



An
Bord
Pleanála

Inspector's Report ABP305929-19

Development	Sub-division of building to accommodate light industry joinery manufacturing, upgrading of the heating system to include solar panels and refurbishment of the external building and solar panels.
Location	Carnmore West, Oranmore, County Galway.
Planning Authority	Galway County Council.
Planning Authority Reg. Ref.	19/1342.
Applicant	Norbert Walsh.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal.
Appellant	Norbert Walsh.
Observers	Michael and Brid Kirwin and Others.
Date of Site Inspection	22 nd January, 2020.
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority's Decision	5
4.1. Planning Authority Assessment.....	7
4.2. Observations	7
5.0 Planning History.....	8
6.0 Grounds of Appeal.....	8
7.0 Appeal Responses.....	11
8.0 Observations.....	11
9.0 Planning Policy Context.....	13
10.0 EIA Screening Determination	15
11.0 Planning Assessment.....	15
12.0 Conclusions and Recommendation.....	24
13.0 Appropriate Assessment	25
14.0 Decision	25
15.0 Reasons and Considerations	25
16.0 Conditions	25

1.0 Introduction

ABP305929-19 relates to a first party appeal against the decision of Galway County Council to refuse planning permission for the subdivision of a building to accommodate additional light industry at an existing industrial premises in a rural area north-east of Galway City. Galway County Council refused planning permission for five reasons stating that the multiplicity of industrial uses would be inconsistent with the rural nature of the area, would contravene conditions associated with the parent permission, would give rise to traffic issues and would involve lands outside the control of the applicant in order to gain access. The final reason for refusal states that the applicant has failed to demonstrate the satisfactory and safe disposal of effluent rising from the site. An observation was also submitted supporting the Planning Authority's decision.

2.0 Site Location and Description

- 2.1. The appeal site is located near Carnmore Cross to the north of Junction 19 on the M6 Motorway approximately 9 kilometres to the north-east of Galway City. The village of Claregalway is located approximately 5 kilometres to the north of the subject site while the village of Oranmore is located approximately 5 kilometres to the south. Carnmore Cross is located at the junction of the R339 and R381 and this junction is located approximately 2.5 kilometres to the west of the subject site.
- 2.2. The subject site is located to the northern side of the R339. The R339 to the west of Carnmore Cross is characterised by extensive ribbon development including a number of warehouse/industrial units along its alignment. There are a number of dwellings in the immediate vicinity of the subject site particularly on the south side of the R339 directly opposite the site. A dwelling, together with some outbuildings to the rear is also located adjacent to the eastern boundary of the site.
- 2.3. The subject site occupies an area of 2,288 square metres (0.228 hectares). It accommodates a large building which is setback approximately 50 metres from the public roadway. The building appears to be subdivided into a number of separate ownerships. Most of the building at the time of site inspection appeared to be vacant.

The building to the front appears to be for the most part vacant. However, a relatively modest scale windows, doors and conservatory manufacturer is located in the western part of the front of the building. The remainder of the front part of the building appears to be unoccupied at present (I was unable to obtain access at the time of inspection).

- 2.4. The subject application relates to the portion of the building to the rear, (during my site inspection I was unable to gain access to this part of the site also).
- 2.5. The drawings submitted indicate that the rear portion of the building which is the subject of the current application occupies a gross floor area of 964 square metres. The office reception, canteen and staff area are situated around the front entrance of the building which is located on the eastern elevation. The remainder of the building to the rear incorporates a production area and further west a storage area, an internal partition divides these two areas of the building. The building rises to a height of approximately 7.2 metres although the office and administrative areas on the eastern side of the structure are considerably lower at approximately 3.4 metres in height. The rear part of the building incorporates a plaster render finish with a metal clad roof incorporating a very shallow pitch. The area to the front of the building accommodates hardstanding used for surface car parking. With the exception of the dwelling to the immediate east, the remaining lands surrounding the site are undeveloped and are currently in agricultural use.

3.0 Proposed Development

- 3.1. Planning permission is sought for the subdivision of the building to the rear of the site to include other light industry and manufacturing with ancillary storage. It is also proposed to upgrade the existing heating system to allow renewable energy sources of solar panels and ground to air heating pump together with the refurbishment of the external elevation of the building.
- 3.2. The drawing submitted indicate that an internal loft/mezzanine floor area located within the production area is to be removed and that existing internal partitions between the production area and storage area is also to be removed. It is proposed to incorporate a new storage racking to the rear (west of the building) for the

completed products manufactured on site. A series of solar panels are to be provided on the southern slope of the roof pitch.

4.0 Planning Authority's Decision

Galway County Council refused planning permission for five reasons which are set out in full below.

