



An  
Bord  
Pleanála

## Inspector's Report ABP.302396-18

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<b>Development</b>	Change of use to storage building and construct new storage building
<b>Location</b>	Shronedarragh, Headford Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/225
<b>Applicant(s)</b>	Dermot Healy
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Timmy & Elizabeth Cotter
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> October 2018
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.** The site is located in the townland of Shronedarragh, near Headfort, which is situated approx. 10km to the east of Killarney Town. The site is located on the R570, on the southern outskirts of the village of Barraduff, approx. 500m to the south of the crossroads with the N72 (Mallow-Killarney road). The R570 leads southwards to Glenflesk and the N22 (main Cork-Killarney Road). At the northern end of the R570, close to the village centre, there is a school and some recently constructed housing, which forms part of a larger permitted development. The southern part of the road has been developed with ribbon development, predominantly on the eastern side of the road, stretching to the village of Headfort. The Owenyskeagh River, (which forms part of an SAC), flows in a southerly direction parallel to the R570, to the east of the frontage development. The Mallow-Tralee main line railway runs to the east of the river.
- 1.2.** The site has a stated area of 0.480ha and is irregular in shape. It is located on the eastern side of the road and has c. 27m road frontage. However, it widens to c. 50m in the central section and narrows again to a width of c.30m towards the rear. It extends approx. 126 metres in length. There is a dwelling immediately to the north (appellants) and two residential properties adjoin the site on the southern boundary. One of these sites bounds the front (western) portion of the site and the garden of the other bounds the central portion of the site. The remainder of the southern boundary is with a large agricultural field, with some sheds close to the common boundary with the site.
- 1.3.** The northern boundary of the site is delineated by a row of tall, dense, mature evergreen trees, which continue around the eastern boundary of the site. The western part of this boundary is with the appellants' property for a distance of c.50m and thereafter, is with an agricultural field. The southern boundary is defined by a masonry wall adjoining the entrance to the site, which bounds the adjacent house fronting the road. This wall continues around the rear of that property. The remainder of the southern boundary is defined by a row of trees, which is less dense and more varied than the trees on the northern boundary. The ground levels fall away from the public road to the east, but level off quite quickly. The site has a gravel surface and

there is a wooden fence along the roadside boundary, which continues along the entrance to the site for c.25m.

- 1.4. There is an existing storage shed on the site which has a stated area of 436sq.m and an overall footprint of 22.2 x 19.8. This building is located directly behind the house on the southern boundary, and is more-or-less level with the rear boundary of the second residential property and the agricultural sheds. The building is currently used for storage and spray painting of large bulky items such as carnival floats. The structure is c.6.5m in height and is accessed by means of two sliding doors, one on the northern (front elevation) and one on the western elevation. It is an A-frame shed with a lean-to extension and is clad in corrugated iron sheeting. At the time of my inspection there were two large storage containers located in the central northern part of the site. The area to the rear of the containers and to the rear of the existing shed were being used for the open storage of girders, planks of wood, windows and window frames and other paraphernalia. There were tyres and 2 abandoned cars to the rear of the shed.

## **2.0 Proposed Development**

- 2.1. Permission is sought for the change of use of the existing structure from a car showroom with associated service area and spray room to a storage facility and for the construction of a new storage shed to the north. The Board should note, however, that the submitted drawings for the proposed use of the existing shed do not include proposed floor plans, and the existing floor plans show the existing/permitted uses within the building.
- 2.2. The proposed new building would have a floor area of 643sq.m with a footprint of 36.5m x 18.5m. It has a double pitched roof with an eaves height of 4m and a ridge height of 7.9m. There is a large roller shutter door on each of the eastern and western elevations. The proposed materials comprise metal cladding with concrete blockwork. The size of the unit was reduced by way of further information to a floor area of 526sq.m with a reduced depth of 30m. The proposed shed would be set back from the northern boundary with the appellants by c. 5m and from the front boundary with the public road by c. 42m, and would be sited forward of the building line of the existing structure. The two buildings would be separated by approx. 7.6m. As the site

levels (indicated on the submitted plans) fall from c.106m OD to 102m O.D., and the proposed building is sited towards the rear, the FFL of the proposed building (102m) would be below the level of the public road and of the properties fronting it.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The planning authority decided to grant permission subject to nine conditions, the majority of which are of a standard nature. The following conditions are of note:

Condition 3 - required a further reduction in the size of the new building such that the front building line would be the same as that of the existing shed

Condition 4 - restricted the use of both buildings to non-commercial storage purposes in accordance with the details received on 30/04/18 and 09/07/18. The use for any commercial or agricultural purposes was prohibited and the buildings shall not be leased, rented or sold separately.

