



An
Bord
Pleanála

Inspector's Report ABP-302377-18

Development	Upgrading, reconfiguration and change of use of existing car showroom and retail units to provide for 2 no. car showrooms, staff facilities, public toilet and all associated site works
Location	Balmoral Estate, Kells Road, Navan, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	NA180163
Applicant(s)	Foxtrot Investment 2011 Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Sean Lynch
Observer(s)	None
Date of Site Inspection	16 th of November 2018
Inspector	Angela Brereton

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1.0 Site Location and Description

- 1.1. The site is located within Balmoral Industrial Estate and is on the northern side of the Kells Road (N51 now the R147) and on the opposite side of the road from Navan town centre. The Balmoral Industrial Estate is characterised by low rise units and is at a lower level than the public road. There is a mixture of single/two storey industrial/commercial/warehouse type buildings and an extent of surface car parking, including vehicles for sale associated with the subject application site. Most of the buildings appear occupied and there is an extensive parking area including that occupied by cars 'for sale' to the west. The subject site is located at the south west corner of the existing industrial estate and is currently occupied by low rise units. These include car showrooms for Navan Nissan and Hyundai and other commercial premises.
- 1.2. The Estate is accessed via a traffic light controlled junction and roundabout from the busy Kells Road. There is an internal access road that serves the various units within the estate. There is also a gated access at the site frontage to the Kells Road which was closed on the day of the site visit and does not appear to be generally in vehicular use. Internal signage on the gate 'Please Use Other Exit'. The sign visible from the roadside reads: 'Main Entrance 100 Metres Left at Junction', referring to the aforementioned junction. There is a pedestrian entrance as this gate which was open on the day of my site visit.
- 1.3. The river Blackwater runs along the northern boundary of the estate. This can be seen from the green area to the east of the roundabout. There are currently no linkages from the Balmoral Industrial Estate to the riverside area. There is a footpath and boundary fencing along the road frontage and to the roundabout, but not within the estate. There is a residential area on the opposite side of the Kells Road with houses which are located some distance from the site.

2.0 Proposed Development

- 2.1. This is to consist of the following:

- Upgrading, reconfiguration and change of use of existing car showroom and retail units to provide 2no. car showrooms (781sq.m), workshop (563sq.m), parts store (150sq.m) and ancillary staff facilities and public toilet (109sq.m).
- 2no. free standing double sided signs; upgrades to the existing signage and shopfronts including new glazing and cladding;
- Reconfiguration of the existing car park and yard to provide for 92no. car parking spaces; concrete paved forecourt area and reconfiguration of internal road.

The proposed development includes all engineering works, landscaping works, boundary treatments and site development works on the approx. 0.70 ha site.

The application form notes that the g.f.s of the existing building is 1,602.60sq.m and no additional floor space is proposed.

3.0 Planning Authority Decision

3.1. Decision

On the 27th of July 2018 Meath County Council granted permission for the proposed development subject to 24no. conditions. These conditions include regard to issues relative to infrastructure, signage, construction and development contributions. The following are also of note:

- Condition no.2 restricts the use to that submitted.
- Condition no.3 has regard to external finishes.
- Condition no.4 has regard to the right of way and turning movements onto the Kells Road i.e: *Prior to the commencement of development on site the applicant shall agree details in writing with the Planning Authority regarding the turning movements required to accommodate the existing right of way within the site, including its junction with the Kells Road, R147.*
- Condition no.5 - Provides for Road Safety Audits (Stage 1 – 4).
- Condition no.6 – Provides for Footpaths and Cycleway.
- Conditions nos. 12-14 Signage.

- Condition no.18 – Provides a restriction on hours of operation.
- Condition no.24 – Special Development Contribution.

3.2. Planning Authority Reports

Planner's Report

This had regard to the location of the site, planning history and policy and to the submission made and to the recommendations of the interdepartmental reports. Their Assessment included regard to issues relative to the Principle of Development, Design of the proposed development, Access and Car Parking, Water Services and Appropriate Assessment. The following is noted:

- The building is already in use for motor sales and the proposed alterations are acceptable in principle in this 'C1 Mixed Use' land use zoning.
- It is in compliance with Navan 2030 proposals which seek to enhance the physical attractiveness of the town and improve movement and access in and out of the town centre.
- They consider the design and layout of the alterations included in the proposed development to be acceptable.
- They had regard to the Transportation Section's comments on the access arrangement and to sustainable transport issues. They noted the comments of the NTA relative to the provision of a bus stop.
- They had regard to the Water Services Section comments and consider that further information is required in relation to the surface water attenuation system.
- The Planner's Report refers to the NIS submitted with the concurrent larger scale application Ref.ABP-300375 -18 on the adjoining site and note that the current proposal is more minor and in their opinion an AA is not required.
- They also note this relative to the Inspector's conclusion for the previous application on this site Reg.Ref. NT/70020, PL32.225473 refers.

Further Information request

This included the following:

- To clarify the status of the existing 'right of way' onto the Kells Road.
- To submit a revised site layout showing parking for HGV car delivery trucks and to demonstrate turning movements on site.
- Revised Site Layout Plan to accommodate cycleway and bus stop along the site frontage of the R147.
- Revised Attenuation System and details of permission to provide a surface water connection to the existing LA drainage scheme.
- To address Irish Water's requirements in relation to water and wastewater provision.
- To address the concerns of the third party submission.