1. *Having regard to:*

- (a) *The contents of the planning application which includes for the subdivision of large industrial unit on site to provide for multiple light industrial uses (light industry joinery manufacturing) on site;*
- (b) *the requirements and criteria set out under Objective EDT11 of the Galway County Development Plan 20156 – 2021 for rural enterprise;*
- (c) *the aim of Objective EDT7 of the Galway County Development Plan 2015 – 2021 which seeks to align enterprise to zoned serviced lands;*

it is considered that a multiplicity of industrial uses on site would be inconsistent with the rural nature of the area, would result in a significant intensification of use on site and would generate unnecessary adverse impacts on residential amenity of properties in the vicinity of the site. Therefore, if permitted as proposed, the development would materially contravene Objective ED11 of the Galway County Development Plan 2015 – 2021 and would seriously injure the amenities, or depreciate the value of property in the vicinity.

2. *The building subject to this application accommodates the production area of the overall industrial unit that was part of the overall larger site, prior to the site's subdivision, with the adjoining building to the south specifically conditioned for storage purposes only. Therefore, if permitted as proposed, the Planning Authority is not satisfied that the development would not compromise the overall functionality of the original permitted use on site and therefore would be contrary to the conditions of permission relating to the said use, including Conditions Nos. 1 and 2 of 02/2908, Conditions 1 and 2 of PL Ref. 04/1377 and Condition No. 1 of PL Ref. 11/1423.*

3. *Having regard to:*

- (a) *The absence of satisfactorily demonstrating sightlines for the access onto the public road network in compliance with DM Standard 20 of Galway County Development Plan 2015 – 2021;*
- (b) *the absence of carrying out a road safety audit and traffic and transport assessment for the development.*
- (c) *the multiplicity of uses on site as a result of the proposed development which would generate additional traffic movements onto the regional road network;*

it is considered that the proposed development would cause an intensification of traffic movements on the public road network, would be contrary to Objective TI10 of the Galway County Development Plan 2015 – 2021 and would endanger public safety by reason of a traffic hazard, obstruction of road users or otherwise.

4. *Based on the information submitted with the planning application details, the applicant is reliant on third party lands in order to access the site and has not provided sufficient information to demonstrate to the Planning Authority, that they have the requisite consent of relevant parties to utilise the existing infrastructure. Therefore, if permitted in the absence of this information, the development will be contrary to the proper planning and sustainable development of the area.*

5. *Having regard to the information submitted with the planning application details, the Planning Authority considers the safe and satisfactory disposal of effluent on site cannot be guaranteed and therefore likely significant effects, individually or in combination with other plans or projects on the Galway Bay SAC and Inner Galway Bay SPA, in view of their conservation objectives and qualifying interests, cannot be ruled out. Therefore, if permitted as proposed, the development will be prejudicial to public health, would have the potential to pose an unacceptable risk to water quality and adversely affect the*

qualifying interests and conservation objectives of protected European sites for flora and fauna and would materially contravene Objective NHB1 and DS6 and Policy NHB1 of the Galway County Development Plan 2015 – 2021 and would be contrary to the proper planning and sustainable development of the area.

4.1. Planning Authority Assessment

4.2. Documentation Submitted with the Planning Application

- 4.2.1. The planning statement submitted with the application documentation states that the current planning application is being made to rectify several planning issues that have arisen in recent years and to allow planning approval for the production of a range of joinery items to be manufactured in these premises together with the permitted uPVC windows and doors. This application does not include any increase in floor area. Together with the refurbishment of the building, the applicant also intends to upgrade the building to have better thermal efficiency and to replace the obsolete boiler and ground to air heat pump. It is envisaged that if this permission is granted, the unit could be developed to provide much needed employment in the production of joinery products for the local construction industry.

4.3. Observations

- 4.3.1. A letter from the current observers, John Mooney and Company Limited was submitted in respect of the planning application, the contents of which have been read and noted. An observation was also submitted from the residents of the adjoining dwellinghouse to the east.
- 4.3.2. The planner's report suggested the Planning Authority have insufficient information to screen out likely significant effects on European sites arising from wastewater disposal on site. In relation to sightlines it is noted that a shared access is not included within the site boundary. A right of way to same has not been indicated and sufficient legal interest in the site access has not been sufficiently demonstrated. Furthermore, sightlines have not been demonstrated nor have any details of traffic generation arising from the proposed development.

- 4.3.3. In terms of effluent treatment, it is stated that the existing septic tank and percolation area serving the subject site was permitted under Reg. Ref. 02/2908. It required the septic tank to be upgraded to a treatment plant and polishing filter to be located just north of the R339 in the adjoining site. However, wastewater disposal proposals are not deemed satisfactory.
- 4.3.4. The planning report goes on to assess the principle of development and concludes that the development does not comply with criteria specified under Objective EDT11 or Objective EDT7 and it is concluded that the development of this nature is best suited for industrially zoned lands as opposed to a rural area in which the site is located. It is also suggested that the subdivision of the building compromises the overall functionality of the original permitted use and therefore would be contrary to the conditions of that permission. For the above reasons it is considered that the intensification of use on the site in this rural area would have adverse impacts on residential amenity, traffic safety, access, water supply and wastewater disposal and for these reasons it is recommended that planning permission be refused.

