



<b>Development</b>	Retention Permission for Shot-blasting and Painting Facility and all ancillary works.
<b>Location</b>	Baltreacy, Donadea County Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	18/1214
<b>Applicant</b>	Michael O'Shea.
<b>Type of Application</b>	Retention Permission and Permission.
<b>Planning Authority Decision</b>	Grant Permission subject to conditions.
<b>Type of Appeal</b>	Third Party V. Decision.
<b>Appellant(s)</b>	Seamus Cullen.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> November & 5 <sup>th</sup> December 2019.
<b>Inspector</b>	Susan McHugh

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## 1.0 Site Location and Description

- 1.1. The appeal site is located on the eastern side of the R407 regional road connecting Clane village 8kms to the south, with Kilcock, Co. Kildare some 5km's to the north of the site.
- 1.2. The existing facility is accessed from the R407, along which a speed limit of 80kph applies, by means of a 15m wide ungated simple priority T junction arrangement. To the south of this access is a further site access serving the applicants family land and family residential dwelling.
- 1.3. The appeal site is bounded to the north, east and west by agricultural grazing land. The appellants lands are located to the north and east of the appeal site and are in use as grazing for sheep.
- 1.4. In the vicinity of the site the R407 has a general carriageway width of 6.50 metres with solid centre line road markings and yellow bar markings adjacent to the northbound and southbound carriageway. Mandatory signage is in place which restricts overtaking.
- 1.5. It is located in an unserviced rural area approx. 100m north of the Baltreacy River. There is a drainage ditch which runs in an east west direction along the northern boundary of the site on the appellants property. It feeds into a larger drainage ditch which runs in a north south direction and is culverted through the appeal site and outflows presumably to the Baltreacy River.
- 1.6. The site currently consists of a yard with trailer parking, an office, and a 4-bay workshop where Heavy Goods trailers are shotblasted and painted.
- 1.7. The northern boundary is defined by matures trees, the southern boundary is defined by a mature hedgerow, while the west boundary (front) is defined by a low wall and the east boundary (rear) is not defined.
- 1.8. The site has a stated area of 0.47ha and forms part of a larger landholding with outlined in blue with a stated area of 0.69ha.

## 2.0 Proposed Development

2.1. Retention Permission is sought for the following;

- 4 no. existing booths (used for drying, shotblasting and spray painting) and ancillary storage rooms (476.9 sq.m combined), and
- Standalone office (21 sq.m) along with the change of use of the cottage to office/storage unit (136 sq.m).

2.2. Planning Permission is sought for the following;

- Demolish domestic garage (25 sq.m) located next to the residential dwelling to the south.
- Construct an extension, with a stated area of 37 sq.m, located to the north side of the existing shot blasting booth. The purpose of which is to contain all dust associated with shotblasting.
- Construct a shed structure, with a stated area of 414 sq.m to the front of the existing workshop. The purpose of which is to protect trailers from the weather during the shotblast/repainting process and to prevent dust emissions. The shed will have a ridge height of 6.38m, and will be enclosed on 3 sides, with the south elevation open to allow trailers to enter. It also includes a new doorway connection to the existing cottage building.
- Alter the existing vehicular access arrangements, to provide a single access to the facility and family dwelling, in order to improve sightlines and safety.
- Create a new trailer parking area to the rear of the workshop including a dedicated turning area.
- Provide a new lined car parking area for staff and visitors accommodating (12 no. spaces) and a separate dedicated HGV parking area accommodating (12 spaces)
- Decommission the existing on-site treatment system and percolation area and provide new on-site foul treatment system to the rear of the site.
- Provide new surface water drainage infrastructure.
- Provide new landscaping with screening planting along the front boundary with the family dwelling.

- Carry out all associated site works.

The planning application was accompanied by the following;

- Planning Statement prepared by David Mulcahy Planning Consultants Ltd.
- Visual Impact Assessment prepared by David Mulcahy Planning Consultants Ltd.
- Traffic Report prepared by Transportation Services Ltd & Roadplan Consulting.
- Site Suitability Report prepared by Larry Holton, LOH Consulting Ltd.
- Landscape Plan prepared by Anthony Johns Landscape Design.
- Services Report prepared by Conor Furey and Associates, Consulting Engineers & Project Managers.
- Photomontages prepared by Conor Furey and Associates, Consulting Engineers & Project Managers.
- Report prepared by Aidan Kelly Agri Design & Planning Services.
- Screening for Appropriate Assessment prepared by Niamh Ní Bhroin, Dúlra is Dúchas.
- Letters of Consent from the applicants mother (Margaret O'Shea) to make the application.
- Certificate of approval from Kildare County Council Environment Section dated 27<sup>th</sup> April 2017.
- Letter dated 17<sup>th</sup> December 1991 from Brown & McCann Solicitors to Kildare County Council referring to Kilcock District Court Hearing 9<sup>th</sup> December 1991.
- Rate Demand Note dated January 2017 from Kildare County Council.

In response to further information request the following were also submitted;

- Environmental Report on Dust Emissions prepared by TMS Environment Ltd.
- Revised Landscape Plan prepared by Anthony Johns Landscape Design.
- Traffic and Transport prepared by SM Moran & Associates.
- Affidavit dated 21<sup>st</sup> May 2019 from Michael O'Shea.

### 3.0 Planning Authority Decision

#### 3.1. Decision

The planning authority decided to **grant** retention permission subject to 21 conditions. Conditions of note include the following;

No. 2:	Landscaping
No. 3:	Existing portacabin/office to be removed within 3 months
No. 4&7	Mitigation measures in relation to noise and dust
No. 5:	Noise requirements
No. 6:	Oil and chemical storage tank requirements
No. 8:	Working hours of the business
No. 9:	Details of combined entrance to be agreed
No. 10:	Sight visibility requirements
No. 11&12:	Warning signage during construction and Construction Management Plan to be agreed.
No. 13:	Public lighting to be agreed
No. 14&18:	Surface water and foul waste requirements
No. 15:	Surface finish on the proposed yard requirements
No. 16:	Road Safety Audits Stage 2 and 3 requirements
No. 17:	Signage
No. 19&20:	Waste Management
No. 21:	Section 48 Development Contribution €57,780.41

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports (dated 26/11/2018 and 14/06/2019)

The Planners Report is the basis for planning authority decision. The 1<sup>st</sup> Report in summary states;

- Notes the extensive planning history, unauthorised development, and court proceedings dating from 1991 and 2011.
- The agent submits that the use of the site ‘for spray painting, repairing, construction and storage of lorry trailers, chassis and containers’ was established pre 1<sup>st</sup> October 1964, therefore the applicant has a legal and unfettered right to continue the commercial-business use from the site. The applicant should be invited to provide evidence to demonstrate that the use was established prior to 1<sup>st</sup> October 1964 and should include a copy of the Court Judgement referred to.
- Non-Conforming Uses – The subject proposal would allow regulation of the development by bringing it under planning control, however evidence is required to demonstrate that the proposal qualifies as a Non-Conforming use.
- Expand beyond Existing Capacity - The applicant has indicated that the proposed development will include a number of enhancements in relation to dust emissions and noise, improve access and trailer parking, and new foul treatment system.
- The extent of the site is much reduced from that assessed under previous planning application (09/875), and a portion of land at the extreme east of the site has been included for the provision of the raised polishing filter, which should be annotated on the site layout plan. The focus of the development is to enhance and improve the existing facility in order to reduce ongoing negative impacts on local amenity. It is not considered that the business would be expanding beyond its existing capacity.
- The visual impact assessment demonstrates that there would only be a fleeting view of the site, screen planting will mitigate the visual impact. The design and appearance of the portacabin is not appropriate to the rural area and should be removed. Consider that the proposal would not adversely affect the rural nature of the site or the amenity of the local area.