Condition 5 – required the site to be landscaped prior to commencement of development in accordance with the submitted landscaping plan (12/03/18), including semi-mature trees to a height of 2m to be planted along the roadside boundary.

Condition 7 - Any hazardous waste material arising during the course of demolition or excavation works to be notified to the P.A. and to be disposed of in a safe manner.

Condition 8 – Good site management measures to be employed during construction to prevent discharge of contaminated waters.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

It was noted that the site is located in an area zoned 'Rural General'. Reference was made to the previous planning decisions on the site, (96/1620 and 98/1706) which related to the retention of the existing commercial garage and extensions to same,

an existing domestic garage and store and a septic tank, and to retain and complete relocated access roadway and sign. It was considered, however, that the site had not been used for commercial purposes for some time and that the change of use of the existing shed to storage purposes would be welcome, given the proximity to residential properties. It was noted that the existing building was not visible from the road and it was considered that the proposed building should be reduced in scale and set back further so that it would not be so visually intrusive and/or close to the house to the north, or alternatively, to relocate the new building to the area behind the existing shed.

Further information was requested in respect of the matters highlighted above.

**Unsolicited Further Information** was submitted on **30<sup>th</sup> April 2018**. This was in the form of a letter stating that the proposed shed is for the purposes of storing the applicant's vintage cars and other memorabilia accumulated over the years. It was also stated that the applicant stores some items for voluntary organisations throughout the county such as the local GAA, Christmas Killarney, St. Patrick's Day organisations etc. It was further stated that the proposed building is not intended for any commercial purpose or for renting or letting for financial gain.

### **3.2.2. Other Technical Reports**

**Roads Engineer** – (2/05/18) no objection to development. Existing access appears to be sufficient to cater for traffic.

### **3.3. Prescribed Bodies**

**IFI** – (16/04/18) – the following comments were made:

- Site construction – good site management practices to be adopted during construction to prevent discharge of silt/hydrocarbons contaminated waters to surface waters or storm drainage (e.g. silt traps/interceptors).
- Surface water drainage – Use of SUDS to minimise surface/storm water discharges including permeable paving.
- Foul and surface water drainage – Certification to confirm correct connections made.

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

Timothy & Elizabeth Cotter – Objections raised as follows:

- The proposed development would have an even greater impact on residential amenity and traffic safety than the concerns identified in the assessment of the original permission (98/1706)
- Inaccurate and inadequate information – various matters including extent of change of use, nature of goods to be stored, need for traffic management plan, information on traffic generation and hours of operation.
- Excessive scale of building – height/massing etc.
- Location of doors on shed raises concerns re impact on amenity.
- Revisions sought such as reduction in scale of shed, relocation of new shed to rear of existing shed and omitting proposed shed in favour of an extension to same.

### **3.5. Response to Further Information**

The applicant responded to the FI request on the 22<sup>nd</sup> June 2018 and the 9<sup>th</sup> July 2018. The FI response was re-advertised. The revised submission reduced the floor area of the proposed building to 526sq.m. the depth was reduced to 30m and the width to 18.4m.

- 3.6.** P.A. response to FI is contained in the second report of the Area Planner (31/07/18). It was considered that the FI response was generally satisfactory. It was stated that the proposed development which would replace the existing commercial use with a storage use for private purposes would be appropriate and would deliver significant improvements in terms of residential amenity of the neighbouring properties.
- 3.7.** Further submissions were made by Mr & Mrs Cotter (appellants). In addition, a submission was made by Mr. Kelly, the occupier of the closest dwelling to the south. The concerns raised were generally in relation to traffic, nuisance from the operation of the development in the past, lack of privacy and objection to the development as proposed.

## 4.0 Planning History

**96/1620** – P.A. granted permission to retain existing commercial garage and extension to same and existing domestic garage and store.