5.0 Planning History

- 5.1. No history files are attached. Reference is made in the planning report submitted with the application the two applications pertaining to the site.
- 5.2. It appears that the parent permission was granted in 1981, and a significant extension was granted under Reg. Ref. 02/2908. Under Reg. Ref. 11/142 planning permission was granted to Michael Hanley for (a) changes to the internal layout and elevations of the premises, (b) additional floor area, (c) signage at the main entrance and (d) timber fencing along the public road with corrected site boundaries from that granted under a previous permission.

6.0 Grounds of Appeal

- 6.1. The decision of Galway County Council to issue notification to refuse planning permission was appealed on behalf of the applicant by Leahy Planning Limited. The grounds of appeal are outlined below.

The appellant acquired the premises in 2015. It is stated that the present premises existing on site enjoys the full benefit of planning permission.

It is stated that the original unit incorporating the building on site was granted by Galway County Council on 1st October, 1981. Since then the premises has operated as an industrial unit concerning the manufacturing of windows. A significant extension to the premises was constructed in 2002 (under Reg. Ref. 02/2908). It is stated that the extended area was to be only used for storage purposes. In 2015 the premises was put in to receivership and was purchased by the current appellant. It is argued that it is clear from the above, that the unit built between 1981 and 1982 can continue to operate as a factory unit and there is no prohibition under the Planning Acts from subdividing the property in terms ownership. However, the applicant under the current application seeks to regularise the situation by seeking the subdivision of the planning unit with the original factory being separated as a planning unit from the area from which storage permission was granted.

- 6.2. Reference is made to the various policy statements contained in the development plan including Objective EDT11 which relates to rural enterprise. It is argued that this establishes the principle of providing enterprise activities in rural unserved areas. It is also argued that Development Management Standard 12 as set out in the development plan supports similar type rural enterprises.
- 6.3. The grounds of appeal go on to argue that it is difficult to justify that the proposed use is inconsistent with the rural nature of the area having regard to the fact that a factory use has already been established on site under the parent permission. It is argued that allowing the subdivision of the premises will help facilitate small scale agricultural related industry surrounding the area.
- 6.4. Furthermore, it is not accepted that the proposed development will result in an intensification of use. Up to the time that the premises closed, a highly intensive use was carried out providing windows for the construction industry. The Planning Authority have no basis for assuming that a small-scale industry, possibly employing a much smaller number of persons than that originally employed would represent an intensification.

- 6.5. Similarly, there is no justification the assertion that the proposal will have a negative effect on the amenity of residential properties in the vicinity. A largescale industrial operation has been carried out on site since 1981.
- 6.6. It is inappropriate to refer to Objective EDT7 as this policy clearly relates to the provision of new industry within zoned land in urban settings.
- 6.7. It is not accepted that the proposed development would compromise the overall functionality of the original permitted use on site. It is not appropriate for the Planning Authority to simply refuse planning permission for a change of use on the basis that it represents a change of use. The Board should note that the premises has not been in use for several years. It is also argued that Planning Authorities must be more responsive to the changing needs of industry.
- 6.8. It is argued that a condition associated with a previous permission cannot be used as justification for refusal. Condition No. 1 of the previous grants of planning permission merely require the applicant to carry out the development in accordance with the plans and particulars provided. This does not prohibit the Planning Authority from considering alterations to the development through further planning applications.
- 6.9. The third reason for refusal deals with the issues of traffic safety and sightlines and the fact that a traffic and transportation assessment and road safety audit were not provided. The Planning Authority have no basis in assuming that the proposed development will result in a significant intensification of traffic. It is suggested that by subdividing and creating a smaller unit the likely trip generation will be reduced rather than enlarged. Reference in the planning report to the multiplicity of uses on site would generate additional traffic is not justified. It is also stated that the Traffic and Transport Section of Galway County Council did not recommended refusal. The grant of planning permission originally for the factory development would suggest that the proposed development was deemed to be adequate in terms of sightlines.
- 6.10. With regard to the applicant having sufficient legal interest over the access, the grounds of appeal attach details showing a right of way in order to access the public road.
- 6.11. It is stated that effluent disposal services are contained on site as per the original grant of planning permission in 1981.

- 6.12. The final reason for refusal suggests that the proposed development may have significant effects on a European site. The site is located 5 kilometres from the nearest SAC. There is no source path receptor connection between the subject site and the nearby SAC. More importantly the existing development on site including the effluent disposal system has been in existence since 1981/82 which is prior to the implementation of the Habitats Directive. What is proposed will not lead to an increase in effluent discharge over that which prevailed when the premises operated at full capacity and therefore will in no way endanger the SAC. Given the distance from the nearest SAC and the fact that there is no evidence of adverse change in circumstances it is suggested that the final reason for refusal is entirely without foundation.
- 6.13. The grounds of appeal go on to suggest that the proposal will represent a significant planning gain in that it will provide adequate accommodation for an agricultural type business servicing the needs of local agri-businesses or the needs of local populations. The Board should have regard to the fact that there is an existing legitimate planning permission on site and that this building should gain an appropriate sustainable economic use so that it makes a beneficial contribution to the functioning of the local rural economy. The subdivision of the building into smaller units will have a greater chance of providing services to the local economy and a refusal of planning permission in this instance effectively amounts to an effort to negate a previously granted permissions.

