



An
Bord
Pleanála

Inspector's Report ABP-300723-18

Development	Permission for development that consists of: demolition of existing commercial building, erection of replacement commercial building with provision of car parking and circulation area, provision of wastewater treatment system and percolation area and provision of new site entrance with associated site works.
Location	Cookstown, Ardee County Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	17/600
Applicant(s)	Aidan and Kathleen Callaghan
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Transport Infrastructure Ireland
Observer(s)	None
Date of Site Inspection	21 st of May 2018
Inspector	Angela Brereton

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1.0 Site Location and Description

- 1.1. The site is located on the western side of the N2 (National Primary Road) in the townland of Cookstown to the north of the town of Ardee, Co. Louth. There is an existing single storey building on site. This has a pitched corrugated tin roof and a flat roofed porch. The building has sheds/outhouses at the rear and is surrounded by an area of hard standing and is located c.2m below road level. The agricultural field to the south is included in the application site. The field is flat and appears at the same level as the road. Roadside and western boundaries are undefined. There is a row of mature trees along the southern site boundary.
- 1.2. An existing lane runs parallel with the northern boundary of the site. There is gated access to the existing red brick house to the north west of the application site and a gated field access to the western part of the landholding (shown within the blue line). Neither of these entrances off the minor road are included in the application site (red boundary). There are currently 2 separate accesses to the N2, one from the applicant's dwelling to the north and one for the commercial building on site. It was noted on the day of the site visit that the commercial building was not in active use. There was some storage in the sheds and yard to the rear. No parking spaces have been marked out and the usage did not appear to be operational.

2.0 Proposed Development

- 2.1. Permission is sought to demolish the existing commercial building, erection of replacement commercial building with provision of car parking and circulation area, provision of wastewater treatment system and percolation area and provision of new site entrance with associated site works.

3.0 Planning Authority Decision

3.1. Decision

On the 15th of December 2017, Louth County Council granted permission for the proposed development subject to 7no. conditions. These relate in general to

infrastructural issues including drainage (including the packaged waste water system) and roads (including sightlines) and development contributions.

Condition no.3 provides: *The development hereby permitted shall be used solely for the sale and storage of agricultural related goods.*

Condition no.5(a) refers to adequate visibility splays to be provided.

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Planner has regard to the contextual location of the site, planning history and policy, and to the recommendations made in the Interdepartmental Reports. They note that having examined the documentation submitted, the existing commercial premises on site is pre-1963 and that the use has not been abandoned. The application is located within Development Zone 5 of the Louth CDP. They have no objection to the demolition of the existing building and the replacement building and recommend a condition regarding the demolition and in relation to the use of the building for the sale of agricultural related products. They have regard to the comments of the TII and consider that there will be no intensification of use and the modest scale of the proposal will not adversely impact on the national road. They have regard to the design of the proposed building and do not consider it will adversely impact the visual character of the area. They recommended that further information be sought to include the following:

- Details regarding the proposed and existing the effluent treatment system and percolation area.
- To confirm is a well or connection to a watermain proposed. Distance to percolation areas within 100m of the site to be shown.
- The proposed size of the percolation area is inadequate (must be a minimum of 200sq.m) and location to be shown on the site layout map.

Further Information response

This includes the following:

- BER Services will oversee and certify the installation of the WWTS and Polishing Filter.
- Copy of BER Professional Indemnity Insurance
- Site Layout Plan showing a percolation/polishing filter area of 210sq.m.
- Site Layout Plan showing Water Service Pipeline to be extended from existing Commercial Premises that is to be replaced.

Planner's response

They consider that the principle of development for this replacement commercial building on this site has been established and note details of this. They note that the Infrastructure Section of the Council comments submitted as Addendum to their previous report and include details of this. They have regard to the F.I submitted and consider this to be acceptable. They provide that they are satisfied that the proposed development will not adversely affect the operation and safety of the National Road network. They note that as per the screening report the proposal will not adversely impact upon any Natura 2000 site. They recommend that permission be granted subject to conditions.

3.3. Other Technical Reports

Infrastructure -Planning Report

They had no objections subject to conditions including relative to the closure of the existing entrance and that adequate visibility splays be provided at the proposed entrance.

Environmental Compliance Section

They recommended that additional information be sought relative to the construction of the effluent treatment system and percolation area (they considered the size of this to be inadequate) and proposed water connections. In response to the F.I they considered that adequate information had been submitted and recommended conditions.

3.4. Prescribed Bodies

Transport Infrastructure Ireland

They consider that the proposal is at variance with official policy in relation to the control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the proposed development by itself, or by the precedent it would set, would adversely affect the operation and safety of the national road network for the following reason:

Official policy in relation to development involving access to national roads and development along such roads is set out in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012). The proposal, if approved, would create an adverse impact on the national road where the maximum permitted speed limit applies and would, in the Authority's opinion, be at variance with the foregoing national policy in relation to control of frontage development on national roads.

3.5. Third Party Observations

The Planner's Report notes that no submissions were made.

4.0 Planning History

The Planner's Report and documentation submitted, provides details of the planning history of the site and this includes the following:

Reg.Ref.07/2076 – Permission granted for the Retention of house entry location and to construct a 4m wide domestic entrance. Condition no.2 states: 'The existing entrance directly onto the N2 National Road serving the dwelling house shall be permanently closed off within one month of the date of grant of this application.'