Further Information Response

John Spain Associates has submitted an F.I response on behalf of the Applicant to include the following:

- They provide a clarification on the 'right of way' issue and taking consideration Condition no. 4 of ABP Ref.PL32.225432.
- A revised Site Layout Plan has been submitted showing parking for the HGV parking and their turning movements.
- A drawing has been submitted showing future pedestrian and cycling access through the site.
- A drawing has been submitted showing the new cycle way and bus stop along the southern boundary of the site. A letter of consent from the Council is included and the boundary has been revised to reflect inclusion of the cycle lane and bus stop within the planning application boundary area.
- A revised drainage design (Engineers Hendrick Ryan and Associates – Appendix 2) which includes details regarding surface water and details and drawings relating to the existing water services infrastructure has been submitted.
- They provide a response to the Submission made including relative to Phasing and Condition no.4 of Ref.PL32.225473.

- Appendices 1 – 4 are included.
- Revised Public Notices have been submitted.

Planner's response

The Planner had regard to the F.I submitted, to the further submissions made and to the interdepartmental reports including from Transportation and Water Services. They had regard to all the documentation submitted including issues concerning the access. They concluded that the proposed development represents a logical development to improve the operation of an existing building. They recommended permission be granted subject to conditions.

3.3. Other Technical Reports

Water Services

They have regard to surface water treatment and disposal and considered the proposed attenuation system unacceptable and recommended that a revised system be submitted. They also recommended a number of conditions.

They include regard to Irish Water comments and recommendations relative to drainage issues and wastewater disposal.

In response to the F.I they also considered that the proposed aquacell attenuation system is unacceptable and recommended that it be conditioned that a revised system be submitted and conditions relative to surface water drainage.

Transportation Office

They have concerns relative to the continuing operation of the existing/previous access to the Kells Road R147 now that the signalised junction is in operation. In response to the F.I submitted they have no objections subject to conditions relative to this access point and that a Road Safety Audit (Stages 1 - 4) and amended drawing incorporating Stage 2 recommendations be submitted. They also recommended conditions relative to boundary treatment, signage and the inclusion of a special levy for €25,000 towards footpath and cycle infrastructure to facilitate the proposed development.

3.4. Prescribed Bodies

National Transport Authority

They do not object to the proposed development and provide that provision should be made for the provision of a bus lay-by on the Kells Road and for pedestrian and cyclist access within the site all within the Masterplan lands in accordance with Objectives.

In response to the F.I submitted they provide that while they have no objection to the principle of development they have a number of comments and recommendations relative to the proposed cycle track and bus stop and recommend that these should be designed in accordance with the *National Cycle Manual*.

Irish Water

They have no objections subject to conditions

3.5. Third Party Observations

Regard is had to the Submissions made, as these raise similar issues and are from the subsequent appellants, they are considered further below in the context of the Third Party Grounds of Appeal.

4.0 Planning History

Adjacent site to the north west

NA14/1115 – Permission granted by the Council for the demolition of existing business premises of 3 no. storey over basement car park and the construction of a retail, cinema and commercial building together with all associated site development works. This was subsequently refused by the Board Ref. PL17.245015 relates.

Adjoining Site to the east

- NT/70020 – Permission was granted by the Council and subsequently subject to conditions by the Board for the demolition of the existing buildings and the construction of a mixed use development (15,225sq.m of accommodation) set out over five storeys plus penthouse level (six storeys in total) and all ancillary

works. Retail units were to be included at lower/ground floor levels with office accommodation at first, second and third floor levels and 13no. apartments at fourth floor level. The application also included modifications to the existing Kells Road/N3 Inner Relief Road junction and new roundabout to be constructed on behalf of Meath County Council. 381no car parking spaces and 52no. bicycle spaces all at Balmoral, Kells Road, Navan.

This was subject to appeal and was subsequently granted by the Board Ref. PL32.225473 relates. It is noted that while an extension of duration was granted this permission has now expired. A copy of this decision is included in the History Appendix of this Report.

- NA171476 – Permission granted by the Council subject to conditions for the demolition of existing single and two storey warehouse buildings within the western portion of the site and construction of 6no. storey mixed use building and all associated works. This is the subject of a concurrent appeal to the Board Ref. No. ABP-302375-18 relates.

It is also of note that Appendix 1 of the Planning Report submitted with the application provides details of the Relevant Planning History at Balmoral Industrial Estate.

5.0 Policy Context

5.1. Meath County Development Plan 2013-2019

Section 2.3.3 notes: *The former Town Development Plans for Navan, Trim and Kells are to be read as part of the County Development Plan pursuant to Section 11(c) of the Planning and Development Act 2000 as amended.*

Section 2.9.4 refers to the Land Use Zoning Objectives applicable to all statutory land use plans in the County and for the zoning objectives for the urban centres to be contained within the CDP. The site is zoned 'C1 Mixed Use' where the objective is: *To provide for and facilitate mixed residential and business uses.*

Section 3.4.2 describes Navan as a Large Growth Town 1 where the policy of the Development Plan is to promote economically active towns supporting the

surrounding area and maximising their location on multi modal corridors. They also seek to support critical mass.

