



An
Bord
Pleanála

Inspector's Report ABP-302063-18

Development	Development of HSE Primary Care Unit, upgrading of existing Rugby Club Facilities and all associated Site Works
Location	Scurragh, Townparks, Birr, County Offaly
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	17/296
Applicant(s)	Birr Rugby Football Club and BPI Investments
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Birr Rugby Football Club and BPI Investments
Observer(s)	David O'Meara Conor Sheehan
Date of Site Inspection	21 st September 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The site is located in Birr, Co. Offaly. It is located just south-east of the town centre and is currently in use by Birr Rugby Football Club. The site is located to the east of Railway Road, which is part of the N52 national road which runs north-south through the town and divides to become the N52 and the N62 just south of the site. The site is south of, and bounds the Little Brosna river which runs through the centre of the town.
- 1.2. Directly between the site and the N52 there is an Applegreen Service Station. Access to the site is off the N52 just north of the service station via a local road named Scurragh. This same road serves a relatively large housing development to the south-east, as well as Birr Leisure Centre which lies to the north-east. To the south of the site lies the County Arms Hotel which is a protected structure.
- 1.3. Across the N52 Railway Road lies the GAA sporting pitch, and south of the pitch there is a large Tesco superstore with surface car parking.
- 1.4. The site is effectively three large fields with an overall area of 3.93Ha. The field closest to the N52 road is in use by Birr Rugby Football Club (Birr RFC) as a training pitch and is zoned for open space/sports/recreation/amenity purposes. The second field which bounds the river contains the Clubhouse in the east of the field. The rest of the field is a disused hardstanding area and zoned for public/community/educational purposes. The third field is the rugby pitch zoned for open space/sports/recreation/amenity purposes.
- 1.5. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. The application is summarised as a joint application resulting in the development of a HSE Primary Care Centre (PCC) on part of the existing training pitch, and a new purpose built changing room block adjacent to the clubhouse, new car park, new all-weather pitch, floodlighting and associated works on the remainder of the site.
- 2.2. It is proposed to develop the PCC on the field nearest the N52 road to the rear of the Applegreen Service Station. The PCC will comprise of a purpose built two and three storey building housing a HSE day centre, an own door pharmacy, and 3 no. own

door Doctor's surgeries at ground floor level. At first floor there will be a HSE Day Hospital with treatment and consulting rooms, as well as offices and ancillary accommodation. The third floor comprises a staircase to the roof area for maintenance. The overall area proposed is 3,264sq.m on two floors.

- 2.3. There will be 94 car parking spaces as well as ancillary services such as bin stores, ESB substation and a pedestrian access route from the rear of the PCC to the adjacent County Arms Hotel.
- 2.4. Upgrade works are proposed to the training pitch which adjoins the PCC site, including the provision of floodlighting and new fencing to enclose the training grounds.
- 2.5. New floodlighting is proposed for the rugby pitches to the south-east of the clubhouse.
- 2.6. A new all-weather pitch will be located to the west of the clubhouse including floodlighting and fencing.
- 2.7. A new single storey changing room block is proposed to the south-east of the clubhouse as well as 47 car parking spaces.
- 2.8. Ancillary work includes an upgrade to the access from the N52 including new traffic control signals at the junction of the Scurragh Road and the N52 with MOVA, and removal of the existing zebra crossing opposite the Applegreen service station.
- 2.9. Included with the application are a Design Statement, a Supporting Statement, a Traffic and Transport Assessment, Engineering Report and letters of consent and support from GP's, as well as standard drawings and documentation.
- 2.10. Following the request for further information, changes were made to the design including reducing the overall height and more information was provided about the materials proposed. Photomontages were also provided.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for one reason.