Reg.Ref.03/4 – The applicant subsequently applied for a 'change of house type and site entrance' – permission was granted but condition no.3 of this permission states: 'Only one entrance shall be provided to serve the entire development of the dwelling and workshop granted under 98/16'.

Reg.Ref.02/706 – Permission granted for a Change of house plan & change of location of the site entrance under Reg.Ref.98/016 (which provided for entrance onto the national road); this application was refused.

Reg.Ref.98/16 – Permission granted for replacement workshop, new entrance to serve workshop/commercial building and replacement dwelling and septic tank. This was never enacted.

5.0 Policy Context

5.1. Louth County Development Plan 2015-2021

The current development plan for the area is the Louth County Development Plan 2015-2021 with the site located within development control zone 5 (Section 3.10.5 relates). The objective of development control zone 5 is *'To protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Critical infrastructure projects of local, regional or national importance will also be considered within this zone'*.

Policy RD39 sets out the applicable policies within Control Zone 5 and provides that it is the policy *"To consider developments falling within the following categories; limited one-off housing*, agricultural developments, extensions to existing authorised uses and farms, appropriate farm diversification projects; developments to be used for leisure, recreation and tourism; holiday accommodation including cottages and lodges where these are part of an existing or proposed integrated tourism complex; hotels/ guest houses / B & B's (only where the proposal involves the re-use or diversification of an existing building); extensions to existing authorised commercial and industrial developments; renewable energy schemes, public utility infrastructure, certain resource based and location specific developments of significant regional or national importance, critical infrastructure projects, nursing homes/analogous services, ** and Economic Business Zone at Carrickcarnan*** (for small scale commercial development linked to leisure, recreation and tourism, agricultural diversification and extensions to authorised developments).*

** Refer to Section 2.19.1 for Qualifying Criteria*

*** In the location identified by red dot on Map 3.1 'Development Zones'*

**** In the location identified by light blue dot on Map 3.1 'Development Zones'*

Policy RD40 provides: *Multi-unit residential, conventional industrial and commercial development appropriate to existing settlements, developments directly adjacent to rural motorway interchanges would not be considered appropriate within this zone.*

Economic Development

Policy EDE1 seeks: *To work in partnership with national and local economic development and employment promoting agencies to support employment generating initiatives within the County.*

Policy EDE4 seeks: *To deliver support and co-ordinated services to start ups and small businesses across the County of Louth.*

Transport

Chapter 7 refers to Transport and includes 7.3.5 which provides for the Protection of National and Regional Routes.

Policy TC7 seeks: *To provide and maintain a road hierarchy based on motorway, national routes, regional routes and local roads and to maintain the carrying capacity and lifespan of the road network and ensure high standards of safety for road users and to require that all proposals for development that would be likely to impact significantly on the carrying capacity of national routes be accompanied by traffic transport assessment, road safety impact assessment, road safety audits and mobility management plans, in accordance with the Spatial Planning and National Roads Guidelines 2012 and/or the Design Manual for Urban Roads and Streets (2013).*

Policy TC10 seeks: *To prohibit the creation of new accesses or intensification of existing accesses onto National Routes and Protected Regional Routes as set out in Tables 7.2 and 7.3.*

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

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as

amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in the performance of their functions under the Planning Acts. The guidelines set out planning policy considerations relating to development affecting national roads (including motorways, national primary and national secondary roads) outside the 50/60 kmh speed limit zones for cities, towns and villages. They include regard to the following:

Strategic Traffic and Road Safety

Section 1.4 refers to need to ensure the strategic traffic function of national road network is maintained and Section 1.5 provides that land-use and transportation policy are highly interdependent and that proper planning is central to ensuring road safety. It includes regard to proliferation of entrances and road safety: *The creation of new accesses to and intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks to road users.*

Lands adjoining National Roads

Section 2.5 provides the following policy approach for 'Lands adjoining National Roads' to which speed limits greater than 60 kmh apply: *The policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.*

Exceptional Circumstances

Section 2.6 provides the criteria for Exceptional Circumstances where planning authorities identify stretches of national roads where a less restrictive approach may be applied, only having taken on board the advice of the NRA and details are provided of the approach to be followed: This include:

- (1) Developments of National and Regional Strategic Importance;
- (2) Lightly-trafficked sections of National Secondary Roads.

Requirement for Road Safety Audits

Chapter 3 relates to the Development Management of Roads and notes that this is the Key to Plan Implementation. This notes that larger scale developments require a Traffic and Transport Assessment (TTA) and Road Safety Audits (RSA).

Section 3.6 refers to Road Safety Audits:

Planning authorities should generally require that planning applications, involving a new access to a national road or significant changes to an existing access, are accompanied by a road safety audit to aid the identification of any appropriate measures required to maintain safety standards. This includes that they may decide to dispense with this requirement in the case of lightly trafficked sections of national secondary routes described under the heading 'Exceptional Circumstances'. It also notes that guidance for the preparation of road safety audits are included in the NRA Design Manual for Roads and Bridges.

Implementation

Chapter 4 concerns Implementation of these guidelines including by ABP. *An Bord Pleanála will apply these guidelines in considering appeals made to the Bord and/or applications made to the Bord under the provisions of the Strategic Infrastructure Act, 2006.*

5.3. Development Management Guidelines for Planning Authorities

As noted by the First Party: Section 6.4 refers to Planning reports – importance of a balanced approach.

