



An
Bord
Pleanála

Inspector's Report ABP-301789-18.

Development	Amendments to and retention of development on a site accommodating an existing, permitted transport workshop.
Location	Rathmore Road, Fiddown, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	18/173.
Applicant(s)	James Brophy Transport Ltd.
Type of Application	Permission and Retention Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party v. Refusal.
Appellant(s)	James Brophy Transport Ltd.
Observer(s)	Nicholas Leahy.
Date of Site Inspection	15 th October 2018.
Inspector	Susan McHugh.

1.0 Site Location and Description

- 1.1. The appeal site is located on the outskirts of the village of Fiddown, Co. Kilkenny. Fiddown is located at the southern end of Co. Kilkenny close to the river Suir, on the national secondary road N24 and mainline rail. The N24 is the primary route between Waterford City and Clonmel. The N24 bypasses the village of Fiddown, running between the village and the appeal site and adjoining residential properties.
- 1.2. The appeal site is accessed from Rathmore Road, a local primary road, L3439-9, which has a speed limit of 50km/ph. The Rathmore Road connects the appeal site to the village of Fiddown, by way of an underpass. The Rathmore Road also has direct access from the N24.
- 1.3. The subject site is adjoined to the southwest by an existing residential property which is defined by mature evergreen planting along all its boundaries. This is the home of the observer to the current appeal. Agricultural land abuts the site on all remaining adjoining boundaries. Directly opposite the subject site is a traditional farmhouse which appears unoccupied, to the southwest of which is a newer house which is the applicant's residence.
- 1.4. The existing premises is in use as a truck haulage business and comprises, a workshop, with offices, staff car park and portacabin with facilities for staff to the front of the site. Access to the workshop and rear yard area is located along the north-eastern gable of the building, with a number of oil tanks located along the southwestern gable. To the rear of the workshop along the southwestern boundary is a parking area for trucks.
- 1.5. A concrete yard extends from the rear of the workshop and includes a vehicle wash bay area, with turning and parking area for trucks. Beyond this is a compacted gravel area which provides for additional parking for trucks and storage of containers. Beyond this to the rear of the site is a grassed area which provides for a soakaway for surface water disposal.
- 1.6. The site is defined to the front by a grass verge and boundary wall which is plastered and capped, and is set back from Rathmore Road in order to provide sightlines for vehicles existing the site. The staff car park is delineated by a concrete post and timber slatted fence along its south-western boundary and is separated from the staff

area and amenity building by a security fence and gate. All other boundaries are defined by a wire fence and planting.

- 1.7. There are also two lamp standards located in the vicinity of the staff amenity building and another next to the wash bay area.
- 1.8. The site is served by existing public water and foul mains.
- 1.9. The site which is long and narrow in shape has a stated area of 1.0ha.

2.0 Proposed Development

2.1. Permission is sought for variations to the site layout of the existing transport workshop and grounds previously permitted under P.A. Reg. Ref. 11/453 & ABP Ref. PL10.240192. Variations to site development works comprise the following;

- Erection of a 2.4m high concrete post & timber panel screen located 2.5m from western boundary of the site of approx. 80m in length,
- A 2m high post & wire fence and planting of hedge along the existing western and northern boundaries of the site,
- Erection of 3 no. 9m high lighting standards to north of existing workshop,
- Revisions to car parking layout to front of existing workshop and
- Revisions to landscaping north-west of yard.

2.2. Permission is also sought for the retention of the following;

- Wash bay and extension to concrete yard to north-east which caters for tractor parking,
- Compacted gravel yard to north west of existing yard,
- Oil tank and bunded area adjoining the north-west of workshop,
- A single storey staff amenity building (6m x 3m) located to the west of the workshop.

2.3. Permission and retention permission are also sought for minor landscaping modifications.

2.4. The application was accompanied by:

- Acoustic Report
- Planning Report

- 2.5. The proposed development is part of an established transport business. The details supplied by the first party state that the transport business began as a cattle transporting business in 1941. The existing workshop is stated to date from 1961. Expansion into container delivery associated with Waterford Port occurred in the 1960's.
- 2.6. In 1998 the company began to serve Dublin, Cork and Rosslare Ports. The business expanded and in 2012 permission was granted PL10.240192 for improvements to the site to provide a purpose-built workshop and maintenance of the business' fleet of trucks, associated office, yard, parking, new access arrangements and site development works.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to **refuse** permission 08/05/2018 for the following reasons;

1. *'The proposed development represents commercial intensification of use on site, extension to site and hard-standing area and reduction in landscaping / buffer grass area which deviates from permission terms under planning references P.11/453 and An Bord Pleanála reference PL10.240192. It is considered that proposed variations would result in an unacceptable level of intensification of truck haulage business at this location in a rural area adjoining a residential property. The proposed development would, notwithstanding proposed mitigation measures, seriously detract from the amenities of the area and of property in the vicinity by reason of noise, general disturbance and unauthorised open storage and would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *The surface water drainage details submitted do not satisfactorily show petrol interceptor capacity, soakaway infiltration design and cattle-grid / drainage provision at access. In the absence of satisfactory surface water management*

on site the proposed development would therefore be prejudicial to public health, protection of the environment and traffic safety.'