1. The development of a Primary Care Unit on lands zoned as open space is not normally permitted in the zoning objectives of the Development Plan. The proposed development of a primary care unit in an area zoned as open space in the Birr Town and Environs Development Plan 2010 – 2016 (as extended) would contravene materially objective BTEO 15-02 which states that it is an Objective “To ensure that development progresses in accordance with the landuse zoning objectives set out within this chapter”.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner’s Report is the basis for the Planning Authority’s decision. In summary it includes:

- The location for the proposed PCC is zoned open space/sports/recreational and as such the proposed development is ‘not normally permitted’. A Material Contravention of the Development Plan is required in the event of a grant of permission.
- Notes PCC is being developed under public/private partnership with the HSE and notes letters on file from 3 doctor’s surgeries and 2 local pharmacists. The pharmacists state that they will continue to own and operate their existing pharmacies in the town.
- Notes sequential test was carried out looking at alternative sites.
- Roads Design are happy with the proposal subject to conditions.
- Notes no details submitted regarding the floodlighting and Irish Water request details on the Hydrobrake.
- Welcomes upgrade works to rugby facilities.
- Serious concerns with the overall design of the PCC. Lists Architect’s concerns which the Planner concurs with, including query about reuse of existing buildings and if HSE is moving from its existing location in the former convent. Architect considers the provision of a large pharmacy in an out of town location should not be approved due to the resulting implications to the existing main street pharmacies. States that the three new GP’s will perhaps

benefit from combined services and the provision of a modern premises but will result in the vacating of existing premises in the town. Refers to permeability and connectivity. Considers site is well located to take a larger building. Considers building is an ineffective combination of styles, materials along with multiple parapet heights and submits the design is of a rudimentary commercial block. Considers that the design neither complements the architectural fabric of Birr nor provides its own modern idiom.

- States that building design and materials are not acceptable, and pharmacy is given too much emphasis and too large in floor area. Applicants to be requested to carry out a sequential test with regard to the pharmacy and the hairdressers being proposed in an edge-of-town location. Considers site is an edge-of-town site being 150m from the town centre and having regard to map 4.1 of the Town Plan.
- Recommends Further Information is requested with respect to 10 items including the design, floodlighting, Hydrobrake, letter of support from HSE, Giant Knotweed on the site, amended contextual elevation, errors on drawings, pedestrian link to hotel, a sequential test and to note that the proposal requires a material contravention of the Birr Plan.
- The applicant responded with an amended design and 3D images as well as responding to other technical requests. It is stated that the issue of a material contravention was addressed in the initial supporting statement submitted with the application.
- With respect to a sequential test, it is stated by the applicant that the PCC should be assessed in its entirety whereby its primary use is for health purposes and not retailing. The pharmacy only comprises 4% of the overall floor area. Reference is made to the Board's positive determination of a PCC in Tullamore (ABP Ref. 244684) and Westmeath County Council positive decision for a PCC in Mullingar. The pharmacy was seen as a complement to the PCC and was not subject to a sequential test but rather an assessment against other possible sites. Notes that the new pharmacy will operate under the auspices of 3 of the 4 existing pharmacists in Birr who have committed to keeping their existing pharmacies open. Confirms there will be no

hairdressers operating – the unit will operate on a medical and not a retail basis with no signage and has been renamed HSE Day Centre Hair Treatments.

- The Planner assesses the response under a number of headings. Having regard to the precedence set by An Bord Pleanála, the Planner agrees that the pharmacy is an integral part of the PCC and not a standalone retail unit and considers that a sequential test is not required. Notes the site adjoins a ‘Commercial and Residential’ zoned area and is an edge-of-town centre location and given the positive contribution of providing a PCC and the upgrading of the sports facilities, considers the proposal is acceptable.
- With respect to design, notes the Senior Executive Architect comments and concurs that the revised plans and particulars are acceptable.
- Considers size of pharmacy acceptable and notes HSE Guidance Document for Primary Care Developments.
- Considers all other items acceptable.