Section 7.15 refers to Refusals arising from development plans or local area plans and includes: *A statement of objectives in a development plan should not be regarded as imposing a blanket prohibition on particular classes of development and does not relieve the planning authority of responsibility for considering the merits or otherwise of particular applications.*

Section 7.16.1 provides: *In general, prematurity arises where there are proposals to remedy the deficiency.*

Section 7.15 refers to Refusals arising from development plans or local area plans.

5.4. Code of Practice Wastewater Treatment Disposal Systems serving Single Houses

This document (2009) by the EPA relevant to single houses (p.e <10) and replaces SR6:1991 and the EPA Manual 2000 for 'Treatment Systems for Single Houses'. The objective is to protect the environment and water quality from pollution and it is concerned with site suitability assessment. It is concerned with making a recommendation for selecting an appropriate on site domestic wastewater treatment and disposal system if the site is deemed appropriate subject to the site assessment and characterisation report. The implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

5.5. EU Water Framework Directive

The purpose of the EU Water Framework Directive (WFD) 'is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which protects, promotes sustainable usage and enhanced protection and prevents further deterioration of such.

5.6. EU Habitat Directive

The aim of the EU Habitat Directive is 'to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies'.

6.0 The Appeal

6.1. Grounds of Appeal

Transport Infrastructure Ireland (TII) has submitted a Third Party Appeal against the Council's decision to grant and their concerns include the following:

- Louth County Council granted permission for what the Council consider as a replacement commercial activity with no intensification of use of the access to

the N2, arising and they note their condition regarding sightlines. They note that no Road Safety Audit appears to have been undertaken for the new access to the N2.

- When considered in conjunction with the adjoining dwelling, also in the applicant's ownership and which retains a separate access to the national road, the proposed represents the creation of a new access to the national road, which will independently serve the proposed commercial development.
- The creation of a new second access serving the lands for the commercial development is considered to be contrary to the provisions of official policy, contrary to the provisions of the CDP and to road safety objectives.
- They note the planning history of the site restricts the number of accesses serving the commercial development and the adjoining dwelling to a single combined access. Recent permissions have sought the closure of the access to the N2. They consider the Council's permission conflicts with this.
- They are concerned that the existing dwelling and access have been excluded from the subject site boundary.
- They consider that granting permission for this proposal is in conflict with National Policy as provided in the Spatial Planning and National Road Guidelines for Planning Authorities (DoECLG 2012) and to the Road Safety Strategy 2013-2020. They also consider it is inconsistent with policy in the Louth CDP 2015-2021.
- The Council have not considered the proposal represents an additional second access on lands in the applicant's ownership accessing the N2, and therefore a new direct access is contrary to the provisions of official policy and the CDP.
- It is critical to ensure the protection, maintenance and safety of national roads as a finite and critical network resource. This proposal is contrary to Official Policy.
- They have regard to The Road Safety Authority's *Provisional Review of Fatal Collisions (Jan 2018)* and are concerned about the creation of additional direct access and note the higher road speeds in the area.

- It does not appear that the proposed new access to the commercial development has been subject to a RSA in accordance with TII publications.
- It is a serious concern that the TII finds it necessary to appeal the decision of the PA, which results in the creation of additional direct access to a national road, given the stated official policy for national roads and road safety, and having regard to the specific issues outlined in the foregoing and the planning history of the subject site.
- They are concerned regarding the need to Protect Public Investment and note its value. They refer to various publications where the challenge to maintain and safeguard investment in transport infrastructure is identified.

6.2. Applicant Response

A response on behalf of the Applicant has been submitted by Planning and Development Enterprise Service Ltd. This includes the following:

- They note the extensive planning history of these lands and provide details. They state that it was agreed at arbitration stage that the Council would facilitate a new site entrance for the landowners onto the N2, as a replacement entrance for the commercial building and to improve road safety along this stretch of the N2.
- They submit that having regard to the planning history it was accepted restricts the access to 1no. single access onto the National Road. That this is the purpose of the current application; to replace the existing entrance which serves the commercial sheds.
- The separate entrance to the dwelling is unauthorised and is to be closed as part of accommodation works; hence why the applicant has a separate access onto the local road (at the rear of his dwelling).
- They note that given accommodation works cannot be carried out until permission is granted for a new commercial premises, that the existing commercial entrance to the dwelling cannot be closed without a replacement premises and access being available (as is now proposed).

- They are also mindful that the Board may put greater weight relative to the Spatial Planning and National Road Guidelines. The purpose of their statement is to set out how the proposed development complies with both the objectives in the guidelines and also the policies in the CDP.
- They consider the assessment of the Planning Officer and Infrastructure Section of the Council correctly set out the context of the current application.
- They have regard to the Minister’s review of the Louth CDP in 2015. The main planning policy matters under review by the Minister related to: *adopted policy in the plan on exemptions to the restrictions on access to national roads: adopted policy in respect of the designation of an economic business zone on lands at Carrickcamon*. They provide a summary in relation to this.
- They note that the Minister appointed a Planning Inspector to specifically review the adopted development plan policy regarding access onto National road and decided to allow policy in respect of access onto National roads to remain applicable. They refer to their Appendix 2 in this respect and state that the TII has not taken account of this policy. They provide that these matters are fundamental to the determination of this appeal.
- They submit that the chief executive’s report and provisions for ‘revisited policies’ in the development plan are consistent with section 2.6 of the guidelines: i.e exceptional circumstances for less restrictive policies can be provided for (as a variation of the plan) as per the guidelines.
- They submit that objectives and policies set out in the CDP provide for development associated with the existing authorised commercial premises. They submit that this application complies with the relevant provisions and provide details of this.
- The background discussions with the roads design section of the Council over the last number of years concluded that a new entrance point is acceptable as per the proposed plans and they note the reasoning for this. The improvement to road safety which the replacement entrance represents was considered acceptable.