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 04/05/2018)

Basis for the planning authority decision includes;

- *Site Location* - approx. 165m east of the Fiddown Development Boundaries, as outlined by the Fiddown Local Area Plan, 2011 (expired).
- *Enforcement* - details enforcement notice in 2016 in respect to non-compliance with conditions attached to ABP Ref. PL10.240192, and notes completed works. This application follows on in the context of operational requirements of the owner, management practices and changes in regulations.
- *Site Area* - the application is for an extended site area from 0.51ha to approx. 1 ha and this represents an intensification of commercial use on site from that permitted.
- *Buffer Area* - north-west area of the site was to be a reinstated grass and buffer area and instead truck and trailer parking is proposed closer to the adjoining residential property.
- *Staff amenity building and staff area* - has the potential for further nuisance/disturbance on the amenities of the area. The existing workshop building already comprises a canteen, office and toilet area which could potentially be used for this purpose.
- *Noise barrier fence* - constructed on site does not extend the full length of 35m as required under the parent permission, and at a height of 1.8m is 0.2m below that granted.
- *Hours of operation* - Proposed in this application are from 8am to 6pm with up to four no. persons employed, representing an increase of two employees.

- *Retention of concrete yard and compact fill area* - During site inspection a high number of steel containers (some double height stacked) prefab structures, tyre storage, scrap waste metal, machinery equipment and end of life trucks were observed to the north west rear area of the site, where the applicant proposes retention permission to extend the concrete yard and compact fill area. This represents a significant intensification of the open storage on site which if permitted will consolidate the unauthorised use and impact negatively on the amenities of the area.
- *Parking /Access* – Specific areas for designated car, truck and trailer parking have not been delineated and surface finish completed as required in the planning permission. The proposed layout has been modified so as to provide the core truck and trailer parking closer to the residential boundary of the adjoining property to the west from that authorised and includes an increase in staff/visitor car parking and truck/trailer/cab parking numbers on site.
- A total of 12 car spaces, 16 truck and trailer parking area bays and 7 tractor/cab parking bays are shown on the site layout. The size of the truck fleet to be serviced from this site is limited to a maximum of 20 vehicles in the permission for reasons of protection of residential amenity. The revised layout represents intensification of vehicle parking use on site closer to the adjoining property from that permitted. This is a concern, particularly in respect to the truck /trailer parking element and associated noise and general disturbance impacts from this intensified use.
- *Oil/Fuel Storage Area* – Justification for location of oil storage/fuel bunded area on the western side adjacent to the workshop is for the convenience of filling trucks with fuel. No justification for this relocated change from that permitted has been submitted. The permitted layout required that the fuel tank be located on the eastern side of the workshop.
- *Landscaping* – Majority of the site is covered in hardstanding area, with an absence of landscaping to reduce the visual impact of development in the rural landscape and comply with the Landscaping plan submitted as part of

the permitted development. The amendments proposed in terms of landscaping are not acceptable.

- *Buffer Zone Area* – Proposals to remove significant grass buffer zone area to the northwest of the site previously granted and designed to afford a buffer protection to adjoining residential property, will increase the site area for commercial purposes and further impact on the residential amenity of the adjoining residential property. Reduction in landscaping are not adequate to screen and integrate the proposed development into the rural landscape and afford sufficient residential amenity protection.
- *Lighting*- Concern on the potential nuisance from the proposed floodlighting on general amenities of the area and query the justification for the need of the proposed floodlighting. There are three existing light standards on site and these have not been clearly shown on the site layout plan in the context of the erection of 3 no. 9m high lighting standards to the north of the existing workshop.
- *Noise* – The noise impact assessment and noise management plan submitted indicate that noise levels arising from daytime activities comply with prescribed noise limit of 55dB_L. The measured night time noise levels are not compliant with the prescribed noise limit of 45dB_L. Report recommends that noise levels at night can be limited with an extended/upgraded noise barrier fence and management of vehicular activity as part of a noise management plan.
- *Hours of operation* – It is AWN noise consultant understanding that the restriction on operational hours outlined in condition no. 10 of ABP Ref. PL10.240192 relates to the maintenance building and office, and as such vehicular movement within the yard is permitted outside of these hours. This is not the understanding of the planning authority.
- *Parking area to the rear* – Has not been delineated as required in the permission and part of this area is being used for open storage of materials/waste and other equipment contrary to the planning permission.
- *Drainage* – Details submitted do not satisfactorily address the planning permission terms on site which requires details of the surface water drainage

system, capacity of the petrol interceptor and soakaway design. The drainage/surface water layout plan as proposed is not acceptable, and concern is raised in relation to the protection of ground water, the environment and public health. A small area of oil/fuel ponding etc. was observed on site including surface water ponding at the access.

- *Conclusion* – Recommendation to refuse permission.

3.2.2. Other Technical Reports:

- **Environment Section:** - Report dated 30/04/2018 recommends further information. Require more detailed calculations demonstrating that the proposed noise mitigation levels will reduce the noise emissions to the necessary limits. Effluent from the new truck wash /soakaway percolation area which is subject of retention permission should be diverted to the public foul sewer and a confirmation submitted of a pre-connection enquiry to Irish Water.
- **Roads Design:** - Report dated 30/04/2018 states that the works undertaken at the entrance and along the roadside boundary are non-compliant with permission ABP-PL10.240192, in terms of non-installation of a cattle grid/drainage provision at the access, stop control and road markings and signage and the provision of a footpath along the roadside boundary. It is also noted that the drainage provision at the access along with the specification/construction method and gradient of the bound area between the old road edge and the concrete access road, has resulted in surface water ponding along this section of road and there is evidence of pavement failure.
- **CFO:** - Report dated 11/04/2018 states that a Regularisation Fire Safety Certificate is required and recommends no objection.

3.3. Prescribed Bodies

- **Irish Water** – Report dated 11/04/2018 recommends no objection.