Material Contravention

- The proposed development was deemed appropriate and the material contravention procedure was invoked in April 2018. The application was discussed by the Elected Members at the Council meeting on the 18th June 2018 and a resolution to allow the proposed development was not passed.
- A refusal is recommended on the basis that a resolution was not passed to grant a material contravention, and therefore the proposed development materially contravenes the Birr Town and Environs Plan 2010 – 2016 (as extended).
- An Addendum is attached to the Planner’s Report providing clarity on the points raised in the submissions to the Material Contravention.

3.2.2. Other Technical Reports

- **Area Engineer:** Following response to Further Information no objections subject to conditions
- **Environment and Water Services:** No objections

- **Road Design:** No objections subject to conditions
- **CFO:** No objections
- **Senior Executive Architect:** Following response to Further Information Planner notes no objections to design subject to conditions. Other concerns outstanding.

3.3. Prescribed Bodies

- **OPW:** File referred
- **IFI:** File referred
- **Irish Water:** Following response to Further Information no objections subject to conditions
- **HSE:** No objections
- **TII:** Request the Authority to abide by official policy

3.4. Third Party Observations

Five submissions were received initially. Concerns raised included traffic volumes, zoning, no proposal to allow the public access to new sporting facilities, impact on town centre viability, no appropriate assessment submitted, no lighting report or sequential screening, loss of recreational designated zone, material contravention is required, not clear if HSE are vacating other premises, adverse effect on character of the town, no direct pedestrian access to the town park or to the existing HSE facility, and alternative sites.

Four submissions were received under the Material Contravention process.

4.0 Planning History

- **Reg. Ref. BR14017:** Application for similar development was lodged in May 2014 and subsequently withdrawn in May 2015.
- **Reg. Ref. BR521:** Permission was granted in December 1981 for an extension to the clubhouse.

Adjacent:

- **Reg. Ref. BR1572:** Permission was granted in August 2008 for the demolition of an existing services station and the development of new service station.

5.0 Policy Context

5.1. Birr Town and Environs Development Plan 2010 – 2016 (extended until 2020)

- 5.1.1. The Land Use zoning map indicates that there are two zonings on the site. The majority of the site is zoned Open Space/Sports/Recreation/Amenity. The northern section of the site bounding the river where the clubhouse is located is zoned Public/Community/Educational.
- 5.1.2. Chapter 5 of the Plan refers to Amenities & Open Space. It is stated that the aim of the Plan seeks '*To strike a reasonable balance between the coordinated provision of population growth/urban development and the adequate provision of amenities and open spaces for the benefit of residents, workers and visitors*'.

Section 5.2.5 refers to Loss of Open Space. It states '*Only in circumstances where the quality and size of a given open space facility stands to be enhanced through relocation or improvement shall the loss of open space be considered. In such circumstances, the relocated/improved facility or amenity should retain a high level of accessibility to the entire town*'.

Section 5.3 lists the policies. The relevant policies include:

BTEP 05-08 *It is the Councils' policy to cooperate with sporting organisations who wish to expand or develop their facilities.*

- 5.1.3. Chapter 11 refers to Community, Social, Cultural & Sports Development. Section 11.2.8 refers specifically to Health Services. It states that '*The Councils will support the Department of Health and Children and Health Services Executive in the provision and development of new facilities*'.

Section 11.2.9 refers to Sport/Recreation/Open Space. Policies include:

BTEP 11-01 *The Councils recognise the importance of community facilities in the welfare and development of society. It is the Councils' policy to assist, where feasible, in **social, community and cultural development** within Birr*

and to encourage and facilitate the provision and extension of community facilities to serve individual communities throughout Birr and to co-operate with any bodies which wish to expand the provision of social facilities in Birr. The Councils shall encourage the provision and extension of community and sporting facilities to serve individual communities throughout the town. Social development initiatives at a community level will be encouraged and assisted where possible by the Councils. Consideration will be given on an individual basis to the provision of support for community projects, and/or making available sites for same.

