



An
Bord
Pleanála

Inspector's Report

ABP-306395-20

Development

Matthew Kane memorial at Riverside road and permission for demolition of existing buildings and structures on site and erection of retail-led, mixed use town centre development; the application is accompanied by An Environmental Impact Assessment Report (EIAR).

Location

Church road, Tullamore, Co. Offaly

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

1996

Applicant(s)

Grapemont Limited

Type of Application

Permission

Planning Authority Decision

Grant with Conditions

Type of Appeal

First & Third Party

Appellant(s)

Grapemont Limited
Lena Power & Others

Observer(s)

None

Date of Site Inspection

3rd September 2020

Inspector

Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 4.2 ha is located at Church Road, Tullamore an urban setting identified as “town centre” in the local development plan. The site was formerly used for industrial and commercial purposes. It is stated that all industrial buildings were removed (primarily to ground level) in approx. 2010 and that the majority of the site has been left vacant since that time. The previous car dealership buildings in the south west of the site, adjacent to Church Road remains but are vacant. Currently the majority of the site consists of artificial surfaces – former roads and yards surfaced with concrete and the foundations of former buildings, some of which are now overgrown.
- 1.2. The southern boundary is formed by Hophill Road, a shopping centre, a school and a small housing estate. There is a modern mixed use development on the western boundary and the new Tullamore Primary Care Centre on the eastern boundary. The Tullamore River runs along parts of the northern and western boundaries. The rest of the northern boundary is formed by a warehouse and storage yard used by an engineering company, a local road and some greenfield sites.
- 1.3. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file and in particular the EIAR and Landscape and Visual Impact Assessment therein accompanying the planning application. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. **Permission for demolition** of existing buildings and structures on site (1,180 sqm) and **erection of retail-led, mixed use town centre development** (14,055 sqm excluding Garden Centre (800 sqm)) on an approx. 4.25 ha brownfield site, including;
 - Block A 2-storey retail building
 - Block B comprising 2-3 storey retail, café/ restaurant and 8 residential apartments
 - Block C single storey retail building
 - Block D multiplex cinema
 - Block E single storey retail unit with attached Garden Centre

- Access, access roads, car and cycle parking, pedestrian linkages/ paths, riverside walkway, hard and soft landscaping and street furniture, suds pond, foul sewer pumping station and associated pump house, ESB sub-stations and switch rooms and all associated site development works to complete the development.
- **Retention** permission of the Matthew Kane Memorial at Riverside Road.
- The application is accompanied by an Environmental Impact Assessment Report (EIAR).
- The development, when completed, shall be known as and identified as “Riverside”.

2.2. The application was accompanied by the following:

- Environmental Impact Assessment Report & Non-Technical Summary
- Planning Supporting Statement
- Screening for Appropriate Assessment
- Design Statement
- Storm Calculations
- Retail Impact Assessment
- Transport Assessment Report
- Photomontages

2.3. In response to a request of further information the applicant sought clarification on a number of points in the request. There is no evidence of any response to this request on file. **Further information** was submitted on the **30th September 2019** and may be summarised as follows:

- 1) **Retail Impact Assessment** – There is no indication within the Tullamore & Environs Development Plan 2010 – 2016 (as extended) (TEDP) that the plan seeks to promote retail-led development only within the historic core or any other area within the town centre which Offaly County Council (OCC) may chose at any one time to determine as the “heart”, the “central Area” of the “core” all as referenced in the further information request.
- 2) **Urban Design Statement** – Update urban design statement submitted. A further landscape assessment has been carried out and a green wall is now proposed to the servicing area of Block C to soften the development from the Riverside Walk.