The 2<sup>nd</sup> Report in summary states;

- Notes the affidavit prepared by the applicant and a letter from Brown McCann confirming that the judge accepted the pre 1964 commercial use on site. Satisfied

that the proposal qualifies as a Non-Conforming use as outlined in Section 17.1.3 of the County Development Plan.

- Portacabin can be removed from the site by way of a condition.
- Services layout drawing (dwg No. S1001) prepared by Conor Furey and Associates, Consulting Engineers and Project Managers acceptable.
- Notes revised landscaping plan (dwg. No. OSH/TS/001b) prepared by Anthony Johns Landscape Design which includes planting along the eastern boundary and roadside boundary acceptable.
- Notes the report of the Transportation section of the planning authority but considers that the proposed development will significantly improve the existing access arrangements on site.
- Recommendation to grant permission subject to conditions.

### 3.2.2. Other Technical Reports

**Transportation:** 1<sup>st</sup> Report dated 22/11/2018 had concerns about intensification of use, associated increase in traffic, both car and HGV, movements on a regional road where the maximum speed limit applies, and volume of HGV's are very high.

Report recommended further information, in relation to lines of sight for the proposed new entrance and if boundaries are to be set back, requested letters of agreement from affected landowners to be submitted, details of traffic counts and speed analysis of the R407 over a 7 day period, details of the daily anticipated HGV and other truck volumes for the proposed development, a swept path analysis of HGV's accessing and egressing the proposed new entrance, and details including kerbing at the proposed new entrance, signage and sightlines.

2<sup>nd</sup> Report dated 30/05/2019 recommended refusal on the basis that the proposed development would endanger public safety by reason of a traffic hazard.

3<sup>rd</sup> Report dated 12/06/2019 noted the previous recommendation and discussion with the planning officer and recommended a number of conditions.



**Environment:** Report dated 9/11/2018 recommended further information in relation to the open drain and the containment of dust. Report dated 12/06/2019 recommends no objection subject to conditions.

**Water Services:** Report dated 19/10/2018 recommends no objection subject to conditions.

**Environmental Health Officer:** Report dated 21/11/2018 recommends no objection subject to requirements.

**Planning Control:** Report dated 17/10/2018 notes no unauthorised development.

**Chief Fire Officer:** Report dated 19/11/2018 recommended no objection.

### 3.3. Prescribed Bodies

**Irish Water:** Report dated 26/10/2018 recommends no objection.

**Inland Fisheries Ireland:** Report dated 02/11/2018 recommends no objection subject to requirements.

The Board also referred the proposed development to Inland Fisheries Ireland (IFI), the DAU Department of Culture, Heritage and the Gaeltacht, An Taisce, the Heritage Council, but no reports were received.

### 3.4. Third Party Observations

A third party observation was lodged with the planning authority from Seamus Cullen the appellant in the current appeal. The objection to the proposal received by the planning authority has been forwarded to the Board and is on file for its information. The issues raised are comparable to those raised in the third party appeal summarised in section 6 below.

## 4.0 Planning History

### *Relevant Planning History*

**P.A.Reg.Ref.09/875 ABP PL09.237117:** Permission granted by Kildare County Council following a material contravention procedure. Following an appeal by the current third party appellant permission was **refused** 15/11/2010 to Seán

O'Shea for retention and completion of parking area for trailers to the rear of existing premises and all ancillary site works at Baltracey, Donadea, County Kildare.

*'1. It is an objective of the planning authority as set out in the Kildare County Development Plan 2005-2011, to guide development to appropriate locations in rural areas (section 6.3, objective 2) and it is the policy of the planning authority to protect the environment and landscape of the county (policies RG1). The site is located within a rural area outside and at a distance from any identified settlement or zoned land and it is the policy of the planning authority (policy OD 1) that the use of such land is primarily agriculture.*

*These policies and objectives are considered to be reasonable. The proposed development would facilitate the intensification of an existing industrial use, conflicts with the agricultural use of the surrounding lands and which would be appropriately directed to lands zoned to accommodate industrial type uses. The proposed development would seriously injure the amenities of the area including agricultural amenities, would be contrary to the provisions of the development plan for the area and would, therefore, be contrary to the proper planning and sustainable development of the area.*

*2. The proposed development, involving an intensification of use, would access onto the R407 national road where a speed limit of 80km/h applies. The Board is not satisfied that it has been demonstrated that the applicant can provide and maintain the line of sight at the amended site entrance which is infringed by mature field boundary hedging outside of the applicant's landholding.*

*Notwithstanding that the substandard nature of access and turning facilities on the site, the Board considers that the proposed development, which would facilitate the intensification of an existing industrial use, which would have a very high proportion of heavy goods vehicle traffic, would endanger public safety by reason of a traffic hazard.*

*3. The proposed development, which would facilitate the intensification of an industrial use, does not make adequate provision for sanitary facilities and wastewater effluent treatment to accommodate and treat the effluent that would arise from such a development. The proposed development would be prejudicial to public health.*

4. Having regard to the nature of the existing industrial use, to the nature of the existing wastewater treatment systems within the landholding, to the proposal to discharge effluent from an existing septic tank on the site into the surface water system, to the evidently polluted condition of the watercourse/ditches adjacent the north of the site and the water from which are piped (flowing south) through the site and based on the reasonable assumption that the said watercourse connects into the Baltracey River approximately 110 metres and which is of 'poor status' (Q3) water quality status, the Board is not satisfied that the proposed development will be sufficient to protect the adjoining stream from pollution and would, therefore, be contrary to public health.' (See file attached)

**P.A.Reg.Ref.08/2094:** Permission **refused** 18/02/09 to Seán O'Shea for the retention of parking area to rear of premises for the purposes of parking trailers on part of the site subject of the current application under appeal. The 7no. reasons for refusal related to contravention of policies RG1 and RG6 of the development plan, material contravention of objective OD1 for use of the land primarily for agriculture, serious injury to local amenities, impact on an historic monument, material contravention of policy RR1 of the development plan relating to regional roads, endangering of public safety by reason of a traffic hazard due to sightlines at entrance, and prejudice to public health relating to 2no. wastewater treatment systems serving 2no. dwellings / structures within the landholding.

**P.A.Reg.Ref.06/514:** Permission **refused** 29/05/07 to Seán O'Shea for the development of a parking area for the repair of trucks and trailers on part of the site subject to the current application under appeal. The 3 no. reasons for refusal related to material contravention of land use zoning objective for agricultural use, undesirable precedent and serious injury to local amenities.