BTEP 11-08 *It is the Councils' policy to **preserve the landuse of existing public and private recreation areas** to prevent the loss of existing leisure facilities, including sports clubs, grounds, built leisure facilities and areas of public and private open space through redevelopment to other uses. In exceptional circumstances, a change of use may be sought, but must demonstrate that alternative recreational provisions are provided in the same area or in a suitable alternative location. Further, it is the Councils' policy to identify, where possible and appropriate, new open space/amenity sites and existing sites for possible future extension within Birr (refer to Chapter 6: Local Area Strategies and Chapter 5: Amenities & Open Space).*

With respect to Community Healthcare:

BTEP 11-16 *It is the Councils' policy to promote and facilitate the improvement of health services in Birr where necessary and, in particular, to encourage the integration of health services and facilities with new and existing community facilities, where feasible.*

BTEP 11-17 *It is the Councils' policy to look favourably upon **primary care centres** which comprise/provide access to a range of healthcare services including General Practitioners, nurses/midwives, health care assistants, home help assistants, occupational therapists, physiotherapists, social workers and administrative personnel, as appropriate. However, the provision of **individual healthcare facilities** will also be considered, as appropriate.*

BTEP 11-18 *It is the Councils' policy to co-operate with the Health Services Executive (HSE) in the provision and location of health, community and social*

facilities. Also to co-operate with other groups who may wish to provide social services in the town (see Chapter 6: Local Area Strategies).

- 5.1.4. Chapter 15 refers to Land Use Zoning and Zoning Matrix. It is stated with respect to 'Not Normally Permitted' *Proposed use will not be favourably considered by the Local Authorities, except in exceptional circumstances and in such instances, the development may represent a material contravention to this plan. This may be due to envisaged negative impact on existing and permitted uses, incompatibility with policies and objectives contained in the Birr Town and Environs Development Plan or that it may be contrary to the proper planning and sustainable development of the area.*

Section 15.3.4 refers to **Public/Community/Education Zoning Objective** and states:

The use of land as 'Public/Community/Education' shall be taken to include the use of land for the above stated uses, which generally include community related development (including the provision of schools, community halls, health care institutions, utilities, libraries and development for other community uses). Ancillary facilities such as dedicated open space or sports facilities will normally be facilitated within this zoning objective.

Section 15.3.5 refers to **Open Space Zoning Objective** and states:

The use of land as 'Open Space' shall be taken to include the use of land for; afforestation, playgrounds, housing estate open spaces, parks and development incidental to the enjoyment of open space including sports centres, outdoor recreation centres and landscaped areas, the provision of shelters, walks, walls, sanitary conveniences, play equipment, dressing rooms and similar facilities. It also provides for the use of such land or such facilities for games, educational and recreational purposes. High standards of accessibility are essential.

Objective **BTEO 15-02** states:

To ensure that development progresses in accordance with the landuse zoning objectives set out within this chapter [Chapter 15].

Table 15.9 lists the land use zoning matrix. *Health centre/clinic* is listed as ‘not normally permitted’ in the open space zoning.

5.2. Natural Heritage Designations

Dovegrove Callows SPA (Site Code 004137) is c. 3km to the north-west of the site.

Lisduff Fen SAC (Site Code 002147) is c. 4.5km to the south-east.

Sharavogue Bog SAC (Site Code 000585) is c. 4.5km south-west of the site.

Ballyduff/Clonfinane Bog SAC (Site Code 000641) is c.6km west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party has lodged an appeal against the Planning Authority’s decision to refuse permission. In summary it includes:

- The Council’s officials adjudged the PCC to be “appropriate” for this location, which was carefully considered, after receipt of further information, over a considerable period of time.
- The single reason for refusal struggles to specify how the proposal contravenes the Development Plan other than stating it would materially contravene objective BTEO 15-02.
- Zoning matrix states that health centres/clinics are ‘not normally permitted’ except in exceptional circumstances. It is asserted that there are exceptional circumstances surrounding this application. Consider that the issue of whether it is a material contravention is finely balanced. The Plan indicates that there are 3 factors that can influence the Council’s determination in this regard which are addressed below.
- (i) Envisaged negative impact on existing and permitted uses: proposal has support from all GPs in the town and half of the four pharmacists; it is clear there is misplaced concern for the impact of the pharmacy on Birr Town Centre; and existing open space will be significantly upgraded for the benefit

of the sporting organisation and wider community. It is clear that this application will have a wider positive impact on Birr as opposed to a negative one.