**98/1706** – split decision - permission granted to retain existing commercial garage and septic tank, retain and complete relocated access roadway and retain and relocate sign, all within revised boundaries. Permission was refused for retention of re-located access roadway on the grounds of traffic hazard and impact on residential amenities of adjoining residential property.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Kerry County Development Plan 2015-2021**

The site is located in an area zoned **Rural General** which is described as being the least sensitive landscape, which can absorb moderate amounts of development. Development in these zones is required to take account of the topography, vegetation, existing boundary features. Permission will not be granted for development that does not integrate into its surroundings. **Obj. ZL-1** seeks to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people's lives.

Chapter 4 contains policies relating to the economic development of the county. **Objective ES-11** seeks to ensure that all economic development proposals will comply with the objectives and development management standards of the Plan, including landscape, flood risk and biodiversity

**Section 4.8** relates to the **Rural Economy**, which is described as an important component of Kerry's overall economy. **Objective ES-28** requires all proposals for economic development in rural areas to demonstrate inter alia,

- Compliance with development standards of Plan
- No adverse impact on the residential amenity of nearby residents, particularly in relation to noise, traffic, air quality, odours or vermin.

- No significant adverse impacts on the environment including the integrity of Natura 2000 network.
- Existing/programmed capacity in the water infrastructure (supply and/or effluent disposal)
- Sustainable waste management practices both at construction and operational phases of development.
- The proposal will not compromise water quality nor the programme of measures contained in the South Western or Shannon River Basin Management Plans;
- That the existing road network can safely handle any extra vehicular traffic movements generated by the proposed development or suitable developer funded improvements are identified and delivered to overcome any road related issues.
- Adequate access arrangements, parking, manoeuvring and servicing area in line with standards set out in the Development Management, Standards, Guidelines section of the Plan, or as otherwise agreed in writing with the P.A.
- Compliance, where appropriate, with the measures contained in the Plan as they relate to biodiversity protection and enhancement.
- Appropriate boundary treatment and means of enclosure are provided and that any areas of outside storage proposed are adequately screened from public view.
- Any retail element must be clearly ancillary to the primary industrial/business use.

## **5.2. Natural Heritage Designations**

The Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (000365) and Blackwater River (Cork/Waterford) SAC (002170).



## 6.0 The Appeal

### 6.1. Grounds of Appeal

The third-party appeal was submitted by the neighbouring residents to the north. The main points raised may be summarised as follows:

- Inaccurate ground levels and FFLs – The failure to provide accurate ground levels creates confusion and uncertainty regarding the construction of the proposed building and the FFL and ridge height of same. The proposed FFL is 2.35m below that of the existing garage. As the existing ground levels are fairly even across the site, with the FFL being no more than 0.2m above the existing ground levels, the accuracy of the information provided is questioned. Thus, there will either be excavation to up to 3 metres below ground level which would undermine the foundations on the appellants' site or the FFL and ridge height of the proposed shed will be 1.35m higher than the existing shed.
- Location of shed – the applicant's response to the P.A. suggestion of placing the new shed behind the existing shed, in which it was stated that the ground levels are steeply sloping at the rear, is disputed as the levels are gently sloping. It is stated that there is more than enough room to place the new shed behind the existing and thereby conceal it from public view.
- Appropriateness of use – the area is predominantly residential in character and the use of the site is not appropriate. The P.A. has failed to control the operation of the use in terms of restricting the activities permitted on site, the hours of operation, noise levels, odour, waste management, open storage and control of vermin. Condition 4 merely restricts the use to non-commercial storage and prohibits the sale/leasing etc. of the buildings as separate entities. However, it does not address the scenario whereby the applicant could sell the whole site and multiple business could operate from the site due to the proposal to include two roller shutter doors to the front and rear and to subdivide the site with gates.
- Landscaping and site layout – the proposed landscaping is inadequate and the condition attached to the P.A. decision is weak and not specific enough. There is no requirement to provide car parking on site and the site layout is

not defined. The area shown as 'existing gravel' was formerly shown as landscaping area on the previously permitted development in 1998, but has never been landscaped as required by that permission. It should be required that a lawn with native tree planting be provided and that the planting be maintained and managed appropriately. The hard landscaping should be specified and should be required to be dust free, permeable and durable.