Objective SS OBJ 8 seeks: *To develop Navan and the Drogheda Environs as the primary development centres in Meath and to ensure that the settlements grow in a manner that is balanced, self-sufficient and supports a compact urban form and the integration of land use and transport.*

Section 4.1.1 seeks to develop Navan Core Economic Area and development objectives include: *The significant intensification of employment opportunities in Navan to serve the large resident population is a strategic objective of the Development Plan.*

5.2. **Navan Development Plan 2009-2015 (as varied)**

Note: The Navan Development Plan 2009-2015 incorporating Variation 1 relative to the Core Strategy is still enforce as per Section 11C of the Planning and Development Act 2000 (as amended).

The appeal site is governed by the policies and provisions contained in the Navan Development Plan, 2009-2015. The site is zoned 'C1' with the objective to: *"provide for and facilitate mixed residential and business uses"*.

On 'C1' zoned land there is a requirement for proposed developments to include at least 30% of a given site area for commercial, non-retail, development.

Section 3.2 of the Development Plan indicates that the Action Area Plan 2 was approved in early 2008. Under Variation No. 1 of the Development Plan the subject site which formed part of Action Area Plan 2 was re-named to Masterplan 2 and noted as being land zoned predominantly for mixed use commercial activity. It indicates that applications for development on these lands shall be required to be in accordance with the existing plans unless alternative proposals are provided to the satisfaction of the Planning Authority as part of a planning application. The Area Action Plan sets out a broad framework for development on these lands.

5.3. The Planning System and Flood Risk Management Guidelines for Planning Authorities, 2009

These guidelines set out the methodologies for flood risk identification, assessment and management in relation to development proposals. In this regard they advocate the carrying out of a plan led justification test where it is intended by the Planning Authority to designate land for development which is at a moderate to high risk of future flooding.

5.4. Natural Heritage Designations

The River Boyne and River Blackwater SPA and SAC (site codes 004232 and 002299) is located 90m to the north of the site. This designation includes the river itself and a small piece of land to the south of the river, and to the east of the application site. The application site is not within the SAC.

6.0 The Appeal

6.1. Grounds of Appeal

A Third Party Appeal has been received from Sean Walsh. His grounds of appeal are summarised as follows:

- He contends that condition no. 4 of PL32.225473 has not been complied with to date and refers to documentation attached which includes correspondence between Meath Co.Co. and Meath Co. Solicitors and considers this information contradictory.
- Enforcement proceeding were issued for non-compliance with Condition no.4 of PL32.225473 and yet there is clear evidence in the form of photos proving that the relevant entrance did not cease to be in operation.
- He queries why UD14231 file was closed if the existing entrance was and still is operational.
- He attaches images of recent usage over the last no. of years as evidence that this is still the case and will continue to do so against this condition.

- He submits that Phase no.1 of the proposed development as applied for in 2007 has not been complied with and it states that phase 2 cannot be started until this phase has been completed.
- He is the current owner of a commercial property within Balmoral Estate. He has a formal unfettered 'right of way' from his premises to the main road and through the original entrance which is the subject of condition no. 4 of PL32.225473.
- He has been trying to protect the rights to and of his property since the beginning of the planning process and refers to his constitutional rights and provides that he is not prepared to surrender his ownership.
- He includes documentation in support of his appeal, including regard to details of enforcement history and legal proceedings relevant to non-compliance with condition no.4 of PL32.225473.

6.2. Applicant Response

John Spain Associates has made a response to the Third Party grounds of appeal on behalf of the Applicant s, Foxtrot Investment 2011 Limited. Their response includes the following:

- The appeal is focused on property rights issues and do not contain any substantive planning issues relating to the proposed development.

Right of Way

- They note the appellant's concerns regarding retention of their right of way.
- A review of the planning appeal confirms that the principal issue relates to property rights rather than any substantive planning matters. As such in accordance with Section 138 (1)(b) of the Planning and Development Act 2000, they submit to the Board to dismiss both appeals on the basis that the nature of both appeals do not relate to any substantive planning issues.

Enforcement Issues – Non-compliance with previous planning permission

- The appeal by Mr Sean Lynch relates to a historic enforcement matter regarding an alleged non-compliance with Condition no.4 -PL32.225473

relative to a previous grant of planning permission on the subject lands. This file is now closed.

- Enforcement matters and interpretation of such conditions imposed in decisions are primarily the responsibility of the Council in this instance. This is not relevant to the proposed development which is the subject of this appeal.
- All issues relating to property matters including rights of way and historic enforcement matters were comprehensively dealt with at planning application stage and F.I stage. This was deemed acceptable by the Council and this is reflected in the notification to grant planning permission subject to conditions.
- From a legal perspective, a number of single unit owners to the rear of Balmoral Estate seek to maintain access to the existing entrance, although a newly constructed and fully compliant/signalised junction is now in place to serve the overall Estate, over which these owners have full use. The gate remains locked and is not accessible to the general public and is for the most part unused.

Conclusion

- They submit that the appeal is focused on property rights issues and a historic enforcement issue which is not relevant to the proposed development which is the subject of this appeal.
- The third party appeal does not relate to any substantive planning issues. These matters have been fully addressed by the applicant in their submission to Meath County Council on this planning application.

They request the Board to dismiss the appeal under Section 138 of the Planning and Development Act, 2000 (as amended).

6.3. Planning Authority Response

They note that the issues raised by the Third Party Appellant include:

- Non compliance with Condition no. 4 of PL32.225473
- This condition has not been complied with in phase one therefore phase 2 cannot commence.