- (ii) Incompatibility with policies and objectives of the Plan: reason for refusal is not expended upon given that the objective assessment by the planning and technical sections of the Council recommended granting permission; Section 5.2.5 of the Plan outlines circumstances when the loss of open space will be countenanced – the quality of the existing open space will be significantly enhanced through improvement, and the reduction in the size of the training ground will be compensated by the transformation of neighbouring land into open space, there will be no overall net loss of open space in the area.
- (iii) the proper planning and sustainable development of the area: compatibility of proposal with existing land uses, together with its strong planning gain help substantiate the credentials.
- The pharmacy is addressed from the perspective of Retail Impact and precedent. Applicants consider that the pharmacy was one of the key factors underpinning the decision by councillors to refuse the material contravention. Restates view that pharmacy is ancillary to the primary use of the PCC which is accepted in the Planner's Report. Provide an assessment of the retail impact of the pharmacy which is considered to amount to 1.6% of total comparison goods floorspace.
- With respect to precedent reference is made to previous appeals to the Board whereby a pharmacy is considered ancillary to the PCC. The reference by an objector to a 2008 case in Killarney is not comparable having regard to its location on the N22 bypass.
- Consider the hearing into the material contravention appears to have attached significant weight to the anecdotal and unsubstantiated supposition that the pharmacy would act to the detriment of the town centre. No weight was given to the support of the local pharmacists (3 of 4) albeit one of the three has withdrawn their interest.
- 7 sites were assessed as alternative venues. At the hearing no substantive information was presented to indicate that a feasible site existed within the

town centre. The recent public ownership of part of the Rectory site was mentioned, however this site was investigated and dismissed on the grounds of access.

- It is stated that the HSE notes that the distance of the site from the town centre is little different to that in other towns namely Mullingar, Athlone, Kells and Longford. In many cases, sites outside the town centre are the only ones capable of facilitating the consolidation of all services under one roof.
- The proposal is contingent upon the prior provision of open space facilities by the applicant. The applicant assesses the development against the policy BTEP 05-07 and considers that granting permission would be in keeping with the spirit and purpose of BTEP 05-08.
- The applicant concludes that the finely balanced judgement to invoke the material contravention process has resulted in a last minute reversal for this long-running proposal to equip Birr with a state of the art PCC. The recommendation to grant permission based on a comprehensive and objective assessment by the Council's planning and technical sections has been overturned by the outcome of a subjective hearing into the material contravention.

6.2. Planning Authority Response

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

6.3. Observations

Two observations were submitted to the Board by objectors to the application at Planning Authority stage. In summary they include:

David O'Meara

- No objection to the sports element of the application.
- Proposal is not adequately described in respect of consequential impacts on other health care sites in the town.