- Previous planning decision – the permission granted in 1999 (under 98/1760) was a split decision in that permission was granted for the retention of the commercial garage, septic tank and relocated signage, but was refused for the retention of the re-located access due to inadequate sightlines, particularly to the north, and to the proximity of the access roadway to the neighbour's dwelling, which would injure the amenities of that property. It is submitted that the current proposal would result in even more adverse impact on the residential amenities of neighbouring properties.
- Traffic hazard – the sightlines at the entrance would still be inadequate, particularly in light of the increased level of development on the site.

## **6.2. Planning Authority Response to grounds of appeal**

The P.A. has not responded to the grounds of appeal.

## **6.3. First party response**

The first party responded on 20<sup>th</sup> September 2018. The response was mainly in the form of a rebuttal. However, a number of points of note were made as follows:

- The applicant's business is car sales and his hobbies include vintage cars. He is also an active member of a number of voluntary organisations in the area including Killarney Chamber of Commerce, Tidy Towns, St. Patrick's Day Parade Committee etc. He provides storage for bulky items such as floats, bill boards, equipment and memorabilia etc. At present most of these items are stored at his car sales premises. He receives no commercial gain from storing the items. The purpose of the new shed is to allow for orderly storage of the items.

- The proposed development will reduce activity on the site as the permitted use is as a car sales premises. No parking is required as there will be no visitors. There is no intention to carry out any car repairs at the site.
- The applicant would be happy to accept a condition imposing a restriction on hours of operation to normal business hours.

## **7.0 Assessment**

**7.1.** It is considered that the main issues arising from the appeal are as follows:-

- Principle of development
- Residential amenity
- Visual amenity
- Traffic safety and convenience
- Environmental impact assessment
- Appropriate assessment

### **7.2. Principle of development**

**7.2.1.** The site is located in a rural area on the outskirts of Barraduff village. It is outside the settlement boundary for the village in the Tralee/Killarney Hub FALAP 2013-19. Although it is sited within a ribbon of development, which is predominantly residential, it is not an area designated exclusively for residential use. It is zoned Rural General, which is the least sensitive landscape, but where development must integrate with the landscape. The Development Plan (4.8) encourages development which promotes and sustains the rural economy and helps to maintain sustainable vibrant rural communities. Objective ES-28 sets out the general criteria for new economic development which includes avoidance of adverse impacts on residential amenity, water quality or the environment, integration with the landscape, including appropriate boundary treatment and landscaping proposals, provision of adequate access/parking arrangements, waste management proposals and adequate capacity in the water infrastructure.

- 7.2.2.** The permitted use on the site is as a commercial car sales premises which has been present since at least 1998, with the first permission granted in 1997 for the retention of a commercial garage and a domestic garage on the site (96/1620). Thus, the use of the site for storage of vintage cars, large bulky items etc, whether for personal or commercial use is considered to be appropriate in principle, provided that any such development integrates with the landscape and respects the residential amenity of the adjoining area and generally complies with the criteria in ES-28.
- 7.2.3.** The first party and the P.A. are of the view that the proposed development would reduce the level of activity on site, having regard to the permitted use, notwithstanding the introduction of a large new storage shed. This is based on the description of the use and intended purpose of the development provided by the first party, which is that the two buildings would be used for the storage of items for community events by charitable/community organisations and for the storage of the applicant's own vintage cars, as part of his hobby. The first party has submitted that these items are currently stored at the car sales premises elsewhere in the district, and in the existing shed, and that no commercial gain is made from the activity.
- 7.2.4.** I note from the details of the previous permissions (96/1620 and 98/1706), provided by the P.A., that the site associated with the commercial garage has been revised over the years, and that the first permission for a "machinery shed" was granted as far back as 1981 (Ref 2031/81). This permission and the 1996 permission related to a much smaller site which included the dwelling to the south, (now occupied by Frank Kelly who made an observation to the P.A. in respect of the current scheme). The 1998 permission approved revised boundaries, which are generally along the lines of the current site boundaries, although the proposed entrance roadway was on the northern side. I note from the planning reports, however, that the entrance on the ground seemed to be on the southern side. The two permissions in the late 1990s, however, permitted a car sales room with a range of other uses which are generally light industrial in nature. The building included a garage repair service area, storage areas and a body spray area. I also noted from my site inspection that part of the building has recently been used for spray painting.
- 7.2.5.** Thus, the existing permitted use is one which includes a range of activities that could potentially give rise to detrimental impacts on residential amenity and on the local environment. Each of the previous permissions, however, included several