They provide that the proposed development was considered by the PA to be consistent with the policies and objectives as outlined within the Meath CDP 2013-2019. They refer the Board to the Planner's Report dated 27th of July 2018. They request the Board to uphold the decision of the PA to grant permission with the conditions intact.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. The site is zoned 'C1 Mixed Use' with the Objective Meath CDP 2013-2019 i.e: *To provide for and facilitate mixed residential and business uses.* Uses open for consideration include *Motor Sales/Repair.* It is also provided in the that *C1 zones have been identified to encourage mixed use development and for this reason it will be a requirement to include at least 30% of a given site area for commercial (non-retail) development.* Also: *There shall be no restriction to the definition of office in C1 land use zones.* As the building and the subject site area is already in use for motor sales purposes, and have been for some time, this is considered to be an established use. It is therefore considered that the proposed development is acceptable in principle.
- 7.1.2. The Navan Development Plan 2009-2015 as amended requires the agreement of a Masterplan as described in the Planner's Report in respect of the subject lands. It is provided that a Masterplan for the development of Balmoral Industrial Estate through six phases was agreed with the Council in October 2017. This application is intended as phase 2. The purpose of the Masterplan is to set out a vision and framework for the mixed use development of the lands ensuring the delivery of quality mixed use zoning in accordance with the 'C1' land use zoning. The subject site forms part of a larger site extending to the east which forms part of an area designated as Masterplan 2.
- 7.1.3. It is of note that the Grounds of Appeal primarily relate to access and right of way issues and reference is had to Condition no.4 of NT70020/ABP/ Ref PL32.225473 and to Phasing of development within the Masterplan Lands. It is of note that the Planning Statement submitted with the application provides that if approved this

proposal will form Phase 2 of the wider Masterplan area. The subject building of this planning applicant is identified as 'Upgraded Existing Buildings' within the current Masterplan. Also, Phase 1 relates to the subject of the concurrent application on the adjoining site to the east N1171476 (now also the subject of a separate appeal Ref. ABP-302375-18 refers).

- 7.1.4. These issues are discussed in the context of this Assessment below. However, as it is not stated in the grounds of appeal that they are specifically against any Condition of the Council's current permission e.g. Condition no.4 relative to the subject site, it is in order therefore, that this application be considered *de novo*, having regard to the issues raised and the details and documentation submitted.

7.2. Design and Layout

- 7.2.1. The proposed development is to consist of the upgrading, reconfiguration and change of use of existing car showroom and retail units to principally provide for 2no car showrooms (781sq.m), workshop (563sq.m), parts store (150sq.m) and ancillary staff facilities and public toilet (109sq.m). Floor plans and elevations have been submitted showing the proposed changes to the existing single storey building and site. No extensions to the building are proposed. It is noted that Nissan and Hyundai will have separate showrooms in the northern part with a combined new larger workshop area in the southern part of the building.
- 7.2.2. It is noted in the Outline Construction Management Plan, that the existing commercial single storey commercial building is to be retained and modified as necessary as part of the upgrade/reconfiguring works. It was built in the 1990's and constructed of steel portal frame with masonry/cladded walls and cladded roof. The 'part' remaining existing asbestos roof is to be removed and localised openings within the existing walls to be filled/created as necessary. A soft strip of the internal non-load bearing partitions, fixtures and fittings is to be carried out as part of the proposed upgrade works. It is provided that the existing building is to be retained with minimal regrading of the site area carried out. All final details are to be constructed in accordance with engineering details. No substructure/basement storey construction is to be carried out as part of the (Phase 2) proposed works.

- 7.2.3. The proposed development will improve the appearance and functionality of the existing building and parking and circulation system relative to the established use as car showrooms, and provide a larger workshop facility. However, it must be noted that when seen in context with the proposed six storey building to the south east i.e. concurrent application and appeal – NA171476- ABP-302375-18 refers, it will appear as shown on the Contiguous Elevations submitted, very understated, particularly when seen from the R147. However, it will be seen more in context of the established use and the existing low profile units/buildings in the Balmoral Industrial Estate.
- 7.2.4. It is also provided, that it is not proposed to alter the existing vehicular, pedestrian and cyclist access into the estate. If temporary routes are required at any stage of the works these shall be provided. Regard is also had to the Construction and Demolition Waste Management Plan submitted. It is recommended that if the Board decide to permit that it be conditioned that a Construction Management Plan be submitted.
- 7.2.5. It is also proposed to upgrade the existing signage on site and on the building. This includes 2no. free standing double sided signs, upgrades to the existing signage and shopfronts, including new glazing and cladding, reconfiguration of the existing car park and yard to provide 92no. car parking spaces, concrete paved forecourt area and reconfiguration of internal road. The proposed development includes all engineering works, landscaping works, boundary treatments and site development works on the approx. 0.7ha site.
- 7.2.6. A drawing has been submitted showing 2no.double sided totem signs proposed (1) for 'Hyundai' and (2) for 'Nissan'. Both are proposed in their company colours 6m in height and 1.5m in width. The Site Layout shows the location of the proposed Nissan and Hyundai totem signs at either end of the building at the site frontage close to the southern site boundary with the R147. In view of the set down of the site below the level of the road they are considered to be acceptable.

7.3. **Traffic issues**

- 7.3.1. Section 11.1.8 'Traffic and Transport Assessments' of the Meath CDP 2013-2019 sets out that applications for developments that are likely to have a significant effect

upon travel demand should be accompanied by a TTA. A Traffic Assessment has been submitted with the application. This is a copy of and of more relevance to that submitted for the concurrent more significant application for the 6 storey mixed use development proposed on the adjoining site Ref. PL17.302375 refers. The purpose of the TTA is to describe the existing and likely future traffic flows. It discusses the results of traffic flow and junction capacity assessment undertaken to identify the likely potential level of traffic impact arising from the proposed development of Phase 1 Balmoral, Navan.