3.4. Third Party Observations

One submission was received from the neighbouring property to the southwest. The objections to the proposal received by the Planning Authority have been forwarded to the Board and are on file for its information. The issues raised are comparable to those raised in the third-party observation to the appeal summarised in section 6 below.

4.0 Planning History

There is a lengthy planning history relating to this site dating back to 2000. This includes four no. third party appeals and subsequent refusals by the Board, prior to a further third-party appeal and grant of permission by the Board in 2012.

Parent Permission

P.A. Reg. Ref. 11/453 ABP Ref. PL10.240192 Permission **granted** 14/11/2012 for Demolition of existing open workshop and oil tank storage area and the construction of a new single storey workshop building of approximately 482 square metres incorporating canteen, offices and toilets, re erection of oil storage tanks and provision of hard standing for truck and trailer parking area to the rear (north-east) including car parking, landscaping and all associated site works, and provision of a new relocated entrance at the south-east corner of the site, onto the Rathmore Road, all on an overall site of approximately 1.27 acres (0.51 hectares) at Rathmore, Fiddown, County Kilkenny. Applicant was James Brophy (File attached).

This decision was subject to 18 no. conditions, of relevance to the current appeal include;

Condition 2. Vehicular and pedestrian access requirements.

Condition 3. Works to be completed within six months of the erection of the permitted workshop include;

- (a) removal of the existing open-fronted workshop and reinstatement of the site,*
- (b) reinstatement of the grass area to the north-west of the site to its original position prior to commencement of development,*
- (c) completion of the erection of the noise barrier/fence,*

(d) completion of landscaping details submitted on the 15th day of December 2011, and

(e) reinstatement of those areas identified on drawing number PA-002 revision B, as 'grass/buffer area to be reinstated' or 'grass area to be reinstated' to agricultural use.'

- Condition 4. Demolition works and removal of tanks on site requirements. '
- Condition 5. Surface water drainage requirements.'
- Condition 6. Erection of 2m high timber fence/noise barrier along the west/southwest site boundary.
- Condition 7. Noise Management Plan.
- Condition 8. Noise level requirements.
- Condition 9. Emissions and odours requirements.
- Condition 10. Hours of operation
- Condition 11. Size of the truck fleet limited to a maximum of 20 vehicles.
- Condition 16. Car and truck spaces to be clearly delineated and not for use as open storage of materials or other equipment.

Note: The third-party appellant to the application (and observer to the current appeal) sought an application to the High Court for a Judicial Review of the Boards decision to grant permission, but this was withdrawn after a period of about 18 months.

Previous Refusals

P.A. Reg. Ref. 08/1036 ABP Ref. PL10.231951 – Permission **refused** 26/11/2009 for replacement workshop, offices, canteen and toilets (360 sq. m), relocation of oil storage area, revisions to car and truck parking, relocation of entrance to Rathmore Road, and all associated landscaping and site works on a site of approximately 0.68ha. for 2 reasons: 1) the proposal would facilitate right turning movements onto the N24 which would endanger public safety by reason of traffic hazard, 2) the proposed development would seriously injure the amenities of the area. Applicant was James Brophy.

P.A. Reg. Ref. 04/1063 ABP Ref. PL 10.211209 – Permission **refused** 13/09/2005 for upgraded workshop and truck and trailer parking area for 2 reasons: 1) the proposal would facilitate right turning movements onto the N24 which would endanger public safety by reason of traffic hazard, and 2) the proposed development would seriously injure the amenities of the area. Applicant was James Brophy.

P.A. Reg. Ref. 03/98 ABP Ref. PL 10.203521 – Permission **refused** 06/08/2003 for new truck workshop / storage building with ancillary offices, canteen together with material extension of existing site and associated site works together with indefinite retention of existing hard standing yard for 2 reasons: 1) the location of the site on a bend where visibility is severely restricted and would cause a traffic hazard and 2) the impact on the adjoining residential amenities. Applicant was Alfie Brophy.

P.A. Reg. Ref. 99/1123 ABP Ref. PL 10.119016 – Permission **refused** 08/11/2000 to erect a truck workshop for 2 reasons: 1) traffic movements generated by heavy commercial vehicles would endanger public safety by reason of traffic hazard, 2) the proposed development would seriously injure the amenities of the area. Applicant was Alfie Brophy.

Enforcement History

ENF 15/036: Non-compliance with conditions 1, 3-7, 9,10 & 14 of ABP Ref. PL10.240192.

ENF 02/131: Unauthorised expansion of hard standing truck yard.

5.0 Policy Context

5.1. Development Plan

5.1.1. **Kilkenny County Development Plan 2014-2020**

Chapter 3 sets out the Core Strategy

Figure 3.17 Rural Housing Strategy - Identifies Fiddown as being located along a National Primary Route in an area under urban influence.

Chapter 4 refers to Economic Development

Section 4.6.4 Enterprise and Employment in Rural Areas states that *‘Rural areas have a vital contribution to make to the achievement of balanced regional development. This involves utilising and developing the economic resources of rural areas, particularly in agriculture and food, marine, tourism, forestry, renewable energy, enterprise and local services, while at the same time capitalising on and drawing strength from vibrant neighbouring urban areas. In this way rural and urban areas are seen as working in partnership, rather than competing with each other. Rural development has been dealt with in detail in Chapter 6 of this plan. Certain kinds of industry, especially those which involve natural resources and serve rural communities may, at an appropriate scale, have a role to play in rural development.’*

Chapter 9 refers to Infrastructure and Environment

Section 9.2.1 Noise Control

‘Excessive noise and dust levels can have an adverse impact on the county’s environment. The Council will seek to minimise noise through the planning process by ensuring that the design of future developments incorporate measures to prevent or mitigate the transmission of noise and vibration, where appropriate.’