7.0 Appeal Responses

It appears that Galway County Council have not submitted a response to the grounds of appeal.

8.0 Observations

- 8.1. One observation was submitted by J. M. Consulting Engineers of Lough Corrib House, Waterside, Galway City. The issues raised in the grounds of the observation are outlined below.
- 8.2. The applicant has failed to provide any detailed information in relation to the use proposed in the subdivision. Therefore, it is argued it is not possible to assess the

suitability of the proposed industry and not possible to assess whether or not it is in keeping with the provisions of the development plan.

- 8.3. It is also argued that there is a long history of unauthorised development and enforcement action on the site. This ultimately resulted in enforcement action and a Court Order.
- 8.4. It is also noted that there are a number of refusals on site and this is not referred to in the planning history set out in the grounds of appeal.
- 8.5. It is also suggested that the proposed development does not comply with EDT11 which relates to rural enterprise as any such rural enterprises permitted has to have consideration of the social and environmental impacts and ensure that any such development does not result in a road safety hazard or impact on residential amenity.
- 8.6. It is also argued that, as this portion of the building is currently used for storage, any industrial activity on site would result in intensification of use.
- 8.7. It is argued that the original permission for a rear extension was for storage purposes only and thus any change of the building to light industry or manufacturing will compromise the function of the original purpose of the building. Subdivision of the building will inevitably lead to additional staff, additional car parking and additional traffic. It is stated that An Bord Pleanála came to a similar conclusion in relation to two appeals under Reg. Ref. 14.225326 and 27.233396. The development is located adjacent to a busy regional road and therefore some form of traffic assessment is required. It is suggested that the local authority are thoroughly justified to request a traffic impact assessment and a road safety audit.
- 8.8. It is also argued that the land registry details submitted did not demonstrate that the applicant is the registered owner of the right of way and therefore has not demonstrated ownership or rights in order to access the public road.
- 8.9. With regard to the septic tank, it is stated that under Planning Ref. No. 02/2908 a condition was attached requiring the applicant to upgrade the effluent treatment system on site. The effluent treatment system referred to by the appellant was made redundant following the grant of planning permission in 2002 and therefore the historic septic tank cannot now be resurrected without the proper planning permission being put in place.

- 8.10. The applicant has not provided details of any water supply.
- 8.11. It is also argued that the applicant should provide an appropriate assessment screening report and this is the general practice by Galway County Council even in the case of a domestic dwelling.
- 8.12. With regard to the issue of planning gain it is argued that it is not possible to assess whether or not there are any merits in the change of use application as the applicant has failed to identify what the future use would be. It is also suggested that problems in relation to traffic, effluent disposal and impacts on residential amenity would counterbalance any planning gain arising in terms of commercial employment etc.
- 8.13. By way of conclusion it is stated that the applicant has failed to provide details associated with the planning application including:
- Specific details of the proposed use.
 - Details of operational hours.
 - Details of traffic management proposals.
 - Details of effluent treatment details.
 - Details of parking requirements, third party consents, landscaping details etc.
- 8.14. In the absence of these details it is argued that a proper assessment cannot be undertaken and for these reasons and the other reasons set out in the observation, the decision of Galway County Council should be upheld in this instance.

9.0 Planning Policy Context

- 9.1. The site is governed by the policies and provisions contained in the Galway County Development Plan 2015 – 2021. The subject site is not governed by any zoning objective.
- 9.2. Section 4.14 of the development plan relates to economic development and tourism policy and objectives.
- 9.3. Objective EDT6 seeks to optimise the benefits of serviced lands. This objective seeks to safeguard lands that are designated for the creation of employment from inappropriate development that would stifle prospective economic activity.

- 9.4. Objective EDT7 seeks to encourage industrial and enterprise development that operates from lands zoned for these purposes within the various local areas plans in the county, subject to an adequate consideration of policies and objectives of this plan and the need to protect the vitality and amenities of the town or settlement.
- 9.5. Objective EDT8 seeks to encourage the provision of high-quality designs (including variations in design and scale) layout, boundary treatment within industrial business enterprise and commercial/mixed use lands in order to positively contribute to the character and visual amenity of the area.
- 9.6. Objective EDT11 relates to rural enterprise. The development plan seeks to consider the establishment of small scale rural orientated enterprises in unserved rural areas outside of town or village settlements which can be accommodated in existing farm buildings or can be established on a brownfield site, subject to satisfying the following criteria.
- Compatibility and general suitability to an unserved rural area (primary consideration will be given to agriculture, renewable and marine resources, forestry, tourism, recreation and food production related enterprise activities and services).
 - Scale of development (assimilate appropriately into a rural setting).
 - Nature of development (raw materials sourced locally).
 - Consideration of social and environmental impacts (enterprise must not have a significant adverse impact on the environment or rural amenity).
 - Enterprise must not constitute a road safety hazard or have a major adverse impact on the road network, road capacity and traffic levels.
 - Residential amenity (enterprise must not have a significant adverse impact on residential amenity).
- 9.7. Chapter 9 of the development plan relates to natural heritage and biodiversity policy and objectives.
- 9.8. Policy NHB1 states that it is the policy of Galway County Council to support the protection, conservation and enhancement of natural heritage and biodiversity, including the protection of the integrity of European sites, that form part of a Natura

