



An
Bord
Pleanála

Inspector's Report ABP-302536-18

Development	Industrial Storage Yard
Location	Naas Enterprise Park, Newhall, Naas County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18748
Applicant(s)	Dawson Rentals Ireland Ltd
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Dawson Rentals Ireland Ltd
Date of Site Inspection	22 nd November 2018
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.35683, is located approximately 6km to the west of Naas. The appeal site is located just south of Naas Enterprise Park at Newhall, which itself is located south of the Dublin Road (Naas to Newbridge Road) and a short distance from the M7. The appeal site is a piece of waste ground (formerly the site of a dwelling). Adjoining uses include existing commercial development to the north (Naas Enterprise Park) and to the east (Dawson Rentals), a dwelling and its associated curtilage to the south as well as yard area associated with HGV's. Levels on site are relatively flat and existing boundary treatment consists of a hedgerow along the southern boundary and open boundary to the existing road to the north and a metal fence along the eastern boundary with Dawson rentals.

2.0 Proposed Development

2.1. Permission is sought for the change of use of a domestic site to an industrial storage yard including new boundary treatment, fence and screening, drainage works and associated site works. The area is to be made into a concrete yard for the storage of refrigeration units and is to be an extension of the curtilage of the adjoining business to the east, Dawsons Rentals.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on two reasons...

1. It is the policy of Kildare County Development Plan 2017-2023, namely policy RE9 to protect agricultural and traditional rural enterprises from unplanned and/or incompatible urban development. Table 10.2 of the County Development Plan further sets out key criteria for the assessment of one off enterprises in rural area. The proposed development, located within a rural area, where land is deemed to be primary agricultural, is not considered an appropriate location for the proposed

industrial facility which would be more appropriately located on zoned and serviced lands elsewhere in the vicinity. It is therefore considered that the proposed development fails to meet the criteria set out in Table 10.2 of the Kildare County Development Plan 2017-2023 and would be contrary to the provisions of policy RE9. The proposed development would materially contravene the Kildare County Development Plan 2017-2023, would set an undesirable precedent for similar developments in rural areas and would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development due to its proximity to an adjoining dwelling, would result in a loss of amenity to the adjoining residential unit by reason of noise generated from the associated activity of the proposed development and additional traffic movements generated. The proposed development would seriously injure the residential amenity of this dwelling, would set an undesirable precedent for similar development, which is unplanned and haphazard and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (15/08/18): Proposal is located within a rural area. Development Plan policy regarding rural development was noted and the fact the proposal would be more appropriately sites on industrial zoned lands. The proposal would have an adverse impact on the residential amenity of the adjoining dwelling to the south. Refusal was recommended subject to the reasons outlined above.

3.2.2. Other Technical Reports

Roads and Transportation Section (16/07/18): No objection.

Area Engineer (25/07/18): No objection subject to conditions.

Environment Section (15/08/18): No objection subject to conditions.

Water Services (14/08/18) No objection subject to conditions.

3.3. **Third Party Observations**

Submission by Nora Egan, Ladytown, Newbridge, Co. Kildare. Issues raised include...

- Site not within existing business park but in a residential area.
- Unauthorised removal of hedgerow to open site into the enterprise park where no opening formerly existed.
- Incorrect reference to adjoining residential property as a field.
- The applicant has no control over the hedgerow along the southern boundary and cannot guarantee its retention.
- Adverse impact on visual amenity of adjoining residential properties.
- Adequate zoned land in the immediate and wider area for such development.
- Incompatible use of the site and contravention of Kildare County Development Plan due to encroachment onto a residential area.
- A dwelling was demolished on site without planning permission.
- The applicant should move to another suitable site.
- Undesirable precedent for similar development.
- Negative impact on residential amenity through noise and truck movements.

4.0 **Planning History**

82/1074: Permission granted for a dwelling and septic tank.

On the adjoining site to east.

18/168: Permission granted to Dawson Rentals for a new mezzanine level and alterations to existing building.

06/1234: Permission granted for an industrial warehouse, car parking and associated site works.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Kildare County Development Plan 2017-2023.

The appeal site is located in the rural area of the county.

RE9: Protect agricultural and traditional rural enterprises from unplanned and/or incompatible urban development.

Table 10.3 Criteria for assessment of one-off enterprises in rural areas.