- As can be noted on the site layout plan, the required visibility splays are readily achievable at the proposed entrance point.
- They request the Board to duly consider that the proposed access arrangement represents planning gain and the proper planning and development of the area.
- The site is served by a long-standing septic tank and they note the provisions of the CDP which sets out the policy regarding wastewater. The proposed waste water treatment system to facilitate effluent from the commercial premises complies with the relevant standards.
- The proposed design of the commercial building will blend sympathetically in the landscape and not detract from the visual character of the area.
- Existing vegetation will be retained to ensure the natural screening which is currently available will be utilised.
- They have regard to the planning history of the site and in particular in relation to the issue of access. They note that the TII highlight that the proposed development will result in a second access onto the National Road (and that condition no.2 of permission 07/2076 details closure of a direct access to the N2). They submit that the assertion by the TII that the proposed access will result in a 'second access to the national road' is factually incorrect.
- They refer to the detailed accommodation works due to be carried out by the Council (Appendix 3). They highlight that when accommodation works to this stretch of the N2 are complete, a fence line is proposed along the entirety of the road frontage associated with both the applicant's dwelling and his existing commercial premises.
- The 'replacement' entrance will result in a single access to the national road. They submit that the proposal complies with Section 7.2 of the Louth CDP in that the new access would eliminate a traffic hazard.
- The entrance point as proposed under the current application is as per agreed with infrastructure section of Lough County Council who carried out extensive surveys and a road safety audit of this stretch of road.

- The TII fail to recognise the sub-standard status of the entrance point which serves the existing commercial premises. The proposed entrance achieves specified sightlines and visibility splays.
- They consider that the Council correctly determined that a RSA was not required given the extensive surveys already carried out as part of 'accommodation survey works' by the Council.
- They submit that under section 2.12 of the Spatial Planning and National Road Guidelines an RSA is specified as only being required in 'significant development proposals'. This development is only a small-scale replacement proposal with no intensification of use from what is already established and authorised.
- They are concerned that the TII fails to recognise the improvement in road safety which the proposed entrance point represents. This is consistent with policy provisions under section 7 of the Louth CDP wherein the policy exemption for new entrance onto a National Road existing in instances where it eliminates a traffic hazard.
- They do not consider that the proposal would be in conflict with section 2.5 of the 'Spatial Planning and Access onto National Primary Roads as it is a replacement entrance and will not create an additional entrance onto such.
- They have regard to Precedent Cases where greater emphasis was placed on the Spatial Planning and National Road Guidelines than the County Development Plan and note that the current proposal which is for a replacement entrance represents a different scenario.
- A grant of permission will facilitate a replacement entrance point, will enable outstanding accommodation works to be carried out and will enable 2no. existing sub-standard entrance points to be closed. This clearly represents a planning gain.
- A refusal of permission will result in the existing situation remaining: 2no. substandard entrance points remaining and accommodation works not being carried out.

- The grounds of appeal by the TII are flawed in that they fail to take into account of the background pertaining to the applicant's scenario. Outstanding accommodation works and agreements reached with the infrastructure section of Louth County Council are the basis for this application.
- They ask the Board to take all the relevant information/documentation submitted into account so that an informed permission can be granted in the interests of the proper planning and sustainable development of the area.
- It is of note that their Appendices include the following:
 - Inspectors report into review of Louth County Council Development Plan (2015-2021).
 - Minister's correspondence with Louth County Council Development Plan (2015-2021).
 - Accommodation works to be carried out.
 - Planning statement accompanying application 17/600.

It is noted that the DoECLG S.31 Draft direction for Louth County Council includes the following:

- *The Minister has reviewed the Report prepared by the Board Inspector (as provided for under Section 31 (11) of the Planning and Development Act 2000-2014 and based on the Inspector's review has made the decision (letter dated 15th of April 2016) not to issue the direction to the Council.*

A number of reasons are listed by the DoE, which includes as point no.2: *In relation to the part of the Draft Direction which addressed the issue of proposed exemptions to the restrictions on access to national roads, the Minister has accepted the decision of Louth County Council elected members to make a decision in respect of exemptions to the restrictions on access to national roads in order to facilitate their overall Development Plan.*

6.3. Planning Authority Response

Louth County Council asks the Board to consider the Planning Inspector's Reports. They also make a further comment as follows: *The separate access referred to in the*

appellant's statement is located outside the red line of the application site to which this appeal pertains, and therefore it did not and does not form any part of the adjudication process.

Having regard to the First Party response to the TII they note that in Section 7 of the Report submitted by PDES Chartered Planning Consultants it is stated: *Given the unauthorised access to the dwelling is within the applicant's lands and control, a condition can be attached to a grant of permission to ensure closure of the unauthorised access to the dwelling.* The Planning Authority notes that as the access referred to is located outside the red line of the application site, any condition placed thereon would not be enforceable.