- 7.3.2. The TTA also includes assessment of the site infrastructure to accommodate the traffic generated to the Masterplan lands encompassed within Balmoral Estate and the greater lands within the MP2. The entire MP2 area is accessed via the same traffic signal junction (now existing from the N51/R147). The TTA includes traffic issues relating to the existing site access and the traffic signal junction.
- 7.3.3. Recommendations and proposals provided in the assessment are based upon the existing and likely future road layout and traffic characteristics together with onsite observations and measurements, traffic survey data and industry standard traffic data analysis. Regard is had to existing and assumed traffic generation on the MP2 lands.
- 7.3.4. The Board previously granted permission on condition that the project be completed in two separate phases where Phase 1 encompassed the completion of the roads infrastructure including the internal roundabout – Condition no.2 refers. It is provided that the Cannon Row signalised crossroad has been constructed as per the proposals of (Reg.Ref.NA/70020 - PL32.225473 refers) the previous permission and includes for dedicated right turn lanes on both the N51 approaches together with dedicated ahead and ahead/left turns.
- 7.3.5. The access road leads from the signals to an internal roundabout designed to provide access to the industrial estate and lands to the west. The traffic signal junction provides for pedestrian crossings and also provides internal access to the Industrial Estate. The TTA notes that the signal junction is the sole vehicular access to the MP2 lands. Also, that the Phase 1 works have now been completed to the satisfaction of the PA.

- 7.3.6. To estimate likely future traffic generation to the proposed development and the potential developments included in the Masterplan reference has been made to traffic modelling including the TRICS database and to other planning applications for similar developments.
- 7.3.7. Details are given of the proposed 6no. Phases of Development in Section 5.2 of the TTA. While the concurrent application for the Retail unit with Office/Medical over and car parking at basement level is referred to as being Phase 1, Phase 2 car parking with further office/enterprise/commercial space and retained space and the Car Showroom is referred to as being in Phase 3. This includes that *to suit general construction sequencing that it is intended that the new showroom would be constructed in the general location of the existing unit with potential office use over part of this demise*. Subject to planning for the purposes of the TTA they provide that this phase would be completed c. 2019/2020.
- 7.3.8. They provide TRICS database traffic generation figures relative to the proposed Car Sales Showroom (1,020sq.m). This is considered in the TTA along with the proposed mixed use (ABP-302375-18 relates). For the purposes of the assessment it is provided that all traffic to the proposed medical/office development is assumed to be totally new to the receiving road network. Phases relative to separate uses 4, 5 and 6 are also considered.
- 7.3.9. In line with the guidance provided in Transport Assessment Guidelines, modelling analyses of the capacity of the receiving road network was carried out for, the Surveyed Traffic Flows (basis of comparison), Opening Year (Assumed 2018), Opening Year +5 (2023) and Opening Year +15 (2033). Table 5.12 of the TTA provides a summary of the AM and PM peak hour traffic generation to each of the component elements of the proposed development spanning the above time periods and development phasing.
- 7.3.10. Regard is had to existing and assumed future traffic generation on the MP2 lands. The scope of future year assessments focuses on the operation of the proposed MP2 at N51/R895 Cannon Row Traffic Signal Junction. Under the Phase 1 scenarios the forecast development traffic is added to the existing surveyed traffic at Balmoral Industrial Estate, in subsequent analyses of the complete development the existing Balmoral Industrial Estate has been discounted.

7.3.11. The computer modelling program OSCADY has been used to assess the existing and future performance of this junction. The results of the analysis show that the junction will perform within capacity without significant queues or delays. The analyses confirm that the impact of the proposed Phase 1 development traffic in the morning and evening peak periods is not likely to be significant. The analyses include a scenario where no development whatsoever occurs on the MP2 lands, a scenario in which includes the construction and occupation of the entire Masterplan development of Balmoral Industrial Estate and a further scenario which includes for not only the Masterplan development but the development of all lands included in the MP2. The results of the analysis show that with the entire MP2 lands fully developed and occupied the junction will perform within capacity without significant queues or delays in the years 2023 and 2033.

7.3.12. A comparison is provided with the previous Assessment in PL32.225473, having particular regard to condition nos.1-4 which relate principally to the road infrastructure serving the site. It has been provided that Phase 1 of the development was completed to the satisfaction of the PA and the signalised crossroad and roundabout now serve as the singular access to the Balmoral Industrial Estate.

7.4. Condition no.4 of PL32.225473

7.4.1. The Board's permission PL32.225473 was granted an extension of duration to the 28th of May 2016 which has now expired. The Third Party is concerned that Condition no.4 of this previous permission has not been complied with. Section 2.4 of the TTA has regard to the previous permission. This notes that the proposed development then included modifications to the junction of the existing Kells Road and the N3 Inner Relief Road. Subsequently the Kells Road (formally the N51) was downgraded on the opening of the M3 motorway which by-passes Navan.