Section 9.2.3 Light Pollution

‘While adequate lighting is essential to a safe and secure environment, light spillage from excessive or poorly designed lighting is increasingly recognised as a potential nuisance to surrounding properties and a threat to wildlife, may pose a traffic hazard and can reduce the visibility of the night sky. Urban and rural locations can suffer equally from this problem. Lighting columns and other fixtures can have a significant effect on the appearance of buildings and the environment.’

Section 9.2.5 Pollution Control Development Management Standards

- *‘To seek to minimise noise and dust through the planning process by ensuring that the design of developments incorporate measures to prevent or mitigate the transmission of dust, noise and vibration, where appropriate.’*

- *Ensure traffic noise levels are considered as part of all new developments along major roads/rail lines.*
- *To ensure that lighting is carefully and sensitively designed*
- *To require that the design of external lighting minimises the incidence of light spillage or pollution into the surrounding environment.'*

Chapter 11 refers to Transport

Section 11.4 Ports and Rivers

'The Regional Planning Guidelines note that the ports of Belview, New Ross and Rosslare are of strategic importance to the region. New Ross Port is Ireland's only inland port, some 32 kilometres from the sea on the River Barrow. New Ross Port Company operates from Marshmeadows, to the east of the Barrow in Co. Wexford. Stafford's Shipping yard is in operation in Rosbercon, in Co. Kilkenny.'

Chapter 12 sets out Requirements for Developments

Strategic Aim: *'To encourage the creation of living and working environments of the highest quality by ensuring a high quality of design, layout and function for all development under the Planning Acts and Regulations, to conserve and build upon positive elements in the built and natural environment, and to protect amenities.'*

Section 12.13 Non-Conforming Uses

'Throughout the County there are uses which do not conform to the zoning objectives for the area. Extensions and improvement of premises accommodating these uses may be permitted where the proposed development would not seriously injure the amenities of the area or prejudice the proper planning and development of the area. In some cases, the Planning Authority may encourage relocation of permitted incompatible uses, for example by exchange of sites.'

5.2. Fiddown Local Area Plan 2011

The appeal site is located outside the development boundary of the Fiddown Local Area Plan, which expired in January 2017.

5.3. Relevant Government Policy

5.3.1. The South East Regional Planning Guidelines 2010-2022

5.3.2. The National Planning Framework Project Ireland 2040

Section 3.4 South East Region - *‘Regional opportunities to leverage growth include national and international connectivity, especially via ports proximate to continental Europe, such as Belview and Rosslare-Europort, strengthening HEIs and further balanced employment and housing development in key settlements and county towns.’*

Section 7.3 Ports – *‘National ports policy also recognises the Tier 2 ports of Belview and Rosslare-Europort, because of the potential to grow traffic through these ports, their proximity to key trading partners and their strategic transport roles beyond their immediate environs.’*

National Policy Objective 40 - *‘Ensure that the strategic development requirements of Tier 1 and Tier 2 Ports, ports of regional significance and smaller harbours are addressed as part of Regional Spatial and Economic Strategies, metropolitan area and city/county development plans, to ensure the effective growth and sustainable development of the city regions and regional and rural areas.’*

5.4. Natural Heritage Designations

5.4.1. The site is approximately 600m to the east of the Lower River Suir SAC (Site Code 002137).

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against the decision to refuse permission by the planning authority has been lodged by Fenton Associates on behalf of the applicant James Brophy Transport Ltd. In summary it states:

- *Established Use* - Existing business is an established use, which has been through an arduous planning process, mainly as a result of third party objections and appeals.
- *Visual Impact* - Tall evergreen trees along the western boundary are maintained by the applicant and provide screening from the adjoining property, there is therefore no visual impact on the appellants property.
- The permission granted by ABP has been implemented and current applications provides improved visual and working conditions.
- *Local Employment* - Seek to maintain the viability of the business which has been in the family for over fifty years and provides critical local employment.
- *Regularise Planning Status* - The current proposal is for modifications to that already permitted, which are essential for the continuation of the business, and will regularise the planning status of the site.
- *Modifications* – Include the,
 - Relocation of a bunded fuel storage tank which was for practical and security reasons,
 - Provision of a petrol interceptor/grease trap adjacent to the wash bay to avoid any pollution to the permitted soak pit, noting that there is no ponding on site and no surface water flows from the site out to the Rathmore Road.
 - Provision of a staff and visitor parking area to the front/southwest of the site, which has no impact on adjoining property.
 - Set back of the trailer parking area from the western boundary, so it is not visible from the adjoining property, in location of area previously identified for truck parking.
 - Tractor/cabs parking area has been relocated in an extended concrete surface area adjacent to the wash bay away from the adjoining property, resulting in less movements and noise than the truck parking that is located on the northern part of the site.