- 3) **DMURS** – Cross sections and raised pedestrian crossing details together with development access junction with the R420 submitted.
- 4) **Drainage** - Much of the detail required relates to detailed infrastructure design matters which are normally covered by condition. The applicant requests that conditions are imposed in this case. No compensatory flood storage is required and has not been specified. Surveys undertaken for the Riverside Walk hydraulic model is based on up to date information. Foul sewer longitudinal sections together with foul pumping station longitudinal section of the surface water sewer details provided. A climate change factor of 15% has been used in the calculation for stormwater storage. Requested that requirement for written confirmation from the OPW for the proposed storm drainage discharge point is dealt with by way of condition. Requested that a condition be attached requiring the submission of Construction Environment Management Plan to be agreed. There is no groundwater extraction or discharge proposed as part of the development and no further samples are provided.

5) **EIAR**

- Climate – This was addressed throughout the EIAR.
- Photomontages – The LVIA has been updated including three update photomontages from along the Tullamore River.
- Biodiversity – The length of hedgerow to be lost is approx. 127m and this will be offset by substantial planting of new trees throughout the site.
- Protected Species along the Tullamore River – The EIAR fully addresses the relevant Annex II and IV species of concern in relation to this site.
- Construction Noise Management Plan submitted
- Technical Noise Report submitted addressing noise nuisance at the operational stage.
- Details of lighting have been provided on plans, photomontages, Design Statement and Ecology Chapter.
- The Hydrology Chapter of the EIAR (Chapter 12) confirms the average water requirement for the proposed development is 24,030 m³/day.

2.3.1. The submission was accompanied by the following:

- Retail Impact Report

- Updated Design Statement
- Roads Drawings
- Drainage Report and details including letter from Irish Water, Foul Water Pump Sump Proposal
- EIAR (Landscape & Visual Impact, Amended Landscape Plan and updated / additional photomontages, Technical Noise Report and Preliminary Construction Noise Management Plan)

2.4. **Revised public notices** were submitted on the **17th October 2019**.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. Offaly County Council issued notification of decision to grant permission subject to 21 no conditions summarised as follows:

1.	The Matthew Kane Memorial shall be retained and the development carried out in accordance with plans and particulars submitted on 6 th March 2019 as amended by revised details submitted on 30 th September 2019.
2.	Block B shall be omitted.
3.	Range of goods to be sold in the garden centre Unit E1 shall be limited solely to “bulky goods”.
4.	No amalgamation of units or subdivision of any units shall take place without a prior grant of planning permission.
5.	Mitigation measures, working hours and noise limits specified in the EIAR dated 6 th March 2019 and 30 th September 2019 shall be implemented.
6.	Development Contribution
7.	Irish Water Connection
8.	Pumping station, rising main, discharge manhole, water supply, wastewater infrastructure, storm water management and fuel and oil storage certification

	and compliance requirements. Submission of a Construction and Demolition Waste Management Plan.
9.	Noise nuisance and dust mitigation, construction traffic dust abatement measures and noise mitigation measures for HGVs and delivery vehicles
10.	As per the objectives of the Tullamore & Environs Development Plan the developer to provide a fully serviced vehicular link from Riverside Bridge to the proposed access road
11.	Proposed footpath at south west of the site shall be extended to the adjacent boundary
12.	No impediment to movement shall be erected along internal roads
13.	Details of road signage, a Stage 2 & 3 Safety Audit and desing, location and selection of LED lighting to be provided
14.	All public open space to be fully landscaped in accordance with plans submitted
15.	Photographic samples of all external building and ground surface finishes to eh submitted for agreement
16.	No further advertising or signage save for that detailed in Drawing No 1741
17.	All car parking spaces to be clearly delineated
18.	Details of plantings of the proposed green wall facing onto the Tullamore River to be agreed
19.	Site boundary walls shall be capped concrete clock walls with details of palisade fencing to be agreed
20.	10% of proposed car parking space shall be provided with electrical connection points
21.	No additional development shall take place above roof parapet