*1991 Court Case*

Kildare Co.Co. v Seán O'Shea, Kilcock District Court, 9<sup>th</sup> December 1991.

## 5.0 Policy Context

### 5.1. Kildare County Development Plan 2017-2023

**Chapter 5** refers to Economic Development Enterprise and Tourism.

**Chapter 10** refers to Rural Development

**Policy 10.4.10** refers to Rural Enterprises

*'The Council acknowledges that the development of rural enterprise and employment opportunities will be vital to sustaining the rural economy. In accordance with the economic strategy for the overall county, employment, servicing the rural areas, should, in general, be directed to local employment centres, small towns and villages (see Chapter 5 Table 5.2 Economic Development Hierarchy, County Kildare), catering for local investment and small scale industry. Within the rural settlements / nodes and the rural countryside, agriculture, horticulture, forestry, tourism, energy production and rural resources-based enterprise should be facilitated.'*

Key considerations for rural enterprise (relevant to the current appeal) include:

- *'In general, existing 'footloose' commercial or industrial activities in towns and villages will not be permitted to re-locate to unserviced rural areas.*
- *Where established authorised rural based enterprises seek to expand beyond their existing capacity and, in the opinion of the planning authority, the expansion proposed would seriously affect the rural nature or amenity of the rural areas and surrounding countryside, it will generally be encouraged to locate in serviced zoned lands.*
- *One-off enterprises in the rural area may be located in the open countryside only where the Council is satisfied that the enterprise is suitable for that location in the first place and that it will comply with the criteria outlined in Table 10.3.*
- *Commercial / industrial developments in rural areas may be acceptable subject to proper planning considerations, where the Council is satisfied that the proposed development requires to be located in the rural area due to its dependence on an existing local resource or source material that is required for the carrying out of the industrial process / commercial activity / service. The local resource or source of material shall be in close proximity to the location of the proposed development.*

- *Apart from rural housing, as provided for in Chapter 4, there are other land-uses which may be considered in the rural countryside. Where an area is not within an identifiable settlement and is not otherwise zoned as part of this Plan, or any of the Local Area Plans, the use of such land shall be deemed to be primarily agricultural.'*

**Table 10.3** lists 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 200sq. 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.'*

**Chapter 17** relates to Development Management Standards and **Section 17.1.1** refers to Enforcement.

**Section 17.1.3** refers to Non-Conforming Uses. It states

*'Throughout the county there are uses that do not conform to the zoning objectives for that area. These are uses which;*

- 1. Were in existence on 1st October 1964;*
- 2. Have valid permissions; or*
- 3. Have no permission and which may or may not be the subject of enforcement proceedings. Extensions to and improvement of premises referred to in categories 1 and 2 above may be permitted. This would apply where proposed development would not be seriously injurious to the amenities of the area and would not prejudice the proper planning and sustainable development of the area.'*

**Section 17.9.1** refers to Employment Uses. It states

*'Compatibility of existing adjacent land uses with the proposed development and mitigation measures to preserve and protect the amenity of the adjacent uses, should this be necessary'.*

**Section 17.9.2** refers to Industry and Warehousing Development. It states

*'A landscaped buffer zone (minimum 5-10 meters will be a requirements of planning permissions for any industrial/warehousing development where it adjoins another zoning or where it would impact on the amenities of adjoining land uses'.*

## 5.2. **Natural Heritage Designations**

There are no designated sites within the vicinity.

## 5.3. **EIA Screening**

- 5.3.1. Having regard to the nature of the development to be retained and proposed, the nature of the receiving environment, and proximity to the nearest sensitive location, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The Third Party appeal against the Planning Authority decision to grant retention permission and permission was submitted by Seamus Cullen, the adjoining landowner to the north. It was accompanied by a number of appendices containing photographs and documents pertaining to the appeal site. The main grounds of the appeal can be summarised as follows;

#### Nature of the Use

- The site is also used for sales related to the reconditioning of trailers and trades as O'Shea Trailer Hire and Sales which has been in operation since 2017 and represents an intensification of use.
- The proposed development can be characterised as industrial processing under the Planning and Development Regulations 2001, as amended, and the existing warehouse structure can therefore be defined as an industrial building. The specific use is subject to certification under the 'Limitation of Emissions of Volatile Organic Compounds Due to the Use of Organic Solvents in Certain Paints, Varnishes and Vehicle Refinishing Products Regulations 2007'.
- The site is not zoned for industrial development, and the nature of the proposed industrial development is not dependent on local resources or source materials that link it to a rural economy.

#### Kildare County Development Plan 2017-2023

- The proposed development is not compatible with the adjacent landuses as the use of such land is primarily agricultural and therefore contrary to Section 17.9.1 of the County Development Plan.
- Previous unauthorised developments on the site have infringed on the objectors livelihood and the current application would result in a further negative impact on the productivity of the objectors farmland.
- A tributary ditch on the boundary between the two properties was filled in two stages by the developer and has led to significant flooding on the objectors land.



The construction of the truck park in 2019 involved the removal of a boundary ditch and infill of hard core material. The unauthorised works blocked natural drainage of the objectors land to the Baltracey River and undermined the hedge and boundary fence, which has caused significant harm for the safe containment of livestock.

#### Established Use Pre-1963

- Submits that evidence from the public planning files and public maps contradicts the proposition that the current use is consistent with and remains contiguous with the use which was in effect before the coming into effect of the Local Government (Planning and Development) Act, 1963.

#### Road Safety

- Refers to Section 17.7.1 Stopping Distances and Sightlines of the CDP, and the recommendation of the Transportation and Public Safety Department of the planning authority to refuse planning permission.
- The development is onto the R407 road at an 80km section, where egress sightlines towards the north of the site are significantly shorter than the 150m NRA standard. The Road Safety Audit contained within the Traffic Report submitted with the application recommends cutting back the hedges to provide sightlines in accordance with the TII requirements. The hedges however are in the ownership of the objector, and while the seasonal growth of the vegetation is managed by the Council any requirements to rest/alter the hedgerow to improve the sightlines would have a negative impact on the agricultural value of the lands.
- The audit also notes that the radius of curvature of the access road is tight, and there is an ongoing risk to road users due to this development.

#### Building Lines

- Table 17.8 states that the building lines from a Regional Road should be 31.0m while the proposed extension to the workshop would fall within 20m of the R407, and therefore in direct contravention of this policy in the CDP.

#### Industry and Warehousing Development

- The construction of the two proposed sheds will not meet the requirement of a minimum 5-10 metre landscaped buffer as required under Section 17.9.2 Industry



and Warehousing of the CDP. And the existing unauthorised shot blasting facility is less than 5 metres from the Cullen's boundary hedge.

#### Screening for Appropriate Assessment

- Assessment carried out did not include an on-site visit. Pollution of water quality has continued to increase over the past 8 years to the detriment of the objectors livelihood and public safety.

#### 6.2. **Applicant Response**

A response to the third party appeal was submitted by David Mulcahy Planning Consultants on behalf of the applicant. The submission also included the following;

- Folio details for the adjoining lands to the north-east which are owned by Mr. James Cullen Jnr.
- Letter prepared by Mr. Sean Reilly confirming that Mr. James Cullen approached Mr. Michael O'Shea, of O'Shea Shotblast and Paint to acquire the lands to the north-east.
- Copy of agreement letter for leasing of yard in Naas for O'Shea Trailer Hire.