- Relocation of the permitted buffer fence to the north and west, to the rear of the truck and trailer parking areas in order to provide sufficient acoustic and visual protection to adjoining properties, thereby protecting their residential amenities.
- Reduction in area to be reinstated, to allow for parking of decommissioned trailers and which are part of the permitted use on site being incidental to the main use. Notes the nature of the truck haulage business that includes on-site repair workshop, that they own decommissioned trucks and trailers which are maintained on site for spare parts. These are parked in the northern part of the site and do not form part of the active fleet nor are they subject to daily movements. This compacted gravel yard to the north-west of the existing permitted yard. Contend that the retaining of vehicles for spare parts should not be seen or considered to be an intensification of use.
- *Items for Retention* – Are necessary and ancillary to the operation of the business.
- *Noise* – A night time noise management plan will be put in place by the applicant based on mitigation measures set out by AWN consulting and submitted to the planning authority for agreement. Current operations on site do not result in any noise impact during the daytime. The suggested mitigation measures include the extension and upgrading of the noise barrier form part of the current application.
- *Lighting Standards* – The three no. lighting standards on site are required and are at a height and position that has no impact on the amenities of the area.
- *Nature and Extent* – Item by item the proposed development is not significant and in principle adheres to the parent permission.
- *Reason for Refusal No. 1* – The current application does not represent an intensification of use, and condition no. 11 of the parent permission which limits the no. of trucks to be serviced to 20 is being strictly adhered to as the applicant operates 19 no. trucks. Submits that it is disingenuous to assert that the individual items which are ancillary to the operations of the business will

result in an intensification of use, or would seriously detract from the amenities of the area and of property in the vicinity by reason of noise.

- *Planning Authority Assessment* - Appears to have taken the view that permission should not be granted on the basis of an enforcement file and objections from the neighbour, rather than on the merits of the application which have not been adequately assessed.
- *Reason for Refusal No. 2* – The surface water drainage with petrol interceptor and soakaway which have been carried out, are in compliance with BRE standard 365 being the appropriate code of practice. It has been operation for four years with no detrimental impact.
- *Open Storage of Containers* – These have been removed permanently.

6.2. Planning Authority Response

The planning authority notes that there is a history of non-compliance associated with the applicant and the site, in terms of the planning authority and Board decisions. As a result, the planning authority has reservations as to commitments given and future planning compliance on site. The planning authority confirmed its decision and reiterates issues raised in the planner's report.

6.3. Observations

The third-party Nicholas Leahy owner of the adjoining residential property to the southwest, submitted a lengthy observation to the appeal, which can be summarised as follows;

- *Nature and Scale of Business* – Refers to description of the nature of the business on site, which extends beyond that permitted. Comments in some detail on the description of the nature of the development and chronology of events as set out in the enforcement, planning history files, and five planning appeals to the Board, particularly in respect to the north-west part of the site.

- *Residential Amenity* – Current proposal will result in trucks and trailers being placed close to boundary, which would create noise disturbance and emission of diesel fumes.
- *Relocation of Fence* – Will create an additional working space of about one acre.
- *Proposed Lighting* – Will facilitate after-hours and night-time operation of the haulage aspect of the business, in the extended-yard, which contravenes the condition relating to hours of operation in the grant of permission.
- *Car-Parking* – Parent permission for eight no. spaces, current proposal is for twelve.
- *Wash Bay* – Located in an area allocated for truck manoeuvring, and objects to associated noise.
- *Compacted Gravel Yard*– Disputes claim by the applicant that area is similar in scale to that previously permitted.
- *No. of Trailers and Cabs* – Parent permission permits a maximum of 20 trucks to be serviced, not parked. Additional parking space/gravel area of 0.5 ha gives access to an additional undeveloped area in the north west.
- *Oil Tank and Bunded Area* – Concern in relation to fire safety.
- *Staff Amenity Building* – Queries the need and use outside of permitted operating hours. Area is currently used for parking of tipper trucks and has been secured by unauthorised palisade fence.
- *Existing Tree/Hedgerow* – Along the western boundary is in the ownership of the third party, and not the applicant.
- *Noise Management Plan* – Notes condition restricting hours of operation, noise from vehicles left idling, night time noise, sounding of horns, and lack of reference to noise from the Maintenance Building which is open to the rear.
- *Noise* - One of the noisiest activities in the yard area results from the loading/unloading of 40 foot containers, and stacking of containers with a heavy-duty forklift.

6.4. Further Responses

None.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the planning reasons for refusal and I am satisfied that no other substantive issues arise. Appropriate Assessment and Environmental Impact Assessment needs to be considered. The issues are addressed under the following headings;

- Intensification of Use
- Residential and Visual Amenity
- Drainage/Surface Water
- Appropriate Assessment
- Environmental Impact Assessment

7.2. Intensification of Use

7.2.1. It is important to state from the outset that the applicants have an authorised commercial business on approximately half of the overall site comprising a workshop with truck and trailer parking area to the rear.

7.2.2. Reason for refusal no. 1 refers to the intensification of a non-conforming commercial use in a rural area. The crux of the appeal therefore, is to what extent there has been an intensification of this commercial use on site, and whether this is material.

7.2.3. As outlined in section 4 above, there is a long planning history associated with the site and the truck haulage business and the observer to the current appeal. Planning permission was granted by the Board, ABP Ref. PL10.240192, for the commercial use as a truck haulage business in 2012. It was accepted by the Board that the use on site was an established use. Conditions attached to that permission sought to limit the use in terms of the hours of operation and the number of trucks in the fleet. The stated site area of the site was 0.51ha.