7.4.2. It was noted that these modifications included for the creation of a new access then signalised T-junction at Cannon Row thereby creating a signalised crossroad junction and the construction of a new roundabout within the development site. They note that Condition no.4 confirmed that the installation and construction of the signals and roundabout were to be planning authority requirements and that the then existing ghost island direct access to the Balmoral Industrial Estate from the Kells Road (west of Cannon Row) would be closed. Phase 2 was to consist of the

remainder of the development but was not permitted to commence until each element of Phase 1 was completed and certified in writing by the planning authority.

7.4.3. Phase 1 of the proposed mixed use development included the works to the signalised crossroad and the construction of the internal distributor roundabout which now provides access to the Balmoral Industrial Estate and the MP2 lands. It is provided that Phase 1 of the development was completed to the satisfaction of the PA and the signalised crossroad and roundabout now serve as the singular access to the Balmoral Industrial Estate. Phase 2 of the development has not as yet been implemented. The reason for this is understood to be mainly economic which corresponds to the timing of the grant of permission in May 2008.

7.4.4. The Planner's Report relative to the current application notes that the new junction has been completed to the satisfaction of Meath CoCo and formal handover was completed on the 09/07/14. It also states that Condition no. 4 of NT/70020, Ref.PL32.225473 has been complied with. Also, that a Masterplan for the development of the lands has been agreed with the Council. The Planner then provides that this is considered acceptable. However, they note that it may be necessary to address the status of the old access in terms of safety of the continued use of this access. This is also noted in the context of the Council's Transportation Sections comments and recommendations. It is of note that the Appellant refers to Enforcement issues relative to this condition. However, Enforcement is not within the remit of the Board, and is more appropriately dealt with by the Enforcement Section in the Council.

7.5. **Permeability issues**

7.5.1. The NTA note that Navan 2030 Plan sets out measures for improved access and movement in and out of the town centre. A recent Part 8 (P8/17004) includes provision for town centre circulation, infrastructure improvements and park & ride facility. It is noted that the proposed development lies within the AAP2 Masterplan (Masterplan 2) lands. They provide that consideration should be given to the Objective for provision of a bus lay-by on the Kells Roads to serve the development of these lands which have become a significant trip attractor. They also note the need to facilitate Pedestrian and Cyclist access. In this context a footpath and cycle

track need to be provided on the access road and continued from the site of the concurrent application for the adjacent discount foodstore/medical centre.

- 7.5.2. It is of note that in response to the Council's F.I request the applicant has submitted a drawing showing future pedestrian and cycling access through the site. They have also prepared a revised site layout plan showing the new cycle way and bus stop along the southern boundary along the Kells Road. It is noted that the provision of the cycle lane and bus stop along the southern boundary requires the extension of the planning application boundary beyond the applicant's ownership. As such a letter of consent from the Council (Appendix 3) is included for these lands. The red line boundary has also been revised to reflect the inclusion of the cycle lane and bus stop within the application boundary area.
- 7.5.3. In response to the F.I submitted the NTA recommends that details of the integration of the cycle lane and bus stop should be designed in accordance with the *National Cycle Manual* to reduce conflicts and to ensure the safety of cyclists, pedestrians and public service/transport users. They also recommend that in accordance with Objective MO1 a cycle lane should be included in the design of the access road with the Balmoral Estate and this should be designed in accordance with this Manual.
- 7.5.4. The building has been and is to be used as a car showroom and heavy goods vehicles will be used to make deliveries to the showroom. As part of the F.I the applicant was requested to submit a revised site layout showing parking for HGV car delivery trucks and to demonstrate their turning movements through the site. The site Layout Plan shows the carpark to the west of the building reconfigured to provide 92no. spaces. This will be an improvement on the existing layout for the 'cars for sale' which lacks order and properly marked out spaces and circulation route. A revised Site Layout Plan has also been submitted showing the new cycle way and bus stop along the southern boundary of the site with the R147. The red line boundary has also been revised to reflect the inclusion of the cycle lane and bus stop within the application boundary area.

7.6. Right of Way issues

- 7.6.1. The Third Party Appellant is concerned about the impact of the proposed development on their 'right of way'. They provide that they have always benefitted

from a right of way to their property from the now closed entrance from the Kells Road. They note that in agreement with the Council the applicant of the current application constructed a new entrance from the Navan Inner Relief Road. They provide that the construction of this entrance has infringed on their right of way by creating a traffic hazard. This is mainly due to its position, the difference in ground levels and the consequent steep gradient of the access road from the public road to Balmoral Estate.

7.6.2. They also note that a section of a building was demolished by the applicant to provide them with a new right of way. They provide that there is no current legal agreement in place in this regard. While they use this right of way they could be forced to abandon it at any time. They are concerned about traffic hazard for cars exiting their site. They note that it is necessary to drive into the oncoming traffic lane and this manoeuvre is more dangerous when driving a larger vehicle. They consider that it would be safer to revert back to using the original entrance.

7.6.3. The F.I response from the Applicants notes that Condition no.4 of Ref.PL32.225473 required the existing entrance to the Balmoral Estate to be closed within one month of the opening of the signalised junction with the N3. A locked gate now exists at the existing entrance which generally remains closed to the public. From a legal perspective a number of single unit owners to the rear of the Estate seek to maintain access to the existing entrance, although a newly constructed and fully compliant/signalised junction is now in place to serve the overall Estate, over which these owners have been granted full use. The gate remains locked and is not accessible to the general public. They provide that no material works are envisaged in this application which will affect the use of the existing right of way indicated in yellow on the attached Estate Map (Appendix 3 of their submission), which will remain in the ownership of the Applicant. Also, that in the event that temporary alternative access be required at any stage of the proposed works, then safe and suitable access will be provided to and from the Estate for any required users. They include a Report prepared by Trafficwise Ltd consulting engineers in Appendix 5 of their FI response to provide clarity in relation to the right of way onto the Kells Road.