It can be summarised as follows;

#### Overview

- Submit that the appeal is vexatious in nature and should be dismissed by the Board.
- Notes the owner of the adjoining landholding to the north east is James Cullen Jnr (son of the appellant) and not the appellant as claimed.
- Notes the Eircode address provided by the appellant which indicates that he resides nearly 1km from the subject site.
- Reference to a recent approach by the appellant to acquire the adjoining lands to the north east, with a letter from a local estate agent confirming same.

#### Planning History

- The 2009 application excluded the existing development on the site, involved a far larger footprint extending a considerable distance into the rear field and was to accommodate a much larger business involving 18 staff. It was a materially different proposal to that currently under consideration and was far larger in both scale and intensification. The proposed development must be assessed on its own merits.
- There is no intensification involved under the current application. The current proposal involves 8 staff, and only seeks to improve the environmental, traffic, foul and operational elements of the existing business.
- The proposed development represents a development in existence pre 1<sup>st</sup> October 1964, is an extension and improvement of a non-conforming use in accordance with Section 17.1.3 of the County Development Plan.
- Refer to Board decision on PL09.240384 to grant permission for a similar development involving a commercial vehicle breakers yard in the rural area of Hempstown, Blessington where the pre-1964 use on the site and long standing nature of the family business being key reasons for granting permission.
- The applicant owns O'Shea Trailer Hire and Sales, but this operates from an entirely separate location in Naas, Co. Kildare. Copy of rental agreement between Mr. O'Shea and Mr. Dominic Fagan, owner of the yard in Naas. No trailers associated with O'Shea Trailer Hire and Sales are stored on the subject site.
- The existing business on the site is an established use in planning terms, with this fact having been confirmed by the Courts. The applicant is simply trying to regulate the business from a planning perspective.

#### Site Location

- It is not clear from the appeal why the existing business is not considered to be incompatible with the adjoining agricultural use or infringe on the appellant's livelihood. Applicant notes that the dust emission that did occur, was a one-off event that has been rectified, and will be further mitigated against under the current application. In relation to flooding, the applicant has not substantiated any claims with evidence, and references to the 2009 development are irrelevant. The applicant has removed all hardstanding associated with development at the rear of

the site, as directed by the Council. This issue can no longer be raised in relation to the current appeal.

#### Established Use Pre-1963

- The District Court previously ruled in December 1999 that the use of the site was established and therefore there was no case for the Council to pursue. Kildare County Council have never since issued any Warning letters or taken any enforcement action. The applicant has the benefit of an established use on the site for paint spraying, repairing, construction and storage of lorry trailers, chassis and containers. This has been accepted by Kildare County Council in issuing a notification to grant permission.

#### Kildare County Development Plan 2017-2023

- Submit that the business is not expanding beyond its existing capacity and only trying to improve the status quo. The proposed new works will not seriously affect the rural nature or amenity of the area. The criteria under Table 10.3 (criteria for one-off new small-scale enterprises do not apply).

#### Road Safety

- The planning authority clearly see the rationale of the current application in terms of improving the status quo from a traffic perspective rather than allowing the current application to continue in what all parties agree is a substandard and dangerous manner.

#### Building Lines

- Submit that it is unreasonable to apply building line setbacks for regional roads where there is an established building on the site which is closer to the road. Note section 17.7.2 of the current County Development Plan which states that 'Other building lines may be specified in recognition of local conditions'. Therefore, the Council have flexibility in this regard, noting the role played by existing buildings.

#### Industry and Warehousing Development

- Submit that section 17.9.2 of the County Development Plan which states that a minimum of 5-10m will be required where an industrial development adjoins another zoning (not relevant) or would impact on the amenities of adjoining land uses is

aimed at new industrial developments in urban areas, and not to industrial development in rural areas.

- Contend that one of the primary purposes of the application is to avoid any potential dust emissions by the provision of the new extension. Also assert that the proposed development will also improve the status quo in respect of foul discharge and surface water discharge and therefore again reduces the potential impact for any adverse impact on the appellants lands. Submit that there is no material impact on the amenities of the adjoining land use and therefore a landscape buffer is not required in this instance.
- The ecologist did visit the site and the Baltreacy River as evidenced in the photographs in her report.
- The applicant has no intention of interfering with the hedgerow which is in the ownership of the appellant, an all vehicles will be set back from same. The applicant is open to a condition of planning permission requiring a survey of the hedgerow at this area and identification of root protection areas to be provided to the Council, along with a site layout showing details of the parking areas, if the Board consider this necessary.
- No evidence to support the allegation that damage to a hedgerow tree in a photo submitted had anything to do with the applicant.
- Assertion that pollution of the watercourse to the north of the site has been sustained and continued to increase, has not been supported by any evidence.

### 6.3. Planning Authority Response

The planning authority confirmed its decision and considers that the development can be accommodated on the subject site, having regard to the existing established use of the site, the existing access arrangements, the planning history of the site and supporting the principle of encouraging the expansion and employment in rural enterprises which would not seriously injure the amenities of the area or of property in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.

A further response from the planning authority was submitted to the Board 06/09/2019 in response to the applicants response to the third party appeal and confirmed that they have no further observations.

#### 6.4. **Observations**

None.

#### 6.5. **Further Response**

A further detailed response to the applicants response to the third party appeal was submitted. It was accompanied by photographs, newspaper articles relating to fatal car accidents, associated documentation including video on accompanying memory stick. It can be summarised as follows.

##### Legal Owner

- Confirms that he Seamus Cullen is the sole owner of the land and has never placed the holding on the market for sale, nor is it intended to do so.
- Rejects the assertion that there is or has been an old 'grudge between the late Mr Sean O'Shea or any of his family and himself.
- In 2007 a site adjoining the objectors farm was purchased by the O'Shea family and subsequently without any planning permission this site was developed as a trailer park. A drain on the opposite side of the boundary hedgerow was filled in which caused interference with surface water on the objectors farm. The shot blasting facility including a chimney carrying shot blast dust was extended over this ditch coming to within 0.5m of the Cullen boundary. This regularly leaks filling an extensive area of the Cullen property where livestock graze with dust.

##### 2010 Planning Application

- The objection to this proposal was on the basis of flooding and shot blast dust lodging on his lands and livestock (particularly sheep's wool), and road safety.
- In relation to the 2018 application the applicant has made no effort to alleviate the flooding on the Cullen property, to adhere to a five meter buffer, the applicant does not have the sightlines necessary and nor have they provided a swept path

assessment for HGVs existing the subject site. Kildare County Council may have to CPO part of the road frontage to the Cullen property to provide adequate sightlines.