2000 network, the protection of natural heritage areas, proposed heritage areas, Ramsar Sites, nature reserves, wildfowl sanctuaries and Connemara National Park (and any other designated sites including any future designations) and the promotion of the development of a green/ecological network within the plan area, in order to support ecological functioning and connectivity, create opportunities in suitable locations for active and passive recreation.

- 9.9. Objective TI10 requires all proposed new significant development proposals be accompanied by a TTA (Traffic and Transport Assessment) and an RSA (Road Safety Audit) carried out by suitably competent consultants, which are assessed together with the cumulative impact with neighbouring developments on the road network, in accordance with the requirements contained within the NRA's Traffic and Transport Assessment Guidelines, having regard and with respect to the RSA in the NRA DMRB HD19/12 Road Safety Audit (including any updated superseding document).
- 9.10. Objective DS6 seeks to protect European sites that form part of the Natura 2000 site network in accordance with the requirements in the EU Habitats Directive.
- 9.11. DM Standard 20 relates to site distances required for access onto national, regional and local roads. It states that vehicular entrances and exit points must be designed by the developer as part of a planning application with adequate provision for visibility so that drivers emerging from the access can enjoy good visibility of oncoming vehicles, cyclists and pedestrians.

10.0 EIA Screening Determination

The proposal does not constitute a class of development for which an EIAR is required.

11.0 Planning Assessment

I have read the entire contents of the file, visited the site and its surrounding and have particular regard to the issues raised in the Planning Authority's reasons for refusal and the grounds of appeal which challenge these reasons for refusal. I

consider the pertinent issues in determining the current application and appeal are as follows:

- Background to the Proposed Development
- Compatibility of the Proposed Development with the Rural Character of the Area
- Impact on the Functionality of the Originally Permitted Use
- Traffic and Transportation Issues
- Rights of Way Issues over Third Party Lands
- Full Details of the Nature and Extent of Development
- Appropriate Assessment Issues

11.1. Background to the Proposed Development

11.1.1. Planning permission was granted for the industrial unit in 1981. A significant extension was granted under Reg. Ref. 02/2908 which included a large extension to the rear of the premises, the area which appears to be the subject of the current application. It appears that a condition was attached to Reg. Ref. 02/2908 required that the extension be used for storage only. Certain minor changes to the internal layout was also subsequently granted under Reg. Ref. 11/142.

11.1.2. Having read the contents of the file and having particular regard to the planning history of the site it is apparent that there is an extant permission for an industrial unit/manufacturing facility on site and this in my view is a significant consideration that the Board must rely on in adjudicating and determining the application before it. Galway County Council in assessing the application appear to have discounted the fact that there is an extant permission on site for a manufacturing and storage facility in assessing the application. The Planning Authority, it appears to me, have assessed the proposal as if it were an application for a light industrial/joinery business to be located on a greenfield site where there was no established industrial/light industrial use. It is my considered opinion that the development currently before the Board should be assessed in the context of the established use on site.

11.2. Compatibility of the Proposed Development with the Rural Character of the Area

11.2.1. The proposed subdivision of the building in order to accommodate new light industry/joinery and manufacturing of goods is to take place within an existing and established light industrial use. The existing use on site is therefore not rural and it cannot be reasonably argued in my opinion that the proposed development is incompatible with the extant permission and established historic uses on the subject site. I would therefore disagree with the Planning Authority's conclusion that the proposed development is incompatible with the rural nature of the area.

11.3. Impact on the Functionality of the Originally Permitted Use

11.3.1. With regard to the impact of the proposal on the functionality of the originally permitted use, I consider this concept be somewhat unclear and unambiguous. The existing manufacturing activity on site was located in a larger building. The applicant in the grounds of appeal has argued that due to the changing nature of light industrial manufacturing smaller units are now required and desirable in order to undertake such activity. To suggest that the proposed development should be refused on the basis that it somehow interferes or is not compatible with historic manufacturing activities on site does not in my opinion constitute a coherent reason for refusal. The application should be considered on its merits and in accordance with the proper planning and sustainable development of the area it should not be merely refused on the basis that it does not comply with the original layout and function of the existing building on site. The needs and requirements in relation to industrial units and industrial activity may alter over time due to changes in technology and the nature of industrial/light industrial activity to be carried out on site. To suggest that planning permission cannot be granted on the basis that any new proposals would not adhere to or reflect the original function of the building is inappropriate. As already stated, any new application application should be evaluated on it merits and in accordance with the proper planning and sustainable development of the area, rather than essentially refusing planning permission purely on the basis that it does not conform with the original permssion.