- Scale of proposal is excessive and visually unattractive – building design is that of a large office block serviced by a carpark.
- Further elaboration is required with respect to the HSE proposals and what is being left in the town.
- Size of PCC for Birr having regard to HSE Guidance should be around 2,000sq.m not 3,000sq.m proposed. Birr proposal is disproportionately larger than most PCCs that have received planning permission. Table provided comparing floor space to 8 centres referred to by applicant. Birr is larger than any other centre.
- It would have been beneficial to have sought a sub-threshold Environmental Impact Assessment Report. This PCC will be the largest and most important piece of urban infrastructure to be developed within the lifetime of the Plan.
- Appellant seeks to minimise the importance of the reason for refusal regarding the material contravention. Concerned with the limited reasoning of the council behind the refusal and wish to ensure that the Board is fully aware of the incompatibility of the proposal with the Plan. Council have narrowed the relevance to a technical issue of zoning. Consider this is only one aspect, and a minor one, of the project's contravention of the Plan. Consider the proposal represents a fundamental departure from the Plan and not just a departure from the zoning matrix.
- Pharmacies are not a core element of the HSE PCC model but the HSE acknowledges that they are being incorporated into many centres. Pharmacies are a mainstay of the life of traditional town centres. The heritage of Birr is sustained by the use of old buildings as businesses, which would either be relocated or closed down as a result of the PCC. The Tullamore PCC decision is not a relevant precedent for a number of reasons, including the fact that Tullamore cannot boast a streetscape of comparable importance. Photos are provided of the use of old buildings for pharmacies and a dental practice in the centre of the town.
- With respect to alternative sites, there is disparity between the applicant's philosophy and the philosophy of the Plan. The applicant sees 'built heritage' in terms of complications, while the core strategy of the Plan is to recognise

the value of the built heritage of the town centre. Comparisons with other towns and locations of PCCs have limited validity.

- ‘The consolidation of all services under one roof’ cannot be accepted as a non-negotiable pre-requisite. Puts forward another possibility in accordance with HSE guidance but using minimum space and excluding a pharmacy. Notes largest spatial component is the car parking. HSE require ‘ease of access’ but this does not specify the provision of a dedicated car park. Possible to envisage a smaller PCC in the centre of Birr, half the size of the one proposed and serviced by a multiple use town centre car park. It could contribute to the attractiveness of the town centre and contribute to sustaining the long-term viability of the town. Thus believe that the lack of alternative sites is flawed because it is based on an unsubstantiated need for 3,000sq.m+ building with dedicated parking.
- Conclude that the PCC lease model for funding PCC development can lead to an unwarranted emphasis on commercial return. Other considerations must also be to the fore such as effective delivery of primary health care and broader considerations, such as cultural heritage and quality of life.

Conor Sheehan

- No exceptional circumstances justify a material contravention of the site’s zoning objective and the applicant has not demonstrated why site no.6 (the Mart) was discounted as an alternative site.
- Note the Planning Authority’s Senior Executive Architect’s Report of 11th April 2018 states that the development would undermine the viability of the existing pharmacies in the town centre.
- It will have a negative impact on the existing and permitted development in the town centre.
- Refers to section 5.2.5 of the Plan regarding loss of open space. Replacement facility will not be open to the general public unless satisfactory agreements are reached with the Rugby Club. The issue of public access is vague in the documentation. In the absence of evidence, it is unclear how replacing a sports facility with a new private facility will provide a high level of

accessibility to the entire town, or how there will be any public planning gain that might justify a material contravention. Section 5.2.5 states that replacement facilities should provide a high level of accessibility to the entire town – in this case the replacement facility is a private gain.

- The issue of site no.6 was not addressed in the Planner's Report or in the appeal. Policy BTEP 15-01 requires a sequential approach to development in general and not just retail. Suggest the Board should seek further information requiring the applicant to demonstrate that proper investigations were undertaken in relation to site no.6.
- Notes Senior Architect states the provision of a large pharmacy in an out-of-town location should not be approved due to the implications to existing Main Street.
- Birr has a higher than national average retail vacancy rate and a pharmacy in the PCC will attract a significant proportion of prescriptions which will have a dramatic effect on the viability of the town centre.
- Notes that 'shop' was a use 'open for consideration' in referenced ABP case Ref.244684. Notes shop is neither 'permissible' or 'open for consideration' on this site.
- Concludes that the application represents a threat to the viability and vitality of Birr Town Centre and will have a negative impact on the viability of other pharmacies in the town

7.0 Assessment

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

- Material Contravention of Birr Town Plan
- Other policies and objectives of the Birr Town Plan
- Appropriate Assessment