6.4. Further Responses

Subsequent, to the First Party response by PDES Chartered Planning Consultants the TII submitted a further response to include the following:

- They note the detailed planning history of the site including relative to the entrances to the N2, the CPO process, and the issue of a replacement entrance. The TII acknowledges that Louth County Council consider the grant of permission to represent a replacement commercial activity with no intensification of use of access to the N2, national road arising.
- However specific to the TII appeal is that this proposal when considered in conjunction with the separate entrance with the adjoining dwelling, represents the creation of a second access to the national road, which is contrary to the provisions of official policy, contrary to the provisions of the adopted CDP and contrary to road safety objectives.
- They consider that this should have been addressed by the applicant and the P.A in the initial application and that it remains the opinion of the TII that the proposal combined with the existing access to the adjoining dwelling, represents the provision of an additional second access serving the lands concerned.
- They reiterate that there should not be more than one access to the N2 and also, include a separate letter they have sent to the Council on this issue. This

notes their concerns and that the TII received 2,381 applications from local authorities in 2017, but only 1 appeal was made to An Board Pleanala.

- They provide that should the Board be satisfied that that the closure of the 'unauthorised access to the dwelling can be included as a condition of any grant of permission, resulting in only one access to the national road serving both the existing house and the proposed commercial development, the TII is satisfied that the issue of the creation of a new additional direct access to the national road can be addressed. However, they consider this a matter for the Board.
- It is the opinion of the TII that it should be a requirement of any condition that the closure of the existing access to the dwelling from the N2, national road, should be undertaken prior to the commencement of any other works to implement the permission if granted.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. It is submitted that the Regional Planning Guidelines set a supportive context for commercial development such as the submitted application, subject to policies set out in the Louth County Development Plan 2015-2021. It is noted that employment policies are generally supportive of commercial uses in appropriate locations having regard to the proper planning and sustainable development of the area. Section 3.10.5 of the Louth CDP refers to Development zone 5 and to Policy RD39 (as set out in the Policy Section above). This zone covers the rural agricultural area (which also encompasses the subject site) and seeks to protect and provide for the development of agricultural communities and to facilitate certain resource based and location specific developments of significant regional or national importance and critical infrastructure projects. Policy RD39 provides for the consideration of specified uses and this includes where the proposal includes: *extensions to existing authorised commercial and industrial developments*. Policy RD40 of the Louth CDP sets out in summary that conventional commercial developments appropriate to existing settlements will not be considered within the context of zone 5.

- 7.1.2. The First Party contend that the proposed development should be considered as a replacement development for an existing pre-1963 authorised commercial use. They also provide that this use has not been abandoned and relate this to case law. They consider that given the pre-1963 authorised status of the commercial premises which relates to the subject lands the proposed development does not offend policy RD39 or the objectives for Zone 5 of the CDP. They submit that the nature of the appeal lodged by the TII is not based on an informed assessment of the history pertaining to the subject lands and agreements previously reached under CPO and arbitration process. They note that the Council is in agreement with the proposed new entrance and that the existing commercial entrance will be closed.
- 7.1.3. The TII are concerned that the creation of a new entrance to the N2, is in conflict with National Policy as provided in the Spatial Planning and National Road Guidelines for Planning Authorities (DoECLG 2012) and to the Road Safety Strategy 2013-2020. They consider that this proposal is inconsistent with the provisions of the Louth CDP 2015-2021, in particular Section 7.3.5, Policy TC10 and Policy TC7. These are concerned to restrict new accesses and intensification of existing accesses along national and certain protected regional routes in order to preserve their carrying capacity, their life span and in the interest of traffic safety.
- 7.1.4. Regard is had to these issues relative to planning history, access and road safety, design and layout, proposed usage and the impact on the character and amenities of the area in this Assessment below.

7.2. Regard to Planning History

- 7.2.1. The Planning Supporting Statement provides details of the history of the subject lands, which includes that according to local knowledge, the original commercial building was constructed in the late 1800's, with a subsequent building being added since. They provide that the longstanding nature of the commercial building can also be verified by historical mapping and they include a copy of such. They also provide that the established entrance point to the N2 access also date to this time. They note that a dwelling was located adjacent to the roadside, which was since demolished to facilitate road improvement works to the N2 realignment scheme as overseen by Louth County Council (demolished in the 1990's). The original dwelling at the roadside was 'replaced' with the applicant's current dwelling.