Addresses points raised in the Agents submission

- Regarding the permission in Hempstown raised by the Applicants' Agent (i.e. PL09.240384) the applicant provided commercial rates, invoices and previous grants of planning permission as supporting evidence for pre-1963 use. None of these have been provided in the current application.
- Videos and still images from facebook and Instagram show that the O'Shea Trailer Hire and Sales business operates from the subject site in Baltracey.
- To date, no documentary evidence or Court ruling has been provided by the Applicant to prove established use in planning terms.
- Concerns that they may be in breach of regulations relating to Single Farm Payment and membership of the Bord Bia quality assurance scheme, based on the visible damage to hedgerows and grazing land and the contaminated ditch on his property.
- The current duct which carries the dust from the shotblasting operation is sealed to the housing with Duct tape.
- The applicant has not removed all hardcore material from the previous unauthorised site.
- Unclear as to how the Council came to the determination that the subject site has established existing use when they advised in the further information request that they could not place significant weight on the letter provided to support the 1963 use. The applicant should be invited to provide a copy of the Court Judgement. Refers to a local publication from 1984 which states that the operation was established in 1979, not prior to 1<sup>st</sup> October 1964.
- Operations are and have been expanding beyond existing capacity. The proposed new extension to the front of the premises does not address the dust duct at the rear of the premises which is 0.5 meters from the appellants land and regularly leaks onto his property.

- Would have expected that that this application would include a 5 meter buffer between adjoining properties.
- The ecologist report contains only two photographs both of which were taken from the R407, and the report does not state whether inspections or tests of the Baltracey River immediately downstream from the subject site were undertaken.
- The folio details submitted with the Agent's response do not prove that the appellant does not own the hedgerow. The ditch along the north of the subject site is on the appellants land and in his ownership. The unauthorised construction of a Trailer Park as is evidenced in the 2009 submission caused damage to the hedgerow with the placing of hardcore material on site.
- Queries whether additional trailer parking could be provided in area outlined in yellow on site layout plan submitted.
- The appeal is not vexatious, and the current application is not materially different to previous applications as the main issues of the last application remain.

## 7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The relevant issues are addressed under the following headings:

- Non-Conforming Use/Intensification of Use
- Compliance with Development Plan Policy
- Access and Traffic Safety
- Waste Water Drainage
- Surface Water Drainage/Flooding
- Dust/Pollution
- Impact on Adjoining/Visual Amenity
- Other Matters
- Appropriate Assessment

- 7.1.1. It is important to state from the outset that the applicants have an unauthorised commercial undertaking on site comprising shot blasting and painting facility. The unauthorised nature of the use is not disputed by either party.
- 7.1.2. The Planning Authority note the use of the site for 'spray painting, repairing, construction and storage of lorry trailers, chassis and containers' and the planning history of refusals in particular under P.A.Reg.Ref.09/875 ABP PL09.237117 and enforcement proceedings on the site. I concur with the view that the current commercial use is unauthorised.
- 7.1.3. The current application for retention permission and permission differs from the previous application under P.A.Reg.Ref.09/875 ABP PL09. 237117 in that the site area is reduced (from 0.69ha to 0.47ha.), a new waste water treatment system and surface water disposal system are proposed, and a revised access egress arrangement is provided.
- 7.1.4. The site area previously included a concrete pan at the western side of the site used for access, parking and storage, an area of compacted hardcore material used for parking/storage of lorry trailers at the centre of the site, and a rough area of untended grass at the eastern end of the site. The site excluded the area to the north east of the site which included the dwelling house, portacabin and the existing industrial type shed.
- 7.1.5. The applicant submits that the current application addresses the previous reasons for refusal under P.A.Reg.Ref.09/875 ABP PL09. 237117.
- 7.1.6. The current application for retention permission and permission seeks to regularise more recent unauthorised developments on site. It is also important to note that the Board have no role in enforcement matters. The current application will therefore, be assessed on its own merits.

## 7.2. Non-Conforming Use

- 7.2.1. The existing commercial use on site is a non-conforming use located in a rural area without the benefit of planning permission, and as already stated has been the subject of enforcement proceedings. Section 17.1.3 of the County Development Plan refers to non-conforming uses and states that extensions to and improvement of



premises may be permitted where the proposed development would not be seriously injurious to the amenities of the area and would not prejudice the proper planning and sustainable development of the area. My assessment will address amenity issues in relevant sections below.

- 7.2.2. The applicant asserts that the existing use on site which involves taking in HGV trailers which are in a poor state of repair, stripping off the existing paintwork and reapplying new paint work is an established use. The applicant submitted documentation as part of their application and on appeal to evidence the longstanding use of the site as a commercial business. Documentation included;
- Letter dated 17<sup>th</sup> December 1991 from Brown & McCann Solicitors to Kildare County Council referring to Kilcock District Court Hearing 9<sup>th</sup> December 1991,
  - Rate demand note dated January 2017 from Kildare County Council and
  - Affidavit dated 21<sup>st</sup> May 2019 from Michael O’Shea – which refers to failed attempts to obtain a copy of the Order from Naas Court Office in respect of the Kildare County Council -v- Sean O’ Shea Kilcock District Court Hearing 9<sup>th</sup> December 1991.
- 7.2.3. I note however, the protracted planning history on this site and that no photographic evidence or aerial photography was submitted to substantiate this claim.
- 7.2.4. The Planning Authority had concerns in respect to the status of the non-conforming use and sought a copy of the District Court Judgement in 1991 referred to by the applicant by way further information. Notwithstanding the fact that a copy of this Court Judgement was not forthcoming, the Planning Authority were satisfied that the proposal qualifies as a non -conforming use.
- 7.2.5. I can confirm from my site inspection around midday on a weekday, that the site is currently in use as a facility for Heavy Goods vehicles and trailers which are shotblasted and painted in the associated workshop . The yard area is used for trailer parking and staff parking and the portacabin is in use as an office.
- 7.2.6. While it might be construed that the current application which seeks retention permission and permission is intended to circumvent the unauthorised use on site, I am nonetheless, reasonably satisfied that the use on site is a non-conforming use.

- 7.2.7. I do not accept however, the applicants assertion that the subject application for retention and permission does not constitute an intensification of use. I concur with the appellants that the nature of the current use and proposed development appears to constitute an intensification of the use of the site, based on former aerial photography of the site (see attached).
- 7.2.8. I note the previous assessment and decision by the Board under P.A.Reg.Ref.09/875 ABP PL09. 237117 which clearly determined that the then proposed development constituted an intensification of use.
- 7.2.9. I also note the appellants reference to the approach taken by the Board previously on another case. In particular, the applicant cites the decision by the Board on PL09.240384, in which permission was granted for a commercial vehicle breakers yard in the rural area of Hempstown, Blessington, Co. Wicklow. In this case the Board held that the pre-1964 use on the site and long standing nature of the family business were key reasons for granting permission. In the current case however, there are no previous grants of planning permission, and I do not consider that the Boards decision on this particular case is necessarily relevant to the current appeal.
- 7.2.10. On the basis of the submissions made in connection with the planning application and appeal, I am satisfied, that the proposed development for retention and permission relates to a site the use of which is unauthorised, and that the proposed development would facilitate the consolidation and intensification of this unauthorised use. Accordingly, I consider that it would be inappropriate for the Board to consider the grant of a permission for retention and for permission of the proposed development.