7.6.4. The First Party confirm that the 'right of way' is to be retained. No material works are envisaged under this application which will affect the use of the existing right of way. It is to be retained as a one-way access. However, the gates onto the Kells Road are

to remain locked and not accessible to the general public with only a number of single unit owners to the rear of Balmoral Estate seeking to maintain access to the entrance. They have regard to wayleaves shown yellow. They provide that the Appellants have not been impinged by the proposed development with regard to access to the Kells Road. It is noted that the signalised access junction to the N51 is now in place to serve the overall Estate over which there is (including for the Appellants) full access and egress.

- 7.6.5. Appendix 4 of the F.I response contains the Trafficwise Ltd response in relation to the Right of Way onto the Kells Road. They have regard to Condition no.4 of the Council's permissions relative to the concurrent applications (refer also to NA/171476 – Ref.ABP-302375-18). They provide that the original entrance to the Balmoral Industrial Estate, referenced in current Condition no.4 ceased to be operational for public access or for general access to the Estate after the opening of the new access from the traffic signal controlled junction. The existing gates are retained and are closed/locked and there is signing including chevrons along the fence and gate highlighting that access is via the traffic signal junction. Therefore, there is no access for the general public via this gate.
- 7.6.6. The Council's Transportation Section comments that the proposed development is accessed via a signalised junction on the Kells Road which was upgraded for the applicant some years ago. The existing/previous access point onto the Kells road at the western side of the proposed development was to be decommissioned on completion of the new junction but is still in operation, though to a minor extent. They provide that the continued use of this entrance, in particular right and left turning movements from the R147, could impede traffic flows and result in traffic hazard.
- 7.6.7. The proximity of the bus stop could also increase the risk of vehicular collisions at this location. Their preferred solution is for this entrance to be closed. Their response to the F.I includes regard to this issue and they recommend that a Road Safety Audit (Stages 1 - 4) for the entire development be carried out, with the amended drawings and road layout submitted for the agreement of the Council. Also, a footpath and cycleway are proposed on the Kells road fronting this site as part of the R147 Sustainable Transport Corridor and this must be reflected in the overall design of the development.

7.6.8. The First Party provide that the gate and access is in the ownership of the Applicant (Foxtrot Investments 2011 Limited). Owners of units in the Balmoral Estate retain historic legal rights to this entrance. While the majority of the units in the Estate now use the current approved access arrangement some individual unit owners seek to retain these rights. The Applicant has facilitated this with keys to the gate for the individual unit owner. There is sufficient space between the gate and the Kells Road for the user to stop to open/close the gate without impeding the flow or safety of vehicles travelling along the Kells Road. They understand that the PA has monitored this infrequent usage insofar that such minimal use satisfies the requirements of Condition no.4 of the previous permission. They confirm that as stated the 'right of way' is to be retained.

7.6.9. It is of note that the issue of ownership or 'right of way' is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*"

7.7. Regard to Special Contribution

7.7.1. Section 48(2)(c) of the Planning and Development Act 2000 as amended provides for special development contributions i.e: *A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.*

7.7.2. Regard is also had to Section 48(12) which notes that where payment of a special condition is required in accordance with Section 48(2)(c) the following provisions shall apply: (a) *the condition shall specify the particular works carried out, or proposed to be carried out, by the local authority to which the contribution relates.*

7.7.3. The Development Contributions Guidelines for Planning Authorities 2013 notes that:

A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.

7.7.4. The Council's Transportation Office recommendations include that the applicant be requested to pay a special levy of €25,000 as a contribution toward the footpath and cycle infrastructure to facilitate the development. This is included in Condition no.24 of the Council's permission. The Meath County Council Development Contributions Scheme 2016-2021 as amended notes: *The change of use of existing structures and the expansion of existing business no longer attract development contributions.* (Section 6).

7.7.5. It is noted that the Planner's Report considered that the proposed change of use complies with the following relevant section (Section 7.1.2 refers) of the Development Contributions scheme and therefore general contributions *will not be* applied i.e: *Changes of Use from existing non-residential uses to residential or alternative non-residential uses (i.e. Classes 1-5) shall be exempt where development contributions have been paid in full for the existing use.* However, they also provide: *Where the Planning Authority deems that additional public infrastructure is required to facilitate the development a Special Development Contribution may apply.*

Therefore, while Condition no.24 is not the subject of this appeal, I would recommend if the Board decides to permit, that in accordance with the Development Contributions Scheme that this special contribution condition be retained.

7.8. **Drainage and Flood Risk**

7.8.1. The Council's Water Services Section considers the proposed attenuation system unacceptable and recommended that a revised system be submitted. The applicant

was requested to revise the attenuation system type and size to include for all impermeable areas. The response submitted with the F.I from project engineers Henrick Ryan and Associates includes a revised drainage design and details of discussions with the Council regarding surface water drainage. Details are also included relating to the existing water services infrastructure (Appendix 2 relates).