- 7.2.2. Given the pre-1963 status of the building and associated use, they submit that the established and authorised use of the subject lands can best be described as a *commercial store and warehouse with workshop to facilitate associated retailing and distribution*. They note that in recent years the premises has continued to serve as a commercial premises. It is noted that the Council accepts that the commercial premises and is a pre-1963 commercial premises (Appendix 4 of this Report relates). They provide that the use has not been abandoned and quote case law in this respect. Also, that the sheds and original yard on-site are authorised commercial in terms of land use and buildings under the 'pre-1963 status' which relates to the subject lands. They also note details of aerial photography for 1995 and 2013.
- 7.2.3. By virtue of the 'authorised' nature which enures to the commercial premises and associated site area, they consider that the subject lands on-site are therefore 'eligible' for a 'replacement commercial premises', under the provisions of Section 34 of the Planning and Development Act (as amended).
- 7.2.4. In summary they provide, during the 1990's upgrade and realignment works were proposed by the NRA (facilitated by the Council). The road frontage of the applicant's lands were required to facilitate the accommodation works. To facilitate the realignment works, lands of the applicant were subject to CPO and subsequent arbitration process. The Council has agreed to facilitate a new site entrance onto the N2; the purpose of this entrance is to replace the existing entrance associated with the commercial shed/lands and also to improve road safety in that the proposed new entrance is to be located outside of any 'Y' distance associated with the road junction to the north. Agreement reached with the Council Road's Design Section is set out on the drawing as included in Appendix 4.
- 7.2.5. It is noted that as included in Appendix 5 Permission Reg.Ref.98/16 provided outline permission for a replacement dwelling, workshop, retail stores, entrance and septic tank granted subject to 9no. conditions. This provided for the demolition of the commercial premises with relocation of a replacement commercial premises to the adjoining field and provision of one entrance point directly onto the N2. This entrance point to serve the dwelling and commercial enterprise. This permission was never implemented and it subsequently expired. The First Party consider that this permission showed that the principle of an authorised structure was established.

- 7.2.6. The TII response notes that the planning history of the subject lands restricts the number of accesses serving the commercial development and adjoining dwelling to a single combined access, file ref.98/016 refers. In addition, more recent permissions granted by the Council have sought the closure of the direct access to the N2 serving the dwelling, file ref.07/2075 refers. Planning file refs. 02/706 and 03/04 are also of note as relevant planning histories in this regard. They are concerned that details provided with the planning application retain a separate independent gated access to the dwelling (which is within the applicant's landholding) onto the N2 and now proposes a second new access to the national road for the commercial development, contrary to the previous planning history of this site.
- 7.2.7. It has been provided that the entrance onto the N2 from the applicants dwelling is to be closed via the accommodation works (and also stipulated under 07/2076). The time-period that has elapsed since that permission is noted as is the fact that it has now expired and the existing entrance is unauthorised and the relevant condition of that permission has not been complied with to date.

7.3. **Design and Layout and Impact on the Character and Amenities of the Area**

- 7.3.1. Having viewed the site it is noted that the existing buildings are well integrated in the local landscape, by virtue of being low profile and lower than the level of the N2 national primary road. They are set closer to the road than the proposed building. However, they are not of any architectural merit and I would have no objection to their demolition. The proposed replacement commercial building is to be set further back from the road and close to the southern boundary of the site. There is a row of mature trees along this boundary which provide screening.
- 7.3.2. It is considered that the proposed design of the commercial unit, will appear more contemporary than the existing more traditional building and sheds. As shown on the plans it is to be c.6.8m in height and 20m in length in length by 12m in width i.e 240sq.m. This includes the floor area of the workshop is to be 226sq.m. and a smaller office, wc, and counter service area. It is considered that provided appropriate finishes including colour scheme are used the proposed building will in view of its siting and set back blend into the character of the area, and not be out of context with the site. It is also noted that existing vegetation being retained adjacent will help to ensure that natural screening which exists at present will be utilised.

- 7.3.3. It is noted that the proposed extensive hardstanding and parking area will be a new feature in what is now a green field area and it is considered that this will appear more visually prominent in the rural landscape. The current proposal would appear to provide for a more extensive use of these lands at the southern part of the site, currently used for agricultural.
- 7.3.4. It is recommended that if the Board decide to permit that there be a condition regarding external finishes and landscaping including the retention of trees along the boundaries (except where needed to facilitate the proposed entrance) to ensure that the building will not be visually obtrusive and blend into the landscape.

7.4. Regard to Usage

- 7.4.1. It is noted that Condition no.9 of the outline permission Ref.98106 restricted the proposed workshop/shed/non-residential building to use for (a) the renovation, repair and restoration for old/antique farm machinery, tools and/or (b) the renovation, repair and servicing of milking parlour enterprises. It also provided that any retailing would be related to and be a minor and ancillary element to either or both of these aforementioned uses. However as provided in the documentation submitted this permission was not enacted.
- 7.4.2. The Planning Report submitted with the application provides that the existing premises (to be replaced) remains in commercial use, commercial rates remain payable on the subject premises. It is provided that the existing building is 220sq.m and that proposed is 226sq.m. (workshop area) and that no intensification of use is proposed. They provide that this premises has been in use as a commercial workshop and premises to facilitate storage, retail and supply of farm goods which included inter alia: milking machines and related parts; grain equipment; farm supplies, silage covers and general hardware.
- 7.4.3. The First Party provide that in terms of use of the commercial premises, since the applicant purchased the property over 50 years ago the subject building has always been in use as a commercial workshop and premises to facilitate storage, retail and supply of farm goods and they provide details of such. In terms of a use class which best describes the existing building, they submit it is a 'sui genus' commercial use.