- 7.2.4. The current application seeks to regularise outstanding planning issues in relation to further works carried out, which have been the subject of enforcement proceedings by the planning authority. It does not seek to amend the hours of operation or the number of trucks in the fleet. The overall site area has, however, been increased, to 1.0ha.
- 7.2.5. I note that, at the time of the decision under ABP Ref. PL10.240192, the appeal site was located outside the development boundary of the Fiddown Local Area Plan 2011 (now expired). This remains the case, and the site remains in a rural area.
- 7.2.6. The applicant/first party maintains that the proposed development and elements now subject of retention permission do not give rise to an intensification of use.
- 7.2.7. The planning authority and observer to the appeal submit that the elements now subject of retention permission which include the erection and use of a staff amenity structure, truck wash bay area, extension of the concrete yard, and surface water drainage disposal area, combined with the increase in overall site area results in an intensification of use.
- 7.2.8. In my opinion, the most significant difference between the parent permission and the current proposal is the increase in the overall site area.
- 7.2.9. In relation to the nature of the use, the size of the truck fleet is limited to a maximum of 20 vehicles. This number is not disputed by either party.
- 7.2.10. The hours of operation pertaining to the parent permission refer to 0800 hours to 1800 hours Monday to Saturday only and excludes Sundays and public holidays. It is not proposed as part of this application to extend these hours. There is some dispute in relation to the use of the site outside of these hours in relation to the arrival and departure of staff.
- 7.2.11. I consider that the single storey portacabin referred to as a staff amenity building which provides facilities for drivers and staff with a stated area of 18sqm to be very modest in scale.
- 7.2.12. In my opinion, the main issue relates to the increase in the overall area of the site and open storage of machinery on an extended area of the yard to the rear of the workshop. The extension of the concrete yard and gravel area forms part of the development to be retained and has a combined approx. area of 0.29ha.

- 7.2.13. On the day of my site inspection I did note that this area was in use for the storage of containers and disused trucks, but did not observe as noted by the observer any stacking of containers on site. I consider that the additional storage of trucks is ancillary to the principal workshop and haulage business and can be easily accommodated on the site. I would also note that this storage area is not visible from the front of the site or from the neighbouring residential property. I also note that the grassed area at the rear of the site, accounts for approx. 0.22ha of the extended site area. I am satisfied, subject to the grassed area not being used for parking or storage purposes, that the extended area of concrete and gravel yard area is acceptable.
- 7.2.14. I am satisfied that the truck haulage business on site is an established and substantially authorised use, provides employment in the area with ease of access to national roads and major ports. In my opinion, the elements now proposed for retention are relatively minor in the context of the development on site and the extension of the site and use for storage only is acceptable.
- 7.2.15. I am satisfied, subject to compliance with conditions in relation to the nature of the use as per ABP Ref. PL10.240192, that the proposed development is acceptable. There is no obstacle, on this basis, to granting permission and retention permission for the proposed development.

7.3. Residential and Visual Amenity

- 7.3.1. Having accepted that the existing use is substantially an established and permitted use, there is a balance to be struck between this use and the current proposed development and elements for retention with respect to residential amenity, and specifically that of the adjoining residential property to the south west.
- 7.3.2. There are a number of elements of the works to be retained which are relevant in this regard as they are isolated (but not exclusive) to the area near this residential property. It is clear, in my opinion, that the existing and proposed works and activities on site are concentrated along the more sensitive part of the site i.e. adjoining the residential property to the south west. These include the location of the staff car park, staff amenity building and staff area, location of oil/fuel storage, lamp standards, and truck parking area. Given the extent of the overall site, and the fact

that there are no residential properties along the remaining boundaries or other site constraints this concentration of activity in this area is problematic.

7.3.3. The existing dwelling of the observer is located at an angle to and approx. 12 m from the site boundary with the subject site. There are also two existing sheds/glass houses located forward of the existing dwelling and directly along the north-eastern boundary with the appeal site. In my opinion, these structures combined with the mature planting along this boundary, already act as a buffer to potential noise/disturbance from the subject site.

7.3.4. Notwithstanding, I have considered the impact of the individual elements to be retained and the proposed works which primarily relate to increased setbacks to and boundary treatments along the boundary with the adjoining residential amenity property.

Staff/Visitor Car Park

7.3.5. The car park is located to the front of the site and extends up to the south-western boundary with the adjoining property. It is proposed to set back the edge of the car park by approx. 8m from this boundary, which will include a grassed area, and to erect a concrete post and timber fence (Section A-B) 4m off this boundary. The fence is to be 1.8m in height and comprises a post and timber slatted fence. While I fully accept that the permitted proposal provided for an alternative layout with a set back and grassed buffer area of approximately 18m, I consider the current proposal to be acceptable, subject to these works being carried out within a limited time frame.

Staff Amenity Building and Staff Area

7.3.6. The single storey portacabin/staff amenity building and staff area which comprises compacted gravel are located to the rear of the staff car park and is enclosed by a green palisade fence. It is proposed to locate the staff amenity building within 8m of the south-western boundary. It is also proposed to erect a solid marine ply panel fence (Section B-C) 2.5m off the boundary. The fence is to be 2.4m in height and approx. 34m in length.

7.3.7. I concur with the planning authority that staff facilities already exist within the permitted workshop which include toilets, canteen etc. so I would question the need for this facility and rationale for its location along this boundary given the extent of

the overall site. I also note that this area was to be grassed in the permitted development.

7.3.8. I am also mindful that the staff amenity building is a temporary structure which could easily be relocated within the overall site and away from the boundary with the adjoining residential property, particularly given that staff will already have had to drive into and park trucks in the yard area behind the workshop. I am also mindful that it is only in use for very brief periods in the morning and evening prior to the drivers commencing and finishing work.

7.3.9. I consider, on balance, that this facility is appropriate in this general area located adjacent to the staff car park. I recommend therefore, that the staff amenity building be relocated a further 10m such that it is set off the south-western boundary by 18m, resulting in an overall separation of 30m from the adjoining residential property. A greater separation from this boundary in tandem with the proposed boundary fence should mitigate to some extent any noise and disturbance associated with these staff areas. These works should be carried out within a limited time frame.