- 11.3.2. Similar conclusions are also valid in my opinion in relation to the Planning Authority's second reason for refusal. Galway County Council's second reason for refusal argues that the proposed development contravenes Conditions 1 and 2 of previous applications on site. In relation to the previous applications on site, Condition No. 1 required that the development be carried out in accordance with the plans and particulars lodged. To suggest that the proposed development contravenes this condition would de facto preclude any application for alterations or variations to the parent permission from being granted on the basis that it does not comply with the plans and particulars lodged. As in the case of the functionality of the building, any subsequent application should be assessed and evaluated in accordance with the proper planning and sustainable development of the area as opposed to whether or not it complies with the plans and particulars lodged under the original application.
- 11.3.3. A similar argument in my view is also applicable in relation to Condition No. 2 of Reg. Ref. 02/2908. This condition required that the extension of the building which coincides with the floor area of the current application before the Board, required that this area be used for storage purposes only. The applicant is entirely within his rights to seek planning permission to alter this requirement and any such application should be evaluated on its merits. To suggest that the storage area in question cannot be altered or changed by way of a subsequent application purely on the basis that it alters the nature of the storage use does not stand up to scrutiny. It would be inappropriate that an applicant be precluded from altering the use of the building purely on the basis that any grant of planning permission would require that that portion of the building be used for storage in perpetuity. Any such alteration should of course be assessed on its merits.

11.4. **Traffic and Transportation Issues**

- 11.4.1. The third reason for refusal relates to traffic and transportation issues. The reason for refusal states that the proposed development is contrary to DM Standard 20 in the development plan which states that vehicular entrances and exit points must be designed by the developer as part of a planning application with adequate provision for visibility so that drivers emerging from the access can enjoy good visibility of oncoming vehicles, cyclists and pedestrians. Again, I would reiterate the point that there is an established light industrial use on site with the benefit of planning permission. Galway County Council in adjudicating on this original application

considered that the road serving the development and the proposed access point would be appropriate to serve the development.

- 11.4.2. In a situation where it was decided to recommence light industrial activity on the main building on site, this established use could in my view be initiated and operated without the requirement of planning permission as a light industrial use has already been established on the subject site. What is proposed in this instance is a partial change of use in the rear portion of the building from exclusively storage to storage and manufacturing. I would agree with the applicant in the grounds of appeal that, having regard to the established use on site, it is anticipated that there will be little or no intensification of use resulting from the proposed changes particularly as large portions of the entire building on site are currently not in use. It is therefore unlikely in my opinion that the proposed development will result in an intensification of traffic movements on the public road which would be contrary to Objective TI10 of the development plan. Furthermore, having inspected the site (I refer the Board to the photographs attached), I do not consider that the proposed development will in any way endanger public safety by reason of a traffic hazard as sightlines in both directions are adequate. And the access arrangements have already been deemed to be adequate when Galway County Council granted planning permission for the original structure on site.
- 11.4.3. The second part of the third reason for refusal makes reference to the applicant omitting to carry out a road safety audit or traffic and transport assessment for the development. In the first instance I would consider it entirely appropriate that where the Planning Authority had such concerns in relation to road safety and traffic impact issues that it would provide the applicant with an opportunity to address any potential concerns. It is wholly inappropriate in my opinion that the Planning Authority would refuse permission on the basis of the absence of such documentation without affording the applicant an opportunity to allay any concerns in this regard.
- 11.4.4. If the Board have traffic concerns I would consider it appropriate that it request further information in relation to traffic generated by the proposed development prior to determining the application. In my opinion the proposal represents a small scale manufacturing activity to be carried out in a modest portion of the overall building for which a light industrial use has already been established. While it may or may not result in a small intensification of use on the subject site, I consider that any such

intensification would not be material in planning terms. A traffic and transport assessment in accordance with TII Guidelines would be required where the additional traffic generated by the proposal would constitute over 10% of the annual average daily traffic on the adjoining road network. It is hard to countenance a situation whereby a modest increase in the gross floor area of the established manufacturing/light industrial use on site would give rise to an intensification of use and consequential traffic generation which would trigger the requirement of a transport impact assessment. However, if the Board reach a different conclusion, it would in my view be most appropriate to permit the applicant to address any such concerns by way of an additional information request.

11.4.5. On the basis of the above I do not consider it appropriate to refuse planning permission for the proposed development on the basis of traffic impact or road safety.