- 7.4.4. I noted on site that the commercial usage of the existing building and sheds did not appear to be operational, there was no parking on site, no signage indicating/advertising such use. It appeared that the sheds to the rear of the building were used for storage of agricultural equipment, but this did not appear to be a recent use and the site was locked up. There was no activity seen being carried out on site and there were no cars or vehicles parked thereon.
- 7.4.5. Having regard to the plans submitted the proposed commercial unit appears larger and more functional as such than the assortment of smaller buildings (sheds and outhouses) including the more traditional building on site. The large workshop area (as noted in the Design and Layout Section above) is not currently existing. The Site Layout Plan also includes a large hardstanding area associated with the usage, and 17no. marked out car parking spaces, these will be new features and are not currently existing. Therefore, I would not be convinced that this proposal is for a replacement of like for like and does not represent an intensification of use on the subject site.
- 7.4.6. It is of note that Condition no. 2 of the Council's permission provides for the demolition of the existing commercial building on site and Condition no. 3 restricts the usage of the current proposal: *The development hereby permitted shall be used solely for the sale and storage of agricultural related goods*. It is noted that the applicants have not given a clear indication of the proposed usage of the commercial building and the application site and it is recommended that if the Board decide to permit that this type of condition be included, having regard to these issues. However, I would be concerned that this proposal represents an intensification of use particularly having regard to the context of the site on unzoned land, in the rural area and proposed access onto the N2 National Primary Road.

7.5. Access issues

- 7.5.1. It is provided that as noted on the site layout plan, the required visibility splays of 215m x 4.5 m are readily achievable via the proposed entrance point. This is in accordance with the requirements of Table 7.4 of the CDP and represents an improvement from the existing entrance arrangement. It has been submitted that this application has been made without the need for any consents from any third party land-owners to either side of the entrance point given the requisite sight splays

constitute existing roadside verges. I noted on site that some trees and hedgerows along the roadside boundary of the site may need to be cut back to facilitate sightlines. It is of note that the Council agrees that the new access would be safer than the existing access, as adequate sightlines can be achieved. Having regard to the documentation submitted and to visibility issues it is considered that the location of the proposed access is preferable to the existing sub-standard access.

- 7.5.2. I would not consider that the proposed access onto the National road complies with the Exceptional Circumstances as set out in Section 2.6 of the Spatial Planning and National Roads (2012). It is not a development of national and regional strategic importance or located on a lightly trafficked section of a national secondary route.
- 7.5.3. The First Party consider that it would comply with the exemptions as set out in Table 7.2 of the Louth CDP - National Routes-Restrictions and Exemptions on Access. The details submitted on behalf of the First Party note that accommodation works are not referenced by the TII and that there is a need to recognise:
- the need for the replacement entrance point for the replacement shed (as currently proposed);
 - It eliminates a traffic hazard which exists via the existing authorised entrance point i.e the existing entrances will be closed by accommodation works carried out by the Council;
 - It allows for outstanding accommodation works to be undertaken along this section of the N2 road i.e the accommodation works are agreed at CPO and arbitration stage.
- 7.5.4. They provide that the situation on the ground will result in only one access (as currently proposed and detailed on the drawings). Also, that this singular access represents an improvement in road safety and addresses the existing sub-standard access point which serves the commercial premises. It is noted that this singular access will replace the existing commercial access.
- 7.5.5. However, the TII are concerned that the plans submitted do not show that it will also replace the unauthorised access to the dwellinghouse, and this access while within the blue line boundary is not included within the red line boundary. Having regard to the site outline the application site relates solely to the replacement commercial access and does not reference the closure of the unauthorised access to the existing

dwelling in either the development description or application drawings. The First Party submit that the existing entrance from the dwelling onto the National road will be closed in conjunction with outstanding accommodation works to be carried out by the Council.

On my site visit I noted that this is a very busy (including trucks) and fast section of the N2 where maximum speed limits apply. The existing access from the commercial unit does not have adequate sightlines in a southerly direction. The proposed entrance will have improved sightlines, but some hedgerow/planting to the south east of the site would need to be removed to facilitate sightlines. Having regard to the details submitted and to the proposed Site Layout Plan which includes a large hardstanding area and 17no. parking spaces marked out it would appear that the proposed development would be an intensification of use rather than a replacement of like scenario at a point where maximum speed limits on the N2 apply. I would also be concerned that a RSA has not been included for the proposed new entrance.

7.6. Regard to Conditions relative to Access

- 7.6.1. The First Party provide that given the unauthorised access to the dwelling is within the applicant's lands and control, a condition can be attached to any grant of permission to ensure the closure of the unauthorised access to the dwelling. They provide that this will address the concerns of the TII.
- 7.6.2. It is noted that Part 4 of the Planning and Development Regulations 2001 (as amended) refers to the Content of planning applications generally and includes section 22(2)(b)(i) which provides:
- (i) *the land or structure to which the application relates and the boundaries thereof in red,*
 - (ii) *any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land which is the subject of the application in blue.*
- 7.6.3. It is noted that the Council's response to the appeal notes that the separate access referred to in the appellant's statement is within the area outlined in blue and is outside the redline boundary of the application site to which this appeal pertains and

therefore does not form any part of the adjudication process and that such a condition would not be enforceable.

7.7. Investigation of Alternatives

- 7.7.1. It is noted that there is separate gated access to the rear to both the existing house and to the agricultural field within the landholding to the rear of the site. It does not appear to have been explored as to whether access to the site and to the existing house could be from the minor road to the north west of the landholding which maybe a safer and more desirable option than a proliferation of entrances onto the N2. This would mean that the access to the existing house would be closed off and the gated access to the minor road used and access to the site/landholding be via the minor road rather than the N2.
- 7.7.2. Similarly, and as is now suggested by the First Party, if a single access was to be created to serve the existing dwelling and proposed commercial premises from the N2 this would also need to be the subject of a separate application as the dwellinghouse is not included in the current application within the red line boundary.
- 7.7.3. Having regard to these issues arising, I would consider that the proposed development would be premature having regard to the need for clarification of the entrances within the red line boundary of the application site, and the submission of an RSA for the proposed new relocated entrance. However, regard needs also to be had to the intensification of development issue and it is considered that a refusal may be the preferred option subject to clarification of these issues which would necessitate a new application.