- 7.8.2. It is noted that in this case the building and site have been fully developed previously. They propose to carry out alterations within the existing building and upgrade the external area. They propose to use porous paving for attenuation storage in parking areas to improve drainage. They provide that they have previously used porous paving in areas subject to HGV loading without problems and are confident that it is suitable for the proposed use.
- 7.8.3. They have revised the drainage design to allow for attenuation of rainwater falling onto the roof of the exiting building. This rainwater is stored within a localised attenuation system and details are given of this and of the volume of attenuation storage required. They also provide details regarding surface water connections and are confident that a suitable connection can be made. They provide that there will be no increased flow in the pipe associated with the redevelopment as the site has already been fully development. Also, that the flow in the pipe should be reduced as a result of the proposed attenuation system.
- 7.8.4. They note that they are currently in discussions with the Council's Water Service's Section and Irish Water regarding the provision of a 6m wide wayleave on the existing foul sewer which passes through the site and include a drawing showing the proposed wayleave. They propose to re-use the existing water supply to the existing building.
- 7.8.5. The Council's Water Services Section considered the revised details relative to the attenuation system to be unacceptable. They recommended that it be conditioned that a revised attenuation system be submitted and that attenuation storage be sized to include for the expected 10% increase in rainfall due to Climate Change. Details need to be submitted for approval design calculations for proposed permeable paving and the attenuation volumes it will provide. Also, that the report demonstrate that the proposed surface water discharge rate will not exceed the equivalent

predevelopment runoff rate. It is recommended should the Board decide to permit that a condition relative to drainage be included.

7.8.6. An Assessment of Flood Risk has been submitted with the application. This relates to the Balmoral Industrial Estate as a whole. This notes that the site is in the catchment area of the River Blackwater. All storm water from the area is collected in a storm drainage system prior to discharging to the river adjacent to the eastern boundary of the site. The River Blackwater meets and discharges into the River Boyne downstream in the centre of Navan. They have regard to flooding history and to the risk of flooding on site. Note is had of: *The Planning System and Flood Risk Management: Guidelines for Planning Authorities 2009*.

7.8.7. It is provided that the subject site is in Zone C which is outside Zones A or B and is not at risk of flooding. The attenuation storm-water drainage system for the proposed development has been designed to cater for the 100 year event while discharging only the 'Greenfield Run-off' to the receiving storm system. The Report concludes that if the proposed development at Balmoral Industrial Estate is carried out, the flood risk, if any, which the development poses to the site or to other properties will not be significant.

7.9. **Appropriate Assessment**

7.9.1. The River Boyne and River Blackwater SAC (002299) and SPA (004232) is located immediately to the north of the River Blackwater. This designation includes the river itself and a small piece of land to the south of the river and to the east of the application site. The application site is not within the designated areas.

7.9.2. It is noted that an NIS has been submitted for the concurrent larger scale application ABP-302375-18, on the adjoining site to the east which has a finding of no likely significant individual or in-combination impacts. The subject application is of a more modest scale and is for upgrading, reconfiguration and change of use of the existing building and no extensions are proposed. Therefore, it relates to an established use as car showrooms. It is noted that the attenuation system is to be improved. Standard construction methods integral to the design of the project are to be carried out on this fully serviced site. Therefore, having regard to issues such as the nature and scale of the proposed development and/or nature of the receiving environment

and/or proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.10. Screening for Environmental Impact Assessment

7.11. Having regard to the modest nature the proposed development and taking into account the established use of car showrooms on site, the capacity of the soils on site to accommodate wastewater and the distance of the site from nearby sensitive receptors, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

8.1. I recommend that permission be granted subject to the recommended conditions below.

9.0 Reasons and Considerations

Having regard to the proposed development relevant to the car showrooms an established use, the zoning objective, existing development on the site and its planning history, the scale of the development proposed and the existing road infrastructure serving the development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the Meath County Development Plan 2013-2019, the Navan Development Plan 2009-2015 (as amended), would be acceptable in terms of traffic safety and public health, would not seriously injure the amenities of the area and would have no material impact on Navan Town Centre. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 21st day of June 2018 and the 4th of July 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to the use as described in the planning application (as specified in the lodged documentation), unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

4. Apart from the signage shown on the submitted drawings, no further advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the building or within the curtilage of the site unless authorised by a further grant of planning permission.

Reason: In the interest of the visual amenity, and to allow the planning authority to assess any further signage through the statutory planning process.

5. (a) The vehicular access arrangements, internal road network and car parking layout to service the proposed development shall comply with the detailed requirements of the planning authority for such works.
- (b) The car parking facilities, hereby permitted, shall be reserved solely to serve the proposed development.
- (c) Cycleways and footpaths shall be provided between the proposed front boundary and the public road carriageway in accordance with the requirements of the planning authority.

Reason: To ensure a satisfactory standard of development and in the interests of permeability.

6. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-
 - (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
 - (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
 - (c) details of proposed street furniture, including bollards, lighting fixtures and seating;
 - (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

7. Provision shall be made for the proposed bus stop in accordance with Drawing No. 18.00.103. submitted on the 21st of June 2018.

Reason: To facilitate public transport.

8. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

- 9.(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location or at any point along the boundary of the site shall not exceed:-

- (i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
- (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- (b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

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

10. Lighting shall be in accordance with a scheme, which shall be designed to minimise glare and light pollution, and which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of amenity and public safety.

11. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

13. The developer shall pay the sum of € 25,000 (twenty five thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of footpath and cycle infrastructure required to facilitate the development. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Angela Brereton

Planning Inspector

3rd of December 2018