Sites:

PA Ref. No. 20001200. Was granted on 26<sup>th</sup> May, 2000 permitting Liam O'Leary permission for a change of site boundaries from that which was granted under PA Ref. No. 94/0357 at Moyne Upper, Enniscorthy Rural, Co. Wexford.

PA Ref. No. 20023740. Was granted on 4<sup>th</sup> February, 2003 permitting Edward Watchorn permission for the erection of an extension (store) and alterations to existing sales and service workshop at Enniscorthy, Co. Wexford.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. Wexford County Development Plan, 2013-2019:

##### Chapter 6: Employment, Economy and Enterprise:

Section 6.4: *Economic Development Strategy*

##### Chapter 18: Development Management Standards:

Section 18.15: *Economic Development:*

Section 18.15.1: *Proposals for Industrial and Enterprise Developments*

Section 18.15.2: *Criteria for Assessment of Industrial and Enterprise Developments*

#### 5.1.2. Enniscorthy Town and Environs Development Plan, 2008-2014:-

##### Land Use Zoning:

The proposed development site is located in an area zoned as ‘*Industrial and Commercial and Related Uses (IC)*’ with the stated land use zoning objective ‘*To provide for new office and light industrial development*’.

##### Other Relevant Policies / Sections:

*Chapter 11: Development Management Standards*

*N.B.* Pursuant to the provisions of Part 8 of the Electoral, Local Government and Planning and Development Act, 2013, the Enniscorthy Town and Environs Development Plan, 2008-2014 will continue to have effect until 2019 or such time as a new County Development Plan is made. It should be read together with the Wexford County Development Plan, 2013-2019.

### 5.2. Natural Heritage Designations

The following Natura 2000 sites are located in the vicinity of the proposed development site:

- The Slaney River Valley Special Area of Conservation (Site Code: 000781), approximately 900m southeast of the site.

- The Wexford Harbour and Slobbs Special Protection Area (Site Code: 004076), approximately 3km south of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The site layout plan indicates that there will be a separation distance of 324mm between the proposed extension and the common boundary fence, however, no dimensions have been shown on the cross-sectional drawing of the walls and foundations of the proposed construction. Therefore, the applicant should provide a structural drawing prepared by a Chartered Engineer which details that the subject site is of sufficient size to accommodate the entirety of the proposed development
- It will be necessary for the Project Supervisor to prepare a Safety Statement at design stage in accordance health and safety legislation. In this respect it is reiterated that the working space around the excavation required for the foundations of the proposed extension will only extend to 324mm.
- Whilst acknowledging the contents of Advice Note No. 1 (as appended to the notification of the decision to grant permission), there are concerns that a grant of permission would confer the applicant with a right to build on the appellant's property as the boundary fence line is clearly shown on the drawings submitted to the Planning Authority.
- This appeal does not infer that the appellant is in agreement with the boundary line as detailed in the application documentation.

### 6.2. Applicant's Response

None.

### 6.3. Planning Authority's Response

- States that the Planning Report on file has addressed all the salient points.



#### 6.4. **Observations**

None.

#### 6.5. **Further Responses**

None.

### 7.0 **Assessment**

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Overall design and layout
- Impact on adjacent property
- Appropriate assessment
- Other issues

These are assessed as follows:

#### 7.1. **The Principle of the Proposed Development:**

- 7.1.1. Having regard to the site location within an established business park, the applicable land use zoning as '*Industrial and Commercial and Related Uses (IC)*' with the stated land use zoning objective '*To provide for new office and light industrial development*', the existing / historical usage of the property, the planning history of the site, and the pattern of development in the surrounding area, I am satisfied that the extension of the subject premises as proposed represents a complementary expansion of the existing business and is acceptable in principle.

#### 7.2. **Overall Design and Layout:**

- 7.2.1. Whilst the scale of the proposed extension is substantial when compared to the existing building, in my opinion, the overall design and layout of the proposal is in keeping with the established pattern of development in the area and is acceptable.

7.3. **Impact on Adjacent Property:**

7.3.1. The principle concerns raised in the grounds of appeal pertain to the potential for the construction of the proposed development to encroach into the appellant's property given the limited separation distance between the proposed extension and the shared site boundary. In this regard particular reference has been made to the possible infringement of the boundary line by the foundations of the proposed extension and the limited working space available within the southern confines of the application site to accommodate the various building activities arising during the course of the construction works e.g. the excavation of foundations, the erection of scaffolding, the application of plaster / render etc. Accordingly, the appellant has expressed concerns that any grant of permission for the proposed development would serve to confer a right to the applicant to build on his property whilst he has also indicated that he is not in agreement with the boundary line as detailed in the application documentation.

7.3.2. Having reviewed the available information, including the folio details and supporting correspondence submitted with the application, I am satisfied that the applicant has established a sufficient legal interest in the proposed development site to lodge the subject application. Moreover, it is my opinion that any alleged encroachment or interference with the appellant's property (including any need for access to same in order to allow construction / maintenance of the proposed development) is essentially a civil matter for resolution between the parties concerned and in this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property.

7.4. **Appropriate Assessment:**

7.4.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to

have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

#### 7.5. **Other Issues:**

- 7.5.1. In respect of the submission that the site notice was incorrectly displayed, in my opinion, the consideration of the adequacy of the public notices with regard to the validity of a planning application is the responsibility of the Planning Authority in the first instance and in this respect I would draw the Board's attention to the Planner's Report on file which confirms that the site notice in question was inspected by a representative of the Local Authority on 7<sup>th</sup> July, 2017 and was found to accord with the requirements of the Planning and Development Regulations, 2001, as amended. Accordingly, it would appear that the right of the appellant to make a submission on the subject application and to subsequently appeal the decision of the Planning Authority have not been prejudiced in this instance.

### 8.0 **Recommendation**

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below.

### 9.0 **Reasons and Considerations**

Having regard to the nature and scale of the development proposed, to the zoning objectives for the site as set out in the current Development Plan for the area, and to the existing pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further particulars submitted on the 31<sup>st</sup> October, 2017, 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. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

3. Prior to commencement of construction of the development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority. The external finishes shall harmonise in colour and texture with those of the existing structure on the site.

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

4. No signage of any kind shall be erected on the exterior of the proposed extension without a separate grant of planning permission.

**Reason:** In order to permit the planning authority to assess the impact of any such signage on the visual amenities of the area through the statutory planning process.

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development

Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Robert Speer  
Planning Inspector

25<sup>th</sup> April, 2018