Location of Oil/Fuel Storage

7.3.10. The oil and fuel storage tanks are located along the south-western gable of the existing workshop which the applicant has suggested provides a more suitable location to that permitted. The location of the permitted fuel tanks was along the opposite gable. I accept that the current location allows for the tanks to be screened from the public road, are proximate to the truck parking area and, therefore are more ideally located from an operational perspective. I also note that they are located approx. 30m from the south-western boundary which I consider acceptable.

Truck Parking Area

7.3.11. The truck and trailer parking area which comprises compacted gravel is located to the rear of the work shop. It is located within a few metres of the existing planted south-western boundary/side and rear garden of the adjoining property and is only partially grassed. It is also the area which combined with existing floodlighting and noise associated with the arrival and departure of staff and trucks appears to be the most problematic.

- 7.3.12. On plan this area is indicated to be set off the boundary by 11m reducing to 6m at its north-western end. The permitted development provided for a very generous set back/buffer area of 21m reducing to 16m and this area was to be grassed.
- 7.3.13. It is now proposed to erect a concrete post and timber slatted fence (Section C-D) 2.5m off the boundary. The fence is to be 1.8m in height and approx. 38m in length.
- 7.3.14. I note the issues raised in relation to noise, and hours of activity, and the previous conditions with respect setbacks and noise levels. I have also reviewed the assessment of noise and recommendations in the acoustic report.
- 7.3.15. In my opinion, notwithstanding the existing and proposed boundary treatments, the most appropriate mitigation measure would be to increase the separation distance of the truck parking area from the boundary with the adjoining residential property. This is easily achievable given the extent of the overall site. This combined with the implementation of a night time noise management plan to be agreed with the planning authority would help to address the issue of noise and general disturbance. I, therefore, recommend that the truck parking area is set back a further 5m, such that a buffer area of 16m decreasing to 11m can be achieved, and that this area is grassed. These works should be carried out within a limited time frame.

Wash Bay

- 7.3.16. I am satisfied that the wash bay area proposed for retention, which is located in excess of 50m from the boundary with the adjoining residential property is acceptable.

Extended Site Area and Boundary Treatments

- 7.3.17. The overall site area has been increased significantly to that previously permitted. It comprises an extended concrete yard area of approx. 420 sqm, gravel yard area of approx. 2,475sqm, and grassed area beyond this of approx. 2,200sqm. It is proposed to retain these areas which are in use for storage and surface water attenuation.
- 7.3.18. In general, the existing business is well presented to the public road and includes minimum signage. It is proposed to erect a fence along the south-western boundary (Section D-E) and north-western boundary (Section E-F) which comprise a concrete or timber post and wire fence 2m in height. The proposed boundary along the north

eastern boundary (Section F-G) will comprise a post and wire fence of 1.8m with high planted blackthorn hedge.

- 7.3.19. I am reasonably satisfied, subject to these boundaries being erected and planted, that the overall extended site area will be adequately screened from the adjoining agricultural lands and will help to mitigate the noise and visual impact of the proposed development.

Lighting

- 7.3.20. I concur with the planning authority that the three lighting columns already on site are not clearly indicated on the drawings submitted. Nevertheless, they are considered acceptable subject to being cowled and directed away from the adjoining residential property.

Landscaping

- 7.3.21. I recommend that a detailed landscaping plan be submitted and agreed with the planning authority and that it be implemented within a limited time frame.

Summary

- 7.3.22. I am satisfied, subject to modifications, that the proposed works and elements for retention are acceptable. Subject to the implementation of these works within a strict time frame, they will not detract from the residential and visual amenities of the area.

7.4. Drainage/Surface Water

- 7.4.1. Reason for refusal no. 2 refers to the surface water drainage proposals which are considered unsatisfactory.
- 7.4.2. Specifically, the planning authority determined that the details in relation to the petrol interceptor capacity, soakaway infiltration design and cattle-grid / drainage provision at the access were unsatisfactory.
- 7.4.3. As already noted the site is served by a public foul sewer and public watermains. In relation to the wash bay area and petrol interceptor which drain to the soakaway infiltration area at the rear of the site, the Environment Section of the planning authority recommend that this waste be diverted to the public foul sewer.

7.4.4. At the entrance to the site I noted the absence of a cattle-grid as indicated on the drawings submitted. I also noted that there is a slight slope at the access from the public road and that, contrary to what is shown on the drawings submitted, there are two drains/gulleys located just at the junction with the public road.

7.4.5. I note that this is a fully serviced site, and that the yard area on the day of my inspection appeared well maintained, and that Irish Water had no objections. I am satisfied subject to agreement with the planning authority that the proposed development would not be prejudicial to public health.

7.5. **Appropriate Assessment**

7.5.1. I follow the staged approach to screening for appropriate assessment as recommended in both EU Guidance and by the Department of Environment, Heritage and Local Government:-

1. Description of the plan or project and local site or plan area characteristics.
2. Identification of relevant Natura 2000 sites and compilation of information on their qualifying interests and conservation objectives.
3. Assessment of likely significant effects-direct, indirect and cumulative, undertaken on the basis of available information.
4. Screening statement with conclusions.

7.6. *Project Description and Site Characteristics*

7.6.1. The proposed development is as described in the report above and in the application submissions as revised.

7.6.2. *Relevant Natura 2000 Sites, Qualifying Interests and Conservation Objectives:*

Site Code, Site Name and Designation	Approx. distance from the site	Conservation Objectives; Qualifying Habitats and Species	Relevant source-pathway-receptor links between proposed development and European site?
Lower River Suir SAC (002137).	600m East	<p>The generic conservation objective is to maintain or restore the favourable condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p> <p>Freshwater Pearl Mussel White-clawed Crayfish Sea Brook Lamprey River Lamprey Twaite Shad Salmon Atlantic salt meadows Otter Mediterranean salt meadows Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels Old sessile oak woods with and in the British Isles Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) □ Taxus baccata woods of the British Isles □</p>	No, Due to the absence of a hydrological link or any other linkage between the site and the SAC.