conditions which sought to mitigate any such impacts. These included a restriction on the hours of operation and open storage of scrap, waste etc, a requirement to remove all derelict vehicles and scrap/waste from the site, to provide off-street parking in delineated bays, and to landscape the site. There were no conditions restricting noise levels or odour/fume emissions from the site.

- 7.2.6.** The current proposal does not include car sales or car repairs. Although it is not specified that it is proposed to repair/assemble floats etc., it is noted that the items stored at present include parts of such floats and numerous other items, memorabilia, etc. and that a spray room is currently on site. The introduction of an additional larger building, which would more than double the floor area of commercial buildings on site, could potentially result in a significant intensification of use and development on the site unless certain parts of the existing use are ceased. Although the description of the proposed development is for a change of use of the existing shed, the submitted floor plans do not reflect this. It is suggested, therefore, that in order to avoid any such intensification of the use, retail sales, spray painting and repairs of cars, vehicles or floats should be specifically excluded from the use of the existing building, and that the use of both buildings be restricted to storage, as set out in the documentation submitted to the P.A. and the Board. It is considered that these elements should be specified in a condition of any permission, should the Board be minded to grant permission.

### **7.3. Residential Amenity of occupiers of adjoining sites**

- 7.3.1.** There are three residential properties bordering the site. As discussed above, the potential for the existing permitted use to give rise to adverse impacts on the residential amenities of these properties is likely to be greater than that of the proposed use of both the existing and proposed buildings, provided that the use of the site is restricted to storage as proposed. The first party has also agreed to a restriction on the hours of operation to normal business hours. This would also be consistent with previous permissions.
- 7.3.2.** No assessment has been carried out in respect of noise emissions, but the first party has confirmed that there is no intention to carry out repairs of the vintage cars on site, and this can be conditioned. The proposed building has two large roller shutter doors at the front and rear of the structure, which could potentially give rise to noise

nuisance, given the closer proximity to the northern boundary. It is considered that a condition which would restrict noise emissions from the site would be appropriate, should the Board be minded to grant permission.

**7.3.3.** The previous planning decisions on the site required the removal of waste materials and derelict cars etc. from the site and prohibited the open storage of such items. I noted, from my site inspection, that there were two containers on the site and that there were some items stored externally behind the existing shed and behind the containers. This activity seems to be in contravention of the previous permissions and would be injurious to the visual and residential amenities of the area. It is considered that should the Board be minded to grant permission, that similarly worded conditions be attached to any such permission, requiring removal of all such materials, including the two large containers, prior to commencement of development and prohibiting the open storage of such materials in the future. Similarly, a condition restricting external lighting to prevent light pollution should be considered, as per previous permissions.

**7.3.4.** The P.A. decision restricted the use to “non-commercial storage” and prohibited the independent sale, lease, rent of the buildings. Given that the premises relates to a long established commercial entity which is located in a Rural General zone, that the nature of the activities with the potential to give rise to injury to residential amenities is proposed to be changed, and in light of the mitigation measures proposed and in the suggested conditions set out above, it is considered that restriction of the use to “non-commercial storage” would be unduly restrictive. The nature of the use as proposed is storage/warehousing, compared with the permitted light industrial use. Provided that the conditions outlined above are attached to any permission granted by the Board, it is considered that a restriction of the use to storage would be sufficient. However, I would agree that the site should not be subdivided into smaller planning units with more than one business occupying the site, as this would be likely to give rise to an intensification of the use. Any such change should be subject to a further planning application.