Proposals for the development of one-off new small-scale enterprises in rural areas outside of designated employment centres will be assessed against the following criteria:

- As a general guide, development proposals shall be limited to small-scale business development with a floor area at circa 200 sq. m. and shall be appropriate in scale to its location;
- The development will enhance the strength of the local rural economy;
- The proposed development shall be located on the site of a redundant farm building /yard or similar agricultural brownfield site;
- There is a social and economic benefit to being located in a rural area;
- The proposal will not adversely affect the character and appearance of the landscape;
- The development will not be detrimental to the amenity of nearby properties, and in

particular the amenities of nearby residents;

- The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal;
- The proposal should be accompanied by a mobility plan catering for employees' home to work transportation;
- Adequate proposals to cater for any waste arising at the facility;
- All advertising should be kept to a minimum and be suitable in design and scale to serve the business;
- Proper planning and sustainable development;
- The proposals should conform to other objectives of the County Development Plan.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged by David Mulcahy Planning Consultants Ltd on behalf of Dawsonrentals Ireland Ltd.

- It is noted that the proposal is for a storage yard associated with an existing business on adjoining lands the nature of the site is such that it likely to remain waste ground unless the development proposed is permitted.
- It is noted the nature of the site and adjoining uses mean the proposal is no material threat to agriculture or rural enterprises.
- It is noted that first refusal reason incorrectly refers to Table 10.2 of the Development Plan and may have actually meant to refer to Table 10.3 instead. It is noted that Table 10.3 is irrelevant in this case as the proposal is not a one-off rural enterprise and is a small scale extension of an existing industrial development. It is noted that the proposal is extension of an existing business and uses an unkempt piece of land. It is noted that the applicants

have invested heavily in their business at this location and wish to remain at this location and need the additional storage space.

- The appellants note that refusal reason no. 1 refers to material contravention and refers to Section 37(2)(b) of the Planning and Development Act, 2000 (as amended). It is noted that use of the term material contravention is incorrect as Policy RE9 and Table 10.2 are irrelevant to the current application. In this regard the Board are not restricted by Section 37(2)(b).
- The appellant notes that Section 37(2)(b)(iii) would allow for the proposal in any case (regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government). It is noted the site is part of the Nass Economic Core Area under the Regional Planning Guidelines. It is also noted there is precedent under PL09.205850.
- In relation to refusal reason no. 2 it is noted the Environment Section raised no objection. It is noted that there is a large paddock within the curtilage of the adjoining dwelling and the dwelling itself is located 40m from the southern boundary of the site and such distance taken in conjunction with existing vegetation and building (shed) in between would mean noise/general disturbance would not have a material impact.
- The nature of the development is a concrete yard for storage of refrigeration containers and noise level would not be significant. The operating hours are 8am to 5pm daily. The applicant/appellant invites conditions restricting noise during the construction and operational phase.
- It is noted that there was a house on the site and such was demolished however such occurred prior to the applicant purchasing the site.

6.2. Planning Authority Response

Response by Kildare County Council.

- The Council have no further observations to make.

7.0 Assessment

- 7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development/development plan policy

Adjoining amenity

Material contravention

- 7.2. Principle of the proposed development/development plan policy:

- 7.2.1 Permission is sought for the change of use of a domestic site to an industrial storage yard including new boundary treatment, fence and screening, drainage works and associated site works. The proposal is an extension of the external yard area associated with an existing business located on an adjacent site to the west. The site is to be converted to a concrete yard for storage of refrigeration units

(trailers/containers). The site is in the rural area of the county on unzoned land.

Refusal reason no. 1 referred to objective RE9 which states “protect agricultural and traditional rural enterprises from unplanned and/or incompatible urban development”

and how the proposal would be contrary this objective. Despite being in a rural area

the site is just south of Naas Enterprise Park, which is a commercial/industrial

development of significant scale located to the west of Naas. The commercial

development at this location is part of Ladytown Environs and is zoned NE:

Industry/Warehousing under the County development. The development is

essentially an extension of the curtilage of an existing commercial operation part of

the Enterprise Park.

- 7.2.2 The site is an infill site located south of Naas Enterprise Park, west of the existing commercial development it is proposed to extend and north of an existing dwelling and its curtilage. Based on the information on file there was formerly a dwelling on site, which was demolished. The site is not a large site and its development for the purpose proposed would have no significant impact on existing agricultural and traditional rural enterprises in the vicinity. As noted above the site is very much an

infill site detached from the wider rural area and on the fringes of the existing urban area. Another factor of relevance is that the proposal is an extension to an existing and permitted commercial development. The existing enterprise seeks to extend its external storage area onto the site and the site will link into the existing premises to the west and use the existing vehicular entrance to such from within the enterprise park. Given the infill nature of the site and the fact it is not in agricultural use or would be prime agricultural lands due to its small size, I would consider that the proposal would not be contrary to Development Plan policy regarding rural development. I would also note the proposal is an extension of existing and permitted commercial development located in a rural area. I would consider that precluding its extension on the basis of impact on the rural area to be inappropriate.