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their first report and having considered the proposed scheme recommended that permission be refused for 5 no reasons summarised as follows:
 - 1) Material contravention of Policy TTEP 07-09 (Retail Impact)
 - 2) Material contravention of Policy TTEO 07-01 & TTEO 07-02, (negative economic and social impacts on Tullamore Town Core Retail Area)
 - 3) Contrary to the Guidelines for Planning Authorities Retail Planning (2012) (acting as an alternative retail destination to existing retail core)
 - 4) Contrary to design principles for retail areas as specified in the Retail Manual (April 2012) and
 - 5) Contravene materially Policy 7.2 (substandard development)
- The **OCC Chief Executive** having considered the recommendation to refuse permission and given the potential for economic development which the site may represent requested that further information be sought to explore the feasibility of the proposal. The following **further information** was requested on the **30th April 2019** as summarised:
 - 1) Detailed information on the Cumulative Retail Impact Assessment submitted and to demonstrate why the proposal will not have a detrimental impact on the vitality and viability of the heart of Tullamore Town Centre.
 - 2) Urban Design Statement in accordance with Policy 7.2 of the Tullamore & Environs Development Plan to be submitted
 - 3) Cross sections of roads and footways, raised pedestrian crossings in accordance with DMURS and full design of the proposed junction with the R420 including proposed right hand turning lane
 - 4) Details of proposed foul pumping station, Flood Risk Assessment, Foul Sewerage, Surface Water, Soils and Geology and Hydrogeology
 - 5) Deficiencies in the EIAR (climate change, landscape and visual assessment, biodiversity, protected species survey, detailed Construction Noise Management Plan, noise nuisance remedial works, light pollution, cinema night time noise pollution, Hophill sewer capacity and details of water conservation and energy conservation proposals) to be addressed
- Significant further information was submitted on the **30th September 2019** and revised public notices were requested on the **9th October 2019**.

- Having considered the further information submitted the **Case Planner** recommended that permission be refused for the same 5 no reasons as outlined in their first report.
- The **Chief Executive** having considered the recommendation to refuse permission stated that *the proposal, specifically the larger retail units, have the potential to stimulate economic development in Tullamore* but that in order to mitigate the impact on the smaller retail units in the Town Centre Block B is to be omitted. It was requested that appropriate planning conditions be prepared and a grant of permission issue. The Case Planner prepared a grant of planning permission subject to 21 no conditions. The notification of decision to grant permission issued reflects this.

3.2.2. Other Technical Reports

- **Central Fire Station** - No stated objection
- **Environment & Water Services** - In their first report requested further information in relation to Flood Risk Assessment, Foul Sewerage, Surface Water, Soils and Geology and Hydrogeology. In their second report and having considered the further information recommended conditions to be attached relating to noise. A further report set out additional conditions to be attached relating to Irish Water, foul sewerage, surface water, waste management and environmental nuisance.
- **Area Engineer** - In their first report requested further information in relation to cross sections of roads and footways, raised pedestrian crossings in accordance with DMURS, revised road layout to facilitate future links to town via Riverside and Church Road as per policy TTEP 0806/0807 and full design of the proposed junction with the R420 including proposed right hand turning lane.
- **Architectural Report** - Recommended detailed quality design requirements.
- **Road Design** - In their first report and having considered the further information was satisfied with the proposed development subject to conditions as set out in their report including the provision of a fully serviced vehicular link from Riverside Bridge (north west corner) to the proposed access road opposite Unit B5 and the extension of the proposed access road at the north east of the development to

connect to the boundary of the adjacent landholding through the proposed loading yard for unit E1, Garden Centre (Condition No 10 (a) and (b) refers).