- Environmental Impact Assessment

7.1. Material Contravention of Birr Town Plan

- 7.1.1. The subject application was refused permission by the Planning Authority for one reason relating to the fact that the development of a primary care unit, in an area zoned as open space in the Birr Town Plan, would contravene materially objective BTEO 15-02. BTEO 15-02 states that it is an objective “*To ensure that development progresses in accordance with the landuse zoning objectives set out within this chapter*”. The Planning Authority had recommended that permission be granted, but the material contravention of the Town Plan was not passed by the Councillors and hence permission was refused.
- 7.1.2. The observers to the appeal submit that the proposal contravenes the Town Plan in more ways than the just the zoning objective. They consider that the proposed location of the Primary Care Centre (PCC) would undermine the vitality of the town centre which is contrary to many of the objectives of the Plan. They also submit that it would lead to more vacancies in the Main Street and thereby have implications for the built heritage of the town. No issues are raised with respect to the proposed improvements to the rugby facilities, albeit the ‘public’ nature of the club is queried.
- 7.1.3. The applicants consider that the material contravention is a finely balanced decision because the proposal would see a number of objectives of the Plan being achieved. It would result in improved leisure facilities for the community as well as improving health services.
- 7.1.4. Material contraventions of Development Plans with respect to appeals to the Board are set out in Section 37(2) of the Planning and Development Act 2000, as amended. For the convenience of the Board, I have provided the text of the Act below:

(2) (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the

development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

- (i) the proposed development is of strategic or national importance,*
 - (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
 - (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
 - (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*
- (c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan.*

7.1.5. In the first instance, I consider it appropriate to address whether or not the proposal is a material contravention of the Plan and if so, to consider the proposal with respect to Section 37(2) and the Board's role in granting permission whereby the Planning Authority has already refused permission. As stated by the applicant the issue is a finely balanced one, because the proposal would comply with a number of policies of the Plan, such as "*BTEP 05-08 It is the Councils' policy to cooperate with sporting organisations who wish to expand or develop their facilities*" and "*BTEP 11-17 It is the Councils' policy to look favourably upon primary care centres*".

7.1.6. Notwithstanding these policies, I am of the opinion that to grant permission would be a material contravention of the Plan due in principle to the zoning of the lands and the land use zoning matrix, and thereby objective BTEO 15-02. Section 15.2.5 of the Plan states that uses 'Not Normally Permitted' will not be favourably considered except in exceptional circumstances, and in such instances the development may represent a material contravention to the Plan.

- 7.1.7. The land use zoning matrix lists Dentist Surgery/Doctor Surgery or a Hospital as being *not normally permitted* in the Open Space zoning, as well as Health Centre/Clinic. Of note is the fact that Health Centre/Clinic and Hospital are permitted in principle, and Dentist Surgery/Doctor Surgery is open for consideration within the land use zoning Public/Community/Education, which is the land use zoning of the field bounding the river containing the clubhouse and where the all-weather training pitch is proposed.
- 7.1.8. The Plan clearly states that Health Centres (and for comparison purposes other medical related uses) are not normally permitted in the Open Space zoning and in the first instance, in my opinion, to consider granting permission would be a material contravention of the Plan. Thus, in my view the requirements of Section 37(2) of the Planning and Development Act 2000, as amended, must be considered by the Board.
- 7.1.9. I have reviewed each point (i) to (iv) under Section 37(2).
- Category (i): I am of the opinion that the proposal does not fall into category (i) because it is not of strategic or national importance.
 - Category (ii): I do not agree that there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned. The Plan supports both the development of a PCC as well as expansion or improvements to sporting facilities, but I do not consider that these objectives conflict with each other. I am further satisfied that the land use zoning objectives do not conflict.
 - Category (iii): I am satisfied that permission should not be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government.
 - Category (iv): I am satisfied that the pattern of development granted permission in the area since the making of the Plan would not warrant the Board granting permission. Development in the locality comprises mainly residential with the exception of the services station to the west of the site which has been permitted since 2008.