### 7.3. **Compliance with Development Plan Policy**

- 7.3.1. The appeal site is located in a rural area and some distance from the development boundary of the village of Clane and Kilcock as identified in the Kildare County Development Plan 2017-2023.
- 7.3.2. Policy 10.4.10 of the County Development Plan seeks to ensure that, employment and rural enterprises should be directed to local employment centres, small towns and villages catering for local investment and small-scale industry. In particular, the

location of the subject site in an unzoned rural area is noted. The proposed development for retention and proposed is in my opinion directly associated with the existing commercial use, which is located in an unzoned and unserved rural area.

- 7.3.3. The development for retention is assessed in the context of the criteria for one off rural enterprises as set out in Table 10.3 of the County Development Plan. In my opinion the proposed development for retention and as proposed is intrinsic to the commercial use of the site which has no link to the rural area.
- 7.3.4. I am satisfied, that the proposed development for retention and proposed which is intrinsically linked to a commercial use in a rural area, is not in accordance with Policy 10.4.10 and fails to meet the criteria for one-off enterprises as set out Table 10.3 of the County Development Plan 2017-2023 and would therefore, be contrary to Policy 10.4.10.
- 7.3.5. I also note that under P.A.Reg.Ref.09/875 ABP PL09.237117 reason for refusal 1 although referring to policies and objectives of the now expired Kildare County Development Plan 2005-2011 refers that development as facilitating the intensification of an existing industrial use, which would conflict with the agricultural use of the surrounding lands and which would be appropriately directed to lands zoned to accommodate industrial type uses.
- 7.3.6. I am satisfied, therefore, that the proposed development to be retained and proposed would be contrary to the proper planning and sustainable development of the area and should be refused on this basis.

#### 7.4. **Access and Traffic Safety**

- 7.4.1. The existing development on site is accessed via a single entrance from the R407.
- 7.4.2. A Traffic Report prepared by Transportation Services Ltd & Roadplan Consulting accompanied the application. It describes how heavy vehicles accessing the site must reverse into the site in order to position a trailer unit close to the entrance doors of the existing workshop. This series of manoeuvres is also due to the lack of a turning area within the existing site. It is proposed therefore to relocate the existing site access some 15 meters to the south of the existing location merging this access with the site access to the applicants family land. Drawing No. 117-A40-LP01

indicates visibility sightlines of 150 meters from a setback of 2m within the proposed site access in both directions along the R407. A Stage 1 Road Safety Audit was also carried out and is contained in Appendix 2. It is also proposed to provide a dedicated hard standing turning area within the site located towards the eastern boundary of the site with 12 dedicated parking bays for trailer units orbiting the turning area. It is also proposed to provide 12 dedicated parking spaces within the site for staff and visitors.

- 7.4.3. Concern has been raised by the appellant in relation to the applicants ability to provide adequate sightlines, given that they are infringed by mature field boundary hedging outside the applicants landholding, for which consent to cut back has not been provided by the appellant.
- 7.4.4. Concern is also raised by the appellant in relation to traffic safety given the narrow width of the existing road, which includes a solid white line and the nature of the existing and proposed development which would have a high proportion of heavy goods vehicle traffic.
- 7.4.5. The Transportation Department of the Planning Authority had concerns about the intensification of use of the proposed development associated increased traffic, both car and HGV, movements on a regional road where the maximum speed limit applies, and volume of HGV's are very high.
- 7.4.6. Following a request for further information the Transportation Department recommended permission be refused on the basis that the development would endanger public safety by reason of a traffic hazard. The response to the request for further information submitted that the proposed access arrangements are the best achievable within lands under the applicants ownership, and that the proposal can be approved without the need for the applicant to incur further expense in addressing further items raised in the further information. I find this response wholly inadequate.
- 7.4.7. Following discussions with the Senior Planner of the Planning Department the Transportation Department subsequently recommended a grant of permission subject to a number of conditions. Ultimately the view taken by the planning authority was that the proposed development would significantly improve the existing access arrangements on site.

- 7.4.8. I have had regard to the sightlines proposed along the R407 (as indicated on Drawing No. 117-A40-LP01 contained within the TPS Report) and am satisfied from site inspection that part of the existing boundary to the north along the appellants property would be required to be removed/ set back in order to achieve the required sightlines of 150m. I note that the while the applicant was requested by way of further information to submit a letter of consent from the adjoining land owner to set back this boundary, but none was forthcoming.
- 7.4.9. I note Condition No. 9 and 10 of the grant of permission by the planning authority which requires details of combined entrance to be agreed and sets out sight visibility requirements.
- 7.4.10. I also note that under P.A.Reg.Ref.09/875 ABP PL09.237117 reason for refusal no. 2 referred to the fact that the Board was not satisfied that the applicant had demonstrated that they could provide and maintain the line of sight at the amended site entrance which was infringed by mature field boundary hedging outside the applicants landholding.
- 7.4.11. I also note the absence of details of traffic counts and speed analysis of the R407 over a 7 day period, or details of the daily anticipated HGV and other truck volumes for the proposed development, as requested by the Transportation. Notwithstanding, as already outlined above I am satisfied that the proposed development would result in an intensification of an existing unauthorised use and as such I am not satisfied that the previous reason for refusal no. 2 under P.A.Reg.Ref.09/875 ABP PL09.237117 has been addressed.
- 7.4.12. I am satisfied, therefore. that the proposed development would endanger public safety by reason of a traffic hazard and that the appeal should be upheld on this basis.

## 7.5. Waste Water Drainage

- 7.5.1. It is proposed to decommission the existing waste water treatment system which is located to the rear of the existing cottage and to provide a new waste water treatment system and raised polishing filter located to the east of the site. The site is also served by a public watermain.

- 7.5.2. The application was accompanied by a Services Report prepared by Conor Furey & Associates Ltd. This details a total loading for a population equivalent of 5.
- 7.5.3. The application was also accompanied by a Site Suitability Report prepared by Larry Holton, LOH Consulting Ltd. It indicates a groundwater protection response of R1, i.e. acceptable subject to normal good practice. The T test result is 36, which is suitable for a septic tank system but may be suitable for a secondary treatment system with a polishing filter at the depth of the T-test hole. The soil type is sandy silt/clay, with the water table not encountered at a depth of 0.9m below ground level.
- 7.5.4. A Streamline BAF System and polishing filter are proposed with a raised percolation bed which will be a pressurised system. Distances to site boundaries existing wells, etc., are in accordance with the recommendations provided in the EPA *Code of Practice Wastewater Treatment and Disposal Systems serving Single Houses* (EPA 2009).
- 7.5.5. The reports of the Environment Section and Environmental Health Officer of the planning authority recommended that the proposed development was acceptable subject to requirements. Condition no. 18 of the notification of decision to grant permission refers.
- 7.5.6. I also note that under P.A.Reg.Ref.09/875 ABP PL09.237117, that reason for refusal no. 3 referred to the inadequate provision for sanitary facilities and wastewater effluent treatment to accommodate and treat the effluent that would arise from such a development and that the proposed development would be prejudicial to public health. In that case however a new waste water treatment system was not proposed.
- 7.5.7. I am satisfied that the proposed development represents an overall improvement in the treatment and disposal that would arise from such a development.
- 7.5.8. I am satisfied, therefore that the current foul drainage proposals are acceptable, addresses reason for refusal no. 3 of P.A.Reg.Ref.09/875 ABP PL09.237117, and would not be prejudicial to public health.