7.8. Precedent

- 7.8.1. The First Party have regard to Precedent Cases and note a similar issue under appeal Ref. PL18.241093 (Reg.Ref.12/117 made to Monaghan Planning Authority). This was for the erection of a dwelling house and domestic garage and associated works at Carrigans, Emyvale, County Monaghan, where access was onto the N2. In summary the Board refused permission in that greater weight was given to the Spatial Planning and National Road Guidelines than the provisions of the Monaghan CDP (2007-2013). They note the rationale by the Board (and grounds of appeal by

the NRA) were on the basis that the proposed development represented an additional access and therefore was contrary to the Guidelines. They provide that the current proposal which is for a replacement entrance represents a different scenario.

- 7.8.2. They also refer to Ref. PL15.239307 the Board refused permission for development comprising a vehicle services facility and ancillary amenity area at Carrickcarnon in 2011. In summary the two reasons for refusal concerned contrary to the zoning provisions and policy regarding development in the vicinity of the motorway interchange as set out in the Louth CDP 2009-2015 and would further erode the rural character and residential amenities of the area and be contrary to the proper planning and sustainable development of the area.
- 7.8.3. It is accepted that each proposal is considered on its merits and that these proposals which were refused by the Board, raise different issues and are not particularly similar to the current proposal. However, the similarities lie in that they also refer to the issue of access onto roads of strategic importance including national primary roads. Copies of these Reports are included in the Appendix to this Report.

7.9. Wastewater Treatment

- 7.9.1. The existing premises is served by a longstanding septic tank. Policy SS65 of the Louth CDP 2015-2021 seeks: *To protect groundwater and surface water from contamination from domestic effluent by ensuring that all sites requiring individual waste water treatment systems are assessed by suitability qualified persons in accordance with the recommendation contained in the “Code of Practice: Wastewater Treatment Systems for Single Houses”, published by the Environmental Protection Agency (EPA), 2009.*
- 7.9.2. The Planning Report submitted with the application provides that a proposed wastewater treatment system is proposed to facilitate associated effluent from the commercial premises. The location of this close to the southern boundary of the site is shown on the Site Layout Plan submitted. In response to the Council’s Environment Section’s concerns and to the F.I request a revised Site Layout Plan was submitted showing the proposed percolation/polishing filter area increased proximate to the south-western boundary to 210sq.m. Details were also given regarding the certification and installation of the Waste Water Treatment System and

Polishing Filter. The Site Layout Plan shows the proposed development is to connect to the public mains and the water service pipeline to be extended from the existing commercial premises that is to be replaced.

- 7.9.3. A Site Suitability Assessment for one-off wastewater treatment systems has been submitted with the application. This notes that the site is in an area where the Aquifer Category is of high vulnerability. The groundwater protection response is R2¹. It notes that there are no wells, streams or ditches within 100m of the proposed site. The depth to trial hole is given as 2.10. The 'T' tests provide the result of T=73.27. Table 6.3 of the Code of Practice outlines the interpretation of the percolation test results. This provides that the ground is unsuitable for a septic tank system and maybe suitable for a secondary treatment system with a polishing filter at the depth of the T-test hole. 'P' test results = 24.17 are within the acceptable range for a secondary treatment system with polishing filter. As the soil is classified as clay regard has to be had to this issue. It is proposed to install a packaged wastewater treatment system and polishing filter in accordance with the EPA Code of Practice. It is recommended that appropriate conditions relative to this issue be included should the Board decide to permit.

7.10. Screening for Appropriate Assessment

- 7.10.1. The Council have carried out a Screening for AA & Determination Report. They have identified all the Natura 2000 sites within 15km of the site including those sites outside the county or jurisdiction. They note that the site is less than 13.5km from Dundalk Bay SAC/SPA. I would also note that the site is approximately 7.6km from the nearest Natura 2000 site which is the Stabannan-Braganstown SPA (site code – 004091). The Council note that disposal of effluent shall be required to be in accordance with the requirements of the EPA Code of Practice. They provide that it is unlikely that there will be any significant impacts associated with this proposal on Natura 2000 sites.
- 7.10.2. Having regard to nature and scale of the proposed development and the nature of the receiving environment and the distance to the nearest European site, 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

- 8.1. It is recommended that the proposed development be refused for the reasons and considerations below:

9.0 Reasons and Considerations

1. The “Spatial Planning and National Roads - Guidelines for Planning Authorities” issued by the Department of the Environment, Community and Local Government (2012) seek in Section 2.5 “to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 km/h apply.” The proposed development of this commercial unit at this location would result in the creation of a new access (albeit a replacement access) and the intensification of commercial use of lands on to the N2 national road, where maximum speed limits apply. It is, therefore, considered that the additional and conflicting turning movements generated by the proposed development would endanger public safety by reason of traffic hazard, would interfere with the free flow of traffic on this national road, would compromise the level of service and carrying capacity of the road at this location, and would fail to protect public investment in the national road network, both by itself and by the undesirable precedent it would set for similar such development. The proposed development would be contrary to the provisions of the said Guidelines, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

23rd of May 2018