#### **7.4. Visual amenity**

**7.4.1.** The appellants have sought the re-siting of the building to the east, behind the existing shed. I would agree with the first party, however, that the site slopes steeply

towards the river to the east. The existing landscaping on the site creates the illusion that the site terminates further to the west than it does on the ground. I noted from my inspection that the tall leylandii trees continue southwards c.20 metres to the east of the existing shed and merge into a further line of mature trees. I further observed that beyond this line of trees, the ground levels drop sharply and suddenly. Thus, I would agree that there is insufficient room to re-locate the proposed building to the area behind the existing shed, with infilling of a large area in close proximity to the river, which forms part of an SAC. However, it should be noted that the submitted drawings inaccurately reflect the existing boundary treatment and ground levels to the rear. I will return to this matter below.

**7.4.2.** The site layout as revised (22/06/18) shows a reduced footprint for the new building and a much deeper setback from the western (roadside) boundary, (35.6m increased to 42.1m). This revised layout shows the front building line of the proposed building roughly in line with the rear boundary wall of the dwelling to the south and with the rear wall of the shed on the property to the north. It is noted that the P.A. has required a further revision which would bring the front wall of the new building an additional c.8m, so that it would be in line with the front building line of the existing shed. This would reduce the floor area of the proposed shed by a further 147sq.m. Thus, the total floor area of the building has been reduced from 643m<sup>2</sup> initially to 379m<sup>2</sup> with the P.A. condition, which represents a reduction of c.40%. This seems reasonable, would help to protect the residential and visual amenities of the area and the first party has not raised any objections to that condition.

**7.4.3.** The ridge height of the existing building is 6.55m and that of the proposed building is 7.9m (22/06/18). The first party has stated that the FFL of the proposed building (102.15m OD) would be c.2m below that of the existing building (104.5m OD). However, there are anomalies in the submitted drawings regarding the existing and proposed ground levels, which affects the interpretation of the height above ground level/finished floor level of the proposed building. I noted from my observations on site that the level of the adjoining road (given as 106.7m OD) is higher than the existing ground levels on site and that the levels fall away gently towards the centre of the site, and sharply at the rear (as discussed above). However, I would agree with the appellants that the existing ground levels in the main part of the site seem to be generally consistent with the FFL of the existing shed, (given as 104.5m OD).

- 7.4.4.** It is considered that the height of the existing shed is appropriate in the context of the adjoining development. The existing mature landscape screening on the northern, eastern and part of the southern boundaries, together with the siting and FFL of the structure, help it to blend into the landscape and is not considered to be visually obtrusive. As the FFL for the proposed building is much lower (2.35m), I would agree with the appellants that it would seem necessary to excavate to a considerable degree in order to achieve this, notwithstanding the statement (20/09/18) by the first party's agent that "no excavation of any substance is proposed by the applicant". The justification for the lower FFL was given as an attempt to conceal the unit as far as is practical from the public road and in order to protect the adjoining residences.
- 7.4.5.** It is considered that excavation works of this magnitude on a site which abuts a designated European site, (Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (000365)), and where the ground levels slope steeply towards the river, would give rise to an unnecessary level of risk to the environment and water quality of the river, which forms part of the SAC. An alternative to the lowering of the FFL would be to reduce the height of the building such that both the FFL and the ridge height matched those of the existing building. It is considered that such measures, combined with the reduced footprint and increased setback from the road, and the proposed landscaping measures would enable the new building to be absorbed by the landscape and avoid the creation of an obtrusive feature. Should the Board be minded to grant permission, it is considered that a condition should be attached to any such permission requiring the proposed building to match the existing building in terms of FFL and ridge height.
- 7.4.6.** The layout and landscaping proposals contain little in the way of detail and as stated previously, the submitted drawings contain several anomalies. It is considered that in the event of a grant of permission, appropriate conditions requiring the submission of details of the proposed planting and layout of soft and hard landscaping areas on the site, including species of planting and a timescale for implementation, to the P.A. for approval should be attached to any such permission. It is further considered that the applicant should be required to submit accurate survey drawings of the site with spot levels indicating the existing ground levels throughout the site and that the landscape plans should include the proposed ground levels throughout the site.