7.7. *Assessment of likely Effects*

7.7.1. Based on the source-pathway-receptor approach, direct effects are ruled out as there is no hydrological or other links identified. The site is served by a public foul sewer and public watermains, and subject to the diversion of waste water from the wash bay area to the public foul sewer and requirements of Irish Water, the proposed development would not give rise to appropriate assessment issues. I also note in relation to surface water run-off, the location of the soakway percolation area

at the rear of the site and the existing drainage gulleys at the entrance to the site, which do not give rise to appropriate assessment issues.

7.7.2. The proposed development will not have any significant impacts, direct or indirect, on the qualifying species or habitats of the Natura 2000 sites listed above.

7.7.3. In terms of cumulative impacts, the site taken in the context with existing development, is not considered to result in likely significant cumulative effects.

7.8. *Screening Statement and Conclusions*

7.8.1. In conclusion having regard to the foregoing, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European Site and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.9. **Environmental Impact Assessment**

7.10. The proposed development does not fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations.

8.0 **Recommendation**

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

10.0 Having regard to the nature of the development proposed and for retention, associated with an established truck haulage business, the planning history and in particular ABP Ref. PL10.240192 and its location on the outskirts of a village, with easy access to the N24, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the residential or rural amenities of the area, would not be prejudicial to public health and would be in accordance with the proper planning a sustainable development of the area.

11.0 Conditions

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

Reason: In the interest of clarity.

2. The operating hours of the development shall be from 0800 hours to 1800 hours Monday to Saturday. The development shall not operate on Sundays and public holidays.

Reason: In the interest of residential amenity.

3. The size of the truck fleet to be serviced from this site shall be limited to a maximum of 20 vehicles.

Reason: In the interest of residential amenity.

4. Within three months of the date of this permission, a revised site layout plan, shall be submitted to, and agreed in writing with, the planning authority indicating the following;
 - (a) A set back of the staff and visitor car park from the south-western boundary by 8m.
 - (b) The relocation of the staff amenity building such that it is set off the south-western boundary by 18m.
 - (c) A set back of the truck parking area a further 5m such that a buffer area of 16m decreasing to 11m can be achieved,

These works are to be completed on site within six months of the date of this permission.

Reason: In the interest of clarity and residential amenity.

5. Within six months of the date of this permission, the following works shall be completed on-site:-
 - (a) Erection of a 2.4m high concrete post & timber panel screen located 2.5m from western boundary of the site of approx. 80m in length, such that it can act as a noise barrier to protect the amenities of the adjoining residential property.
 - (b) A 2m high post & wire fence and planting of hedge along the existing western and northern boundaries of the site.
 - (c) Completion of planting and landscaping along boundaries and buffer areas.

Reason: In the interest of clarity and orderly development.

6. The reinstated grassed area indicated on plans submitted shall not be used for the storage or parking of vehicles or any other materials.

Reason: In the interest of clarify and orderly development.

7. Within six months of the date of this permission the site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
- (a) A plan to scale of not less than 1:500 showing –
 - (i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder and which shall not include prunus species.
 - (ii) Details of screen planting which shall not include cupressocyparis x leylandii.
 - (iii) Details of roadside/street planting which shall not include prunus species.
 - (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.
 - (c) A timescale for implementation including details of phasing.

All planting shall be adequately protected from damage until established.

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

Reason: In the interest of residential and visual amenity.

8. Within three months of the date of this permission, details of the surface water drainage system, shall be submitted to, and agreed in writing with, the planning authority indicating the following;
- (a) Proposals for the diversion of trade effluent from the truck wash to the public foul sewer.

(b) Proposals to ensure that surface water shall not drain onto the adjoining public road.

These works are to be completed on site within six months of the date of this permission.

Reason: In the interests of environmental protection and public health.

9. The proposed lighting shall be erected by a suitably qualified lighting specialist and the lighting directed and cowled such as to reduce light scatter outside the boundaries of the site.

Reason: In the interests of residential amenity.

10. During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:-

(i) an L_{AeqT} value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive;

(ii) an L_{AeqT} value of 45 dB(A) at any other time. [The T value shall be 15 minutes]. The noise at such time shall not contain a tonal component.

(2) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with respect of Community Response" as amended by ISO Recommendations R 1996 1, 2 or 3 "Description and Measurement of Environmental Noise" as applicable.

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

11. Within three months of the date of this permission, a noise management plan identifying measures to be employed to ensure that the noise from the development complies with the terms of condition No.10 and identifying a noise liaison officer responsible for the implementation of the plan shall be submitted to, and agreed in writing with, the planning authority.

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

12. The developer shall ensure that all operations are carried out in a manner such that air emissions and/or odours do not result in significant impairment of, or significant interference with, the amenities or the environment beyond the site boundary.

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

13. All car and truck spaces shall be clearly delineated on site and shall be available at all times for that sole purpose. Parking areas shall not be used for open storage of materials or other equipment.

Reason: In the interest of orderly development.

14. Waste oils/fluids/batteries and discarded machinery parts shall be properly stored on site in a defined waste collection area and shall be properly disposed of by specialist contractors at frequent intervals.

Reason: In the interest of public health.

15. No advertisement or advertisement structure other than those shown on the drawings submitted with the application shall be erected or displayed on the building or within the curtilage of the site in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

16. 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 the 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.

Susan McHugh
Planning Inspectorate

26th November 2018