## 7.6. **Surface Water Drainage/Flooding**

- 7.6.1. Concerns have been raised by the appellant in relation to a tributary ditch on the boundary between the two properties which was filled in two stages by the applicant

and has led to significant flooding on the appellants lands. It is also asserted that the subsequent construction of the truck park in 2019 involved the removal of a boundary ditch and infill of hard core material. The appellant claims that the unauthorised works blocked natural drainage of the appellants land to the Baltracey River.

- 7.6.2. The existing surface water percolation area is located along the northern boundary of the site and this is to be decommissioned as indicated on Drawing No. S1-001 Services Layout.
- 7.6.3. A Services Report prepared by Conor Furey & Associates Ltd accompanied the application. It describes how surface water run off generated within the development will be diverted away from the public road via a series of gully traps and directed into an infiltration/attenuation system and a flow control device which will subsequently discharge to the nearby watercourse.
- 7.6.4. On the day of my site inspection I did not observe significant flooding on the appellants property to the north, although I did note that the area to the north of the appeal site was waterlogged. I also note the photographs submitted with the appeal which indicate flooding on the lands previously. I would also note that works carried out by the applicant on site and along boundary ditches previously which appear to have interfered with the natural surface water drainage system cannot be considered as part of the current application and is a civil matter between both parties.
- 7.6.5. The Environment Section of the planning authority recommended that the proposals were acceptable and condition No. 14 of the notification of decision to grant of permission refers to standard surface water requirements.
- 7.6.6. I am satisfied therefore that the proposed development would not give rise to flooding of the adjoining farmland.

## 7.7. Dust/Pollution

- 7.7.1. Concern has been raised by the appellant in relation to dust emissions from the existing shot blasting shed and consequent pollution of adjoining watercourses and agricultural grazing land.



- 7.7.2. The Environment Section of the Planning Authority recommended in their initial report that the applicant explain how the development proposed to contain all dust from industrial process and prevent it from entering the surrounding environment with particular reference to the open drains adjacent to the site, the piped drain under the site and the existing and proposed surface water system on the site.
- 7.7.3. In response an Environmental Report on Dust Emissions prepared by TMS Environment Ltd, was submitted. This report outlines that the existing facility takes in HGV Trailers in need of repair and refurbishment, strips off the existing paint in the Shot Blast Booth and repaints the vehicles. When the vehicles arrive, they are parked in the yard until the process commences, with the first stage involving the removal of all the number plates lights etc. in the yard. Then the Trailer is dried in Bay no. 2, moved to Bay no. 3 where it is shotblasted, to Bay no. 4 for painting and Bay no. 1 for finish painting and from there to the yard to await collection. Dust from the shot blasting process is created in Bay no. 3 and occurs behind closed doors.
- 7.7.4. It is proposed to construct an extension to the north of the shot blasting booth in order to fully contain all dust and to construct a new shed structure to the front of the existing workshop which will serve to protect the trailers after shot-blasting and painting. This will be enclosed on three sides leaving the south side open to allow access for trailers.
- 7.7.5. Bay no. 3 is fitted with a dust extraction system which captures airborne dust inside the Bay and collects it in a collection drum. When the doors are opened there is potential for fugitive dust emissions especially when there is wind or when the trailers are moved outdoors.
- 7.7.6. The report refers to a survey of dust deposition levels associated with the existing activity which was undertaken between 11<sup>th</sup> March and 12<sup>th</sup> April 2019 and measurements at three survey locations were within the recommended limit value of 350mg/m<sup>2</sup>/day, and therefore not causing a nuisance during the survey period.
- 7.7.7. The Shot Blast material is an inert non hazardous grit that abrasively removed paint and rust particles. The composition is a mixture of aluminium silicate and various mineral oxides including principally aluminium oxide, iron oxide and calcium oxide.
- 7.7.8. While I would however query the locations of the dust survey points and in particular D3 which is located close to Bay no.3 and which had a measurement of



326mg/m<sup>2</sup>/day. While survey point D3, is also immediately adjoining the appellants property to the north, it would have been more informative if measurements could have been taken at a distance further north within the field and adjoining drainage ditches.

- 7.7.9. The EHO section of the Planning Authority had reservations regarding the location of such an operation in a non-industrial zoned location but considered that the application for retention and additional development, would not intensify the level of operation, but rather improves facilities on site.
- 7.7.10. I note the appellants assertion that the existing warehouse structure can be defined as an industrial building and as such is subject to certification under the 'Limitation of Emissions of Volatile Organic Compounds Due to the Use of Organic Solvents in Certain Paints, Varnishes and Vehicle Refinishing Products Regulations 2007'.
- 7.7.11. However, the report of the EHO of the note that the current operation was issued a certificate of compliance under S.I. No. 564/2012 – European Union (Paints, Varnishes, Vehicle Refinishing Products and Activities) Regulations 2012 – by Kildare County Council on 27<sup>th</sup> April 2017, which is not due to expire until March 2020.
- 7.7.12. The EHO note the mitigation measures outlined in the accompanying Planning Statement which will be implemented if the development is approved. Specific dust thresholds for point and fugitive emissions to air are recommended, as are hours of operations, and recommends that a complaints line be set up by the developer to ensure that residential complaints or queries are dealt with in an efficient manner. In this regard condition No. 7 of the notification of decision to grant permission refers to mitigation measures in relation to dust.
- 7.7.13. Based on my site inspection of the appeal site and appellants lands, I observed the polluted condition of the watercourses/ditches and appellants land adjacent to the north of the site. I would have concerns in relation to excessive dust emissions from the existing facility, and also noted the use of duct tape which is in need of repair on a large duct which forms part of the dust Extraction System. The ditches on the applicants land drain into the culvert on the application site. It is not possible for me to determine the seriousness of the pollution or its source but given the nature of the activities on the appeal site it is reasonable to assume that the development is

resulting in pollution of surface waters. However, I also accept that the proposed extension to the existing shot blasting facility which will enclose this area and help to reduce the impact on the adjoining agricultural land to the north.

- 7.7.14. I fully accept that if permission was granted then there could at least be some monitoring of activities on site and could that work could be conditioned to be carried out within a specific period of time.
- 7.7.15. I am satisfied, therefore, that the development for retention and proposed development would not result in the pollution of the adjoining agricultural land or surface water in the open drains along the northern boundary of the appeal site. I am also satisfied that the current proposal addresses reason for refusal no 4 of P.A.Reg.Ref.09/875 ABP PL09.237117, and that permission should not be refused on this basis.

## 7.8. Landscape and Visual Amenity

- 7.8.1. Concerns have been raised by the appellant in relation to the proximity of the existing and proposed development to adjoining field boundaries particularly to the north, along with damage to/loss of hedgerow along existing planted boundaries with the appellants agricultural lands, and the visual impact of the proposed development both from the public road and adjoining areas.