## **7.5. Traffic safety and convenience**

- 7.5.1.** The applicant has indicated that there would be no visitors to the site and that there is no need for parking on the site. However, given the size of the site, it does not seem unreasonable to require the provision of a limited amount of parking on site, as any on-road or overspill parking would be likely to result in a traffic hazard. Furthermore, the layout does not include any information regarding the ability of large/long vehicles, cars with trailers etc. being able to enter and leave the site safely or to turn around within the site to enable an exit in forward gear. It is considered that any obstruction of traffic on the public road would give rise to a traffic hazard. Thus, the landscaping plan should include the location of visitor parking spaces and an area for the turning of vehicles which would deliver and collect items for storage. This could be addressed by means of an appropriately worded condition, should the Board be minded to grant permission.
- 7.5.2.** The sightlines at the entrance appear to be adequate and it is noted that the P.A.'s Area Engineer did not raise any objections. The issues regarding inadequate sightlines in 1998 related to an access roadway alongside the northern boundary of the site, whereas it is currently proposed alongside the southern boundary.

## **7.6. Environmental Impact Assessment**

- 7.6.1.** It is considered that the proposed development is of a class of development requiring EIA but is sub-threshold. The proposed development involving the construction of an industrial scale warehouse for the storage of miscellaneous materials including vintage cars, parade floats, memorabilia etc. falls within either Class 10(a) Industrial Estate development or Class 10 (b)(iv) Urban Development. In respect of Industrial Estate development, the threshold is 15ha, and as the subject site is 0.48ha it is well below the threshold. In respect of Urban Development, it is noted that EU guidance<sup>1</sup> clarifies that an urban development project is a project that is urban in nature regardless of location, and can therefore be located in an area that is not urban. The threshold for built-up areas or adjoining developed areas is 10ha, and again the site is well under the threshold. Thus, whilst the proposal is relatively limited in terms of its size and nature, regard must be had to the potential to affect an environmentally sensitive location.

<sup>1</sup>Interpretation of definitions of project categories of Annex 1 & 2 of EIA Directive, EU 2015, p.50

- 7.6.2.** The site is located immediately adjacent to and up-slope of the Owenyskeagh River, which forms part of the Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (000365). The eastern boundary of the site abuts the boundary of the designated area. The gradient of the rear section of the appeal site slopes steeply towards the boundary with the SAC and onwards towards the river. It is estimated that the riverbank, (within the designated site), is c.100m from the existing warehouse and c.40m from the boundary with the appeal site. The proposed development involves the construction of a large warehouse, the rear wall of which would be c.60m from the boundary of the SAC and c.100m from the river. The proposals as submitted to the P.A., (and the subject of the P.A.'s decision), indicates that there would be a need for a considerable degree of excavation to achieve the floor levels proposed. The IFI, in its submission to the P.A. had advised that there was a need to ensure that good site management practices be adopted during construction to prevent discharge of silt and/or hydrocarbons or contaminated waters to surface waters or storm drainage.
- 7.6.3.** No information has been submitted which describes the aspects of the environment likely to be affected or the likely significant effects of the proposed development on the environment. Neither have any proposals been made in respect of specific mitigation measures to be implemented to avoid or prevent a significant adverse effect on the environment. In these circumstances, it is considered that the potential for likely significant effects on the environment cannot be excluded.
- 7.6.4.** In conclusion, having regard to the nature and scale of the development, and its proximity to an environmentally sensitive site, the likelihood of significant effects on the environment arising from the proposed development cannot be ruled out. The need for environmental impact assessment cannot, therefore, be excluded at preliminary examination and a screening determination is required. Should the Board be minded to grant permission, therefore, it will be necessary to seek Schedule 7A information from the developer to enable such a screening determination to be made.

## **7.7. Appropriate Assessment Screening**

**7.7.1.** The site is located directly adjacent to a Natura 2000 site, namely, the Killarney National Park, McGillicuddy Reeks and Caragh River Catchment SAC (Site code 000365) and there are five further designated sites within 15km of the appeal site.

**7.7.2.** The designated sites within 15km are as follows:

Blackwater River (Cork Waterford) SAC (002170) – 6km to Northeast.

Killarney National Park SPA (Site code 004038) – 10 km to west.

Castlemaine Harbour SAC (000343) – 12 km to Northwest.

Stack's Mountains to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA (004161) – 12 km to North

Mullaghanish to Musheramore Mountains SPA (004162) – 14Km to Southeast.