7.2.3 It is notable that first refusal reason refers to Table 10.2 of the Development Plan. It appears that reference to Table 10.2 is an error and Table 10.3 Criteria for Assessment of One-off Enterprises in Rural Areas is what is being referred to and is outlined above under planning policy. The proposal would not be contrary to the criteria under this table in that it is an extension to an existing business, its overall design and scale would not be significant due to its infill nature and the level and type of development adjoining the site and the fact that it uses an existing vehicular access serving the existing business it is linked too. I am satisfied that the proposed development would be acceptable in the context of Development Plan policy and that principle of proposed development is satisfactory and in accordance with the proper planning and sustainable development of the area.

7.3 Adjoining amenity:

7.3.1 The second reason for refusal relates to impact on the residential amenity of the dwelling to the south. The owner of this dwelling made a submission during the application stage and such is outlined above. The impacts noted in reason for refusal relate to noise and traffic movements. I would firstly note that the proposal is for an extension of an existing commercial operation that is ongoing on the adjacent site to the west, which is well established. In addition I would note despite the fact the site is located in the rural area of the county, the presence of commercial development is well established at this location with both the appeal site and the adjoining dwelling in close proximity to a significant amount of commercial development. I do not

consider that the nature or intensity of activity at this location is being intensified significantly to the degree that it would impact adversely on the residential amenity of the adjoining property.

7.3.2 As note above the proposal is for an external storage area for refrigeration units and is to expand the curtilage associated with an established business at this location. I am satisfied that appropriate conditions in relation to operating hours, standard noise limit values for commercial development and adequate boundary treatment would be sufficient to ensure that the proposal would have no adverse impact on the amenities of the existing dwelling to the south. It is notable that the applicants/appellants have indicated that they intend to retain the boundary hedgerow along the southern boundary (the third party submission indicated that the applicants do not have control over such). Regardless of ownership of the hedgerow, the applicants/appellants are indicating that they do not intend to remove it and such in conjunction with proposed boundary treatment metal fencing would provide a sufficient degree of separation. I would note that the curtilage associated with the adjoining dwelling is sizeable and that the dwelling is well removed from the boundary with an existing shed located between it and the boundary with the appeal site. I am satisfied that subject to appropriate conditions that the proposed development would be acceptable in the context of residential amenity.

7.4 Material contravention:

7.4.1 Under refusal reason no. 1 it was noted that “the proposed development fails to meet the criteria set out in Table 10.2 of the Kildare County Development Plan 2017-2023 and would be contrary to the provisions of policy RE9. The proposed development would materially contravene the Kildare County Development Plan 2017-2023, would set an undesirable precedent for similar developments in rural areas and would therefore be contrary to the proper planning and sustainable development of the area”. As noted above under section 7.2 of this report I do not consider that the proposal would constitute a material contravention of development policy.

7.4.2 I would refer the Board to Section 37(2)(b) of the Planning and Development Act, 2000 (as amended).

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

8.0 Appropriate Assessment:

8.1 Having regard to the nature and scale of the proposed development and its 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.

9.0 Recommendation

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

10.0 Reasons and Considerations

Having regard to the scale of the activity proposed, the fact it is an extension of an established commercial activity, the infill nature of the site and the adjoining land

uses , it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The proposed development shall be carried out in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2.

(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-

i) An LAeqT value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. The T value shall be one hour.

ii) An LAeqT value of 45 dB(A) at any other time. The T value shall be 15 minutes. The noise at such time shall not contain a tonal component.

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 R 1996 “Assessment of Noise with respect of Community Response” as amended by ISO Recommendations R 1996 1, 2 or 3 “Description and Measurement of Environmental Noise” as applicable.

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

3. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the canopy, on the forecourt building or anywhere within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

4. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. Comprehensive details of the proposed lighting to serve the development shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development. The lighting proposal shall include cowling to ensure no light overspill onto the adjoining residential property.

Reason: In the interest of public safety and visual amenity.

6. Water supply and drainage arrangements, including the disposal of uncontaminated surface water, shall comply with the requirements of the planning authority for such works and services and no surface shall discharge onto adjoining properties or the public road.

Reason: In the interest of public health and to ensure a proper standard of development.

7.

(a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained (southern boundary) shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of 2 metres from the trunk of the tree or the centre of the shrub, and to a distance of 2 metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.

(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No works shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within three months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colin McBride
Planning Inspector

05th December 2018