7.1.10. Thus, I am of the opinion that the Board cannot grant permission because the requirements of Section 37(2) have not been met.

7.1.11. However, should the Board consider otherwise, I have reviewed the planning merits of the case.

7.2. Other Policies and Objectives of the Birr Town Plan

7.2.1. Notwithstanding my opinion with respect to the material contravention process as laid out in Section 37(2) of the Act, I am of the view that with the exception of the issue of land use zoning, the proposal would result in the achievement of a number of policies and objectives of the Plan.

7.2.2. The Plan clearly supports the development of a PCC in the town, as well as improvements to health services as detailed in policies BTEP 11-16, BTEP 11-17 and BTEP 11-18. Furthermore, the Plan supports improvements to sporting facilities as detailed in policy BTEP 11-01 (see Section 5.1 above).

7.2.3. Policy BTEP 11-08 cautions against the loss of open space except in exceptional circumstances where a change of use may be sought, but it must be demonstrated that alternative recreational provisions are provided in the same area or in a suitable alternative location. The applicant contends that the development of changing rooms and an all-weather pitch in the field bounding the river, zoned public/community/education, where there is only hard surface currently, is a suitable alternative and there will be no net loss of recreational open space. I accept that there will be no net loss to the current amount of open space and sporting facilities already developed and in use based on the proposal. I note that the development of a PCC in the field zoned public/community/education has not been addressed by the applicant. A Health Centre/Clinic is acceptable in principle in that land use zoning.

7.2.4. A number of observers referred to the inclusion of a pharmacy as part of the PCC. Concerns were expressed that the inclusion of a pharmacy would have a detrimental effect on the town centre of Birr and have a negative effect on the vitality of the town. Other issues raised included the re-use of heritage buildings in the town centre if pharmacies were to relocate. The applicant states that the pharmacists supporting the proposal will maintain their services in the town centre. I am satisfied that a pharmacy is an ancillary use to the overall development and I do not consider that

there will be a seriously negative effect on the town having regard to the applicant's contention that the existing pharmacies will remain in-situ.

7.2.5. The design of the proposal was subject to change at the Further Information stage. The initial design was of concern to the Council's Senior Architect as well as objectors. Following the design changes at Further Information stage, the Senior Architect was satisfied, and I am satisfied that the design is acceptable.

7.2.6. In conclusion, I am of the opinion that the proposal would be acceptable with respect to numerous policies and objectives. I am satisfied that a pharmacy is ancillary to the main purpose of the PCC and will not have a seriously negative effect on the town centre. Moreover, I am satisfied that the location is edge-of-town centre and within easy walking distance of the Main Street. I am satisfied that the design as proposed following the Further Information response is acceptable and will not seriously injure the visual amenities of the heritage town. However, as noted in Section 7.1 above, I am of the opinion that the development of a PCC on lands zoned for open space is a material contravention of the land use zoning objectives. The land use zoning matrix clearly indicates that a Health centre/Clinic is a use not normally permitted. I am of the opinion that the proposal does not meet any of the criteria listed in Section 37(2) of the Planning and Development Act which provides for the Board to materially contravene a Plan when a Planning Authority have refused permission. Consequently, I am recommending refusal of permission on that basis.

7.3. **Appropriate Assessment**

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

7.4. **Environmental Impact Assessment**

The proposed development is not a class listed within Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations and therefore no EIA Screening is required.

8.0 Recommendation

I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the zoning provisions of the Birr Town and Environs Development Plan, 2010 – 2016 (extended until 2020) for the area within which the site is located being 'Open Space', it is considered that the proposed development of a Primary Care Centre would be contrary to the zoning objectives aimed at promoting open space, sports, recreation and amenity uses at this location. The proposed development would materially contravene the open space land use zoning objectives, as set out in the said Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

Ciara Kellett
Senior Planning Inspector

18th October 2018