**7.7.3.** It is considered that given the distances involved, all but the Killarney National Park, Macgillicuddy Reeks and Caragh River SAC (000365) and The Blackwater River SAC (002170) can be screened out. As the site is located in close proximity and upslope of the Owenyskeagh River, which forms part of the 000365 SAC, which in turn is hydrologically linked to the 002170 SAC, it is considered necessary that a determination be made as to whether or not significant effects on the European sites can be reasonably ruled out on the basis of objective scientific information.

**7.7.4.** The Qualifying interests for each of these two Natura sites are set out in the Site Synopses (attached). It is noted that the habitats of interest include Watercourse of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation; and the species of interest include Lamprey (River, Brook and Sea), Shad (Twaite and Killarney), Salmon, Freshwater Pearl Mussel, Kerry Slug, Marsh Fritillary, Otter and many more habitats and species listed in Annex 1 and 2 of the EU Habitats Directive. The Conservation Objectives for each of the habitats and species of special interest are set out in documents on the NPWS website for each of these European sites. The overall aim is to maintain or restore the favourable conservation status of all of these habitats and species.

**7.7.5.** The favourable status of a habitat is achieved when

- Its natural range, and area it covers within that range, are stable or increasing, and
- The specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist in the foreseeable future, and
- The conservation status of its typical species is favourable.

The favourable status of a species is achieved when

- Population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- The natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- There is and will continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

**7.7.6.** An Appropriate Assessment Screening Report has not been submitted with the application, nor did the planning authority request one. The Area Planner screened out the need for Appropriate Assessment on the basis of a report from the Biodiversity Officer, which had concluded that there is no potential for significant effects to Natura 2000 sites resulting from the development. However, this report was not included in the documentation forwarded by the P.A. to the Board. There is a report, dated 4<sup>th</sup> April 2018, from the Biodiversity Officer on the P.A.'s website. This includes the following statement:

“If a grant is considered likely a condition should be attached that no works are undertaken in the vicinity of the river and a buffer area should be maintained. No earthworks and/or storage of materials should occur within this buffer. Best practices in the environmental management of waste water should be undertaken at construction and no sediment-loaded water should be allowed to enter the watercourse. Further to this, no significant effects on the cSAC are considered likely”.

Inland Fisheries Ireland has also requested (16/04/18) that “good site management practices are adopted during site construction to prevent discharge of silt/hydrocarbon contaminated waters to surface waters or storm drainage”.

**7.7.7.** Given the topography of the site, with a steeply sloping section at the eastern end, and the proximity of the rear section of the site to the SAC and to the watercourse, it is considered that there is potential for significant effects to arise from the project during construction works. The proposed development as submitted by the applicant and permitted by the P.A. involves significant excavation works to achieve the proposed FFL. In the absence of appropriate mitigation measures, the earthworks involved could result in sediment and/or hydrocarbon contaminated waters entering the watercourse. It is further noted from my site inspection that materials are currently stored in the open on the site including containers, building materials, derelict vehicles etc. and the gravel surface appears to have been overlain with a layer of topsoil. There are no proposals for removal of these items. Although I have suggested the attachment of various conditions to address these matters in the Planning Assessment in the preceding sections of this report, the application has not been accompanied by an Appropriate Assessment Screening Report which would properly address these matters.

**7.7.8.** It is considered, therefore, in the absence of any assessment of the likely significant effects on the adjoining SAC or of any proposed mitigation measures, that the likelihood of significant effects, either individually or in combination with other projects, cannot be reasonably ruled out on the basis of objective scientific information. It is considered, therefore, that in these circumstances, the Board is precluded from granting permission. Should the Board decide to grant permission, it is considered that an Appropriate Assessment Screening Report should be required as further information, prior to determination of the case.

## **8.0 Recommendation**

**8.1.** It is recommended that planning permission be refused for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually or in combination with other plans or projects, would not be likely to have a significant effect on the following European Sites Killarney National Park, Macgillicuddy Reeks & Caragh River Catchment SAC (000365)

Blackwater River (Cork/Waterford) SAC (002170)

Or any other European site, in view of the Conservation Objectives for these sites. In such circumstances, the Board is precluded from granting permission.

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Mary Kennelly  
Senior Planning Inspector

4<sup>th</sup> February 2019