11.5. Rights of Way Issues over Third Party Lands

11.5.1. The fourth reason for refusal suggested that the applicant has provided insufficient information to demonstrate to the Planning Authority that they have requisite consent to utilise the existing access provisions to and from the light industrial unit. The Council's concerns appear to lie on the fact that the rear part of the building is in separate ownership from the rest of the lands in question. In response the applicant has submitted folio maps which suggests that there is a right of way/wayleave from the public road to the building to the rear (please see Map Folio No. GY111045F). It appears therefore that the applicant may have sufficient legal interest in the form of a right of way/wayleave over the lands in question in order to access and egress the site.

11.5.2. Notwithstanding this conclusion, I refer the Board to Section 5.13 of the Development Management Guidelines for Planning Authorities which relates to issues concerning title to land. It notes "*that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land*". *These are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as Section 34(13) of the Planning and Development Act states, a person shall not be entitled solely by reason of a permission to carry out any development.*" In this instance I am satisfied that the applicant has asserted and provided

supporting documentation that an existing right of way/wayleave exists on site. On this basis, I do not consider that the Board is precluded from granting planning permission on the grounds that the applicant has insufficient legal interest. Any disputes in this regard can be resolved in a court of law.

11.6. Lack of Details in Relation to the Nature of the Development

11.6.1. The observations submitted argue that there is insufficient information in relation to the application to enable the Board to make a decision in relation to the application before it. Specifically, it is argued that details are lacking in relation to the proposed use, details of the operation hours, traffic management proposals, effluent treatment proposals, parking, turning circles and landscaping etc. If the Board are minded to grant planning permission in this instance, I consider all these issues could be adequately dealt with by way of condition. Furthermore, I do not consider it necessary for the applicant to specify details of the proposed use. What the applicant is applying for in this instance is a class of use under Part 4 of the Planning and Development Regulations 2001. Planning permission is sought for the subdivision of the building to incorporate a light industrial use. The planning application in this instance is for a joinery/manufacturing activity. It is not necessary to specify whether or not the manufacturer relates to windows, doors, woodwork etc. The Board are adjudicating on whether or not it is appropriate for part of the building to be used for a light industrial activity. I have argued having regard to the established use on site together with the extant permission I do not consider that the proposed subdivision and change of use sought would be incongruous or inappropriate in this regard. I am also satisfied, as argued above that the proposed development will not have a significant or material impact in terms of traffic generation over and above the use permitted on site and therefore further details in relation to traffic generation or traffic management are not necessary in this instance. If the Board come to a different conclusion it is always open to it to request further details in relation to traffic or indeed refuse permission on the above basis.

11.7. Appropriate Assessment Issues

11.7.1. The final reason for refusal issued by Galway County Council that the safe and satisfactory disposal of effluent on site cannot be guaranteed and therefore likely effects either individually or in combination with other plans and projects on the

Galway Bay and SAC and Inner Galway Bay SPA cannot be ruled out. It is argued that the proposed development would have the potential to pose an unacceptable risk to water quality adversely affecting the qualifying interests of the European sites concern. The extant permission established on site is served by an existing septic tank according to the planner's report. The planner's report also refers to Reg. Ref. 02/2908 that the septic tank in question was required to be upgraded to a treatment plant polishing filter to be located just north of the R339 in the adjoining site. It is not altogether clear whether or not these works were undertaken as part of the permission. Nevertheless, the planner's report comes to the conclusion that the wastewater disposal proposals are not deemed to be satisfactory. The basis on which this conclusion is drawn is not altogether clear. If there are non-compliance issues associated with Reg. Ref. 02/2908 this is a matter for Galway County Council. Although it would appear that the statutory time limits for enforcement procedures has expired. No information has been submitted with the application with regard to proprietary wastewater treatment arrangements. It is assumed that the septic tank/ or upgraded WWTS in situ will cater for the proposed development in this instance. As already stated previously in my report, I do not consider that the proposed development will result in a material intensification over and above the use originally granted planning permission and which was historically established on site occupying the entire building. On this basis I do not consider it appropriate that planning permission would be refused purely on the basis that the existing septic tank and percolation area is incapable of accommodating the light manufacturing use proposed.

- 11.7.2. As in the case of the potential traffic impact, it is always open to the Board to require further details in relation to the effluent treatment arrangements on site prior to determining the current application before it. The applicant in submitting the first party appeal, had the opportunity to demonstrate that the existing wastewater treatment arrangements are suitable to cater for the proposed development. However, no such information was furnished as part of the grounds of appeal. The Board may consider it appropriate to request further information with regard to on-site wastewater treatment arrangements prior to determining the application.
- 11.7.3. With regard to the other issue raised in the final reason for refusal, namely the potential impact arising from the proposed on-site wastewater treatment