### *Landscape Buffer*

- 7.8.2. The appellant has raised concern in particular to the proximity of the existing shot blasting facility and two proposed sheds to the northern boundary of the site which do not meet the requirement of a minimum 5-10 metre landscaped buffer as required under Section 17.9.2 Industry and Warehousing of the CDP.
- 7.8.3. The proposed extension to the north of the Shot blasting shed is to contain/enclose the existing blasting tank, shot blasting storage area, and existing open storage area, and also includes a new enclosed area. The proposed new enclosed area which has a stated area of 37m<sup>2</sup> is set back approx. 4.085m to the front/east from the northern boundary of the site, tapers back to the rear/west abutting the northern boundary.

- 7.8.4. The larger proposed new enclosed area which has a stated area of 414m<sup>2</sup> similarly extends to the northern boundary of the site for a length of approx. 17m. I note the revised Landscape Masterplan drwg. No. OSH/TS/001b submitted by way of further information which indicates planting along the eastern boundary and roadside boundary.
- 7.8.5. While the CDP minimum requirements in relation to a landscape buffer are noted I also consider that the provision of a landscape buffer in this instance has to be balanced between the benefit of enclosing the open storage areas and I consider it more advantageous to improve and enclose the northern elevation of the existing facility.

*Loss of Hedgerow*

- 7.8.6. The appellant has raised concern in relation to the loss of hedgerow and trees along the northern boundary of the appeal site with the adjoining farm land.
- 7.8.7. A Tree Survey and Landscape Plan prepared by Anthony Johns Landscape Design was submitted with the application and subsequently revised by way of further information. It is proposed to provide mixed specimen tree planting within the gaps of planting along the northern boundary. I noted from my site inspection that there were some gaps in the existing boundary planting but on balance I consider that this issue has been overstated by the appellant.
- 7.8.8. I also consider that the proposed planting along the front western boundary and to the east of the family dwelling will improve the visual amenity of the area.

*Building Lines/Visual Amenity*

- 7.8.9. The appellant has also raised concern in relation to the proposed extension to the workshop which would fall within 20m of the R407, and that this would be contrary to the recommended setback of 31.0m from a Regional Road as set out in Table 17.8 of the CDP.
- 7.8.10. In this regard I note that the existing house to the front of the site is set back approx. between 3 and 5m of the front boundary of the site and is single storey. The proposed shed to the rear of the house is located approx. 17 -18m of the front boundary of the site and has a ridge height of 6.380m. The ridge height of the proposed shed is similar in height to the existing sheds to the rear.

- 7.8.11. I have had regard to the Visual Impact Assessment prepared by David Mulcahy Planning Consultants Ltd. and Photomontages prepared by Conor Furey and Associates, Consulting Engineers & Project Managers.
- 7.8.12. I consider that the existing house on site would help screen views of the proposed extension to the workshop from the public road. I note condition No. 3 of the notification of decision to grant permission which requires the removal of the existing portacabin/office within 3 months of the decision. I also note the proposed new boundary along the frontage of the facility with the public road and associated landscaping, which combined will help assimilate/soften the visual impact of the existing and proposed development within the site.
- 7.8.13. I am satisfied, therefore, that on balance the proposed development would not have a negative impact on the landscape or visual amenity of the area and is not a grounds for refusal.

#### 7.9. Other Matters

- 7.9.1. *Use - O'Shea Trailer Hire and Sales* – The appellants have raised issues in relation to the nature of the use of the facility for the hiring and sale of trailers and have submitted information as part of the appeal in support of this assertion. I however saw no evidence of this on the date of my site visit. I am satisfied therefore that the principal use of the site is as described in the public notices. If the Board were mindful to grant permission then the use of the site could be restricted by way of condition.

#### 7.10. Appropriate Assessment

- 7.10.1. I follow the staged approach to screening for appropriate assessment as recommended in both EU Guidance and by the Department of Environment, Heritage and Local Government:-
1. Description of the plan or project and local site or plan area characteristics.
  2. Identification of relevant Natura 2000 sites and compilation of information on their qualifying interests and conservation objectives.

3. Assessment of likely significant effects-direct, indirect and cumulative, undertaken on the basis of available information.
4. Screening statement with conclusions.

7.11. *Project Description and Site Characteristics*

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

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

Site Code, Site Name and Designation	Approx. distance from the site	Conservation Objectives; Qualifying Habitats and Species	Relevant source-pathway-receptor links between proposed development and European site
Rye Water Valley/Carnton SAC (001398)	8.8km	<p>The generic conservation objective is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p> <p>Petrifying springs with tufa formation (Cratoneurion)*</p> <p>*denotes a priority habitat</p> <p>Narrow-mouthed Whorl Snail</p> <p>Desmoulin's Whorl Snail</p>	Yes, Due to the hydrological link between the site and the SAC.

7.12. *Assessment of likely Effects*

7.12.1. Based on the source-pathway-receptor approach, direct effects cannot be ruled out as there is a hydrological link to the Baltreacy River to the south of the proposed development site which is a tributary of the Lyreen River which flows into the Rye Water River and subsequently the Rye Water Valley/Carnton SAC.

7.12.2. The site is to be served by a new waste water treatment system and raised polishing filter at the rear/east of the site and public watermains, and subject to the requirements of the Environment Section and EHO of the planning authority, Irish Water and Inland Fisheries Ireland, the proposed development would not give rise to appropriate assessment issues.

- 7.12.3. I note, in relation to surface water run-off, the location of the existing percolation area along the northern boundary which is to be decommissioned. The proposed separator, surface water manhole, with silt collector and one way valve which discharges to the surface water to attenuation tank and which then discharges to the existing culverted watercourse running north south through the site, which do not give rise to appropriate assessment issues.
- 7.12.4. I also note from the third party appeal and my site inspection the pollution of the surface water in the ditches along the northern boundary of the appeal site within the appellants property, which also feeds into the existing culverted watercourse running through the appeal site. However, given the number of linkages and overall distance to the Rye Water Valley/Carlton SAC, any residual concentrations would be diluted by the time it reaches the SAC. I am also satisfied that given the conservation objectives for the SAC that the proposed development would not give rise to appropriate assessment issues.
- 7.12.5. The proposed development will not have any significant impacts, direct or indirect, on the qualifying species or habitats of the Natura 2000 sites listed above.
- 7.12.6. In terms of cumulative impacts, the site taken in the context with existing development, is not considered to result in likely significant cumulative effects.

### 7.13. *Screening Statement and Conclusions*

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

## 8.0 **Recommendation**

- 8.1. I recommend that permission for retention and permission be **refused** for the following reasons and considerations.

## 9.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a site the use of which is unauthorised for the carrying on of a commercial facility for the spray painting, repairing, construction and storage of lorry trailers, chassis and containers, and that the development for retention and proposed development would facilitate the consolidation and intensification of this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.
2. The proposed development, involving an intensification of use, would access onto the R407 national road where a speed limit of 80km/h applies. The Board is not satisfied that it has been demonstrated that the applicant can provide and maintain the line of sight at the amended site entrance which is infringed by mature field boundary hedging outside of the applicant's landholding. Notwithstanding the nature of the proposed access and turning facilities on the site, the Board considers that the proposed development, which would facilitate the intensification of an existing industrial use, which would have a very high proportion of heavy goods vehicle traffic, would endanger public safety by reason of a traffic hazard.

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Susan McHugh  
Planning Inspectorate

Tues 14<sup>th</sup> January 2020