arrangements on qualifying interests on Natura 2000 sites in the vicinity, this reason for refusal is scarcely credible in my opinion. The only potential adverse impact arising from the wastewater treatment arrangements relates to potential pollution of groundwater. The site itself is located over a regional karstified aquifer and the vulnerability of the site is rated as 'extreme'. Notwithstanding these points the subject site is located at its nearest point 3 kilometres away from the nearest SAC namely the River Clare to the north which forms part of the Lough Corrib SAC. Groundwater flows in karstified aquifers are normally faster than those associated with less productive aquifers. To suggest that groundwater flows from the percolation area associated with the septic tank would reach the River Clare within 100 days¹ would not in my view be credible. The underlying bedrock comprises of lower carboniferous sandstone and shales. The estimated hydraulic conductivity in this type of bedrock ranges from 0.1 to 10 m/d. Therefore even under a worse case scenario, it would approximately a year for effluent discharge from percolation area to travel to the River Clare and therefore to the European Site in question. Such fast hydraulic conductivity rates are unlikely in the area of the subject site, having regard to the relative flat topography. Therefore, the chance of bacteria associated with any discharge from the effluent tank adversely impacting on any of the qualifying interests of the SAC in question are non-existent. I therefore consider the basis for the last reason for refusal cited by the Planning Authority to be fundamentally flawed.

11.7.4. Finally, in relation to the last reason for refusal I note that the Planning Authority state in the reason that the proposal "would materially contravene Objective NHB1 and DS6 and Policy NHB1 of the Galway County Development Plan 2015 - 2021". The Board will also be aware of the provisions of Section 37(2)(b) which states that where a Planning Authority has decided to refuse permission on the grounds that the proposed development materially contravenes the development plan, the Board may only grant planning permission where it considers that

- the proposed development is of strategic or national importance,

¹ In terms of microbiological contamination both the EPA and GSI define source protection areas on the basis of the 100 day "time of travel". This is based on the premise that 99.9% of bacteria will die within 100 days of being in the groundwater.

- there are conflicting objectives in the development plan or the objectives are not clearly stated insofar as the proposed development is concerned,
- permission for the proposed development should be granted have regard to the Regional Planning Guidelines for the Area, Guidelines under Policy 28, Policy Directions under Section 29, etc.
- Permission for the proposed development should be granted having regard to the pattern of development in the area, permissions granted in the area since the making of the development plan.

11.7.5. I do not consider that any of the above criteria would apply to the current development before the Board. However, I would fundamentally disagree with the Planning Authority that the proposed development in this instance would materially contravene any of the objectives of policies referred to in the Planning Authority's final reason for refusal. Therefore, I would conclude that the Board could grant planning permission on the basis that it arrived at a reasonable conclusion that the proposed development does not materially contravene any of the policies or objectives contained in the development plan and therefore the provisions of Section 37(2)(b) would not apply.

12.0 Conclusions and Recommendation

Arising from my assessment above and having regard specifically to the established light industrial use on site, I consider that the proposed subdivision of the unit would not result in any significant or material intensification of the use on site, would not contravene conditions associated with previous decisions on site, would not give rise to any adverse traffic impacts and would not adversely affect the integrity of qualifying interest and conservation objectives associated with European sites in the vicinity. I therefore recommend that the Board overturn the decision of the planning authority and grant planning permission for the proposed development based on the reasons and considerations set out below.

13.0 **Appropriate Assessment**

Base on my assessment set out above and having regard to the nature and scale of the proposed development and nature of the receiving environment together with the 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.

14.0 **Decision**

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

15.0 **Reasons and Considerations**

Having regard to the established light industrial use on site it is considered that subject to conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

16.0 **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development shall be managed in accordance with a management scheme which shall be submitted to and agreed in writing prior to the occupation of the development. This scheme shall provide for adequate measures relating to future maintenance of the development including landscaping, roads, paths, parking area, lighting, waste storage facilities, sanitary facilities together with management responsibilities and maintenance schedules.

Reason: To provide satisfactory future maintenance of this development. In the interest of visual amenity.

3. Details of the external finishes associated with the structure shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

4. No additional floorspace shall be formed by means of an external horizontal division within the building hereby permitted unless authorised by a prior grant of planning permission.

Reason: In order to control the intensity of development in the interest of residential amenity.

5. No fans, louvres, duct or other external plant other than those shown on the drawings hereby permitted shall be installed unless authorised by a prior grant of permission.

Reason: In the interest of visual and residential amenity.

6. No goods, raw materials or waste products shall be placed or stored between the front of the building and the public road.

Reason: In the interest of public health and the visual amenities of the area.

7. All goods, including raw materials, manufactured goods, packaging, crates etc. shall be stored or displayed only within the enclosed building.

Reason: In the interest of visual amenity.

8. Receptacles for waste shall be provided and be made available for use at all times on the premises in accordance with details which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of the amenity of the area.

9. All plant and machinery shall be enclosed and soundproofed in accordance with details which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: To safeguard the amenities of adjoining property.

10. The light industrial premises shall not operate outside the hours of 0800 hours to 1900 hours Monday to Saturday inclusive and not at all on Sundays or public holidays. Deviations from these times will only be permitted in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: To safeguard residential amenities of property in the vicinity.

11. 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 prior to commencement of development 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.

Paul Caprani,
Senior Planning Inspector,

24th February, 2020.