- **Tullamore District Engineer** - Having considered the further information submitted recommended conditions relating to details for a vehicular link to Riverside, provision of cycle tracks and bicycle stands, Quality Audit in accordance with DMURS to be submitted and road signage and line marking to be agreed

3.3. Prescribed Bodies

- **Irish Water** - In their first report requested further information in relation to the proposed foul pumping station. In their second report (x2) and having considered the further information confirmed that the applicant has engaged with IW and has been issued confirmation of feasibility. Further connection requirements are set out in the report.
- **HSE** - In their first report requested clarity / further information / conditions in relation to inter alia construction and operational noise and associated mitigation, potential impact of odour from the proposed pumping station to be assessed in the EIA, assessment of odour emissions from the proposed restaurant / café, and waste management. Also recommended that meaningful public consultation is carried out and any public concerns addressed and assessed in the EIA. In their second report and having considered the further information submitted set out a number of recommendations.
- **An Taisce** - In their first report stated that *the Planning Authority needs to determine that the proposal will not have an adverse impact on the historic town centre street front retail area and that impacts on existing retailers must be assessed accordingly*. In their second report and having considered the further information states that *further retail unit's peripheral to the town centre will exacerbate the loss of viability and vitality on the town centre*. An Taisce submits that *housing rather than additional out-of-town retail would be the most appropriate use on the subject site*.

3.4. Third Party Observations

- 3.4.1. There are 4 no observations recorded on the planning file summarised as follows:

- **Ray Kelly, Kelly's Toyshop** – Requested that Unit 1 and access road be relocated
- **Eoin Woodblock & Others** – Proximity to private dwellings, loss of privacy and security, construction nuisance and impact, retention of Matthew Kane Memorial is paramount, objection to access being created from Riverside, overshadowing, negative visual impact, noise nuisance, pile driving is unacceptable, traffic impact, air pollution and drainage.
- **Better Value Unlimited** – Potential impact to Tullamore Shopping Centre vehicular entrance due to increase traffic along Church Road (R420) and proposed apartments should be relocated away from the Shopping Centre service yard to avoid noise impact.
- **National Property Fund** – Detrimental impact to vitality and vibrancy of the historic town centre, greater level of importance should be applied to protecting the historic town centre, fails to achieve a quality outcome in terms of urban design.

3.4.2. In response to the submission of further information there is a further observation recorded on the appeal file summarised as follows:

- **Lena Power & Others** – Little if anything has changed with regard to the proposal, there is little mention of the residents' concerns and the proposed access onto Riverside and associated traffic impact is unacceptable.

4.0 Planning History

4.1. There was a previous planning application on this site that may be summarised as follows:

- **REG REF TU7108** – Permission granted in 2009 to Rumbold Builders for the demolition of all existing buildings and structures on the Coen Timber Yard and Nissan Garage sites and the construction of a mixed-use integrated town centre development (29,229.1 sqm) ranging in height from 3 to 6 storeys over basement comprising the following:
 - a) Cinema (8 Screens) – 4,099.1 sqm
 - b) Retail, commercial and restaurant units – 16,416 sqm over 2 floors ranging in size from 123.6 sqm to 6,810 sqm based on new street layout
 - c) Anchor retail unit includes food store of 3,000 sqm (net retail sales)

- d) Offices of 2,673.6 sqm
- e) 36 Residential Apartments
- f) Access via new roundabout on Hophill Road
- g) 1,075 car parking spaces

The permission was extended in 2014 to January 2019. This development was never constructed, and the permission has expired.

4.2. There was also a recent appeal on lands to the north of the appeal site summarised as follows:

- **ABP 304562-19 (Reg Ref 18356)** – OCC granted permission for the subject to 24 no conditions for the construction of 22 apartments over three stories and all associated development works on lands to the north of the appeal site. Following a third party appeal the Board decided to defer consideration of this case and to issue a Section 137 notice to the parties in relation to compliance with the Urban Design Manual – a Best Practice Guide, DMURS, insufficient density and the absence of an NIS. There is no evidence of a response to date. No further details pertaining to this appeal have been made available with this case. I refer to the “screen shot” of the proposed layout extracted from the OCC website attached.

5.0 Policy Context

5.1.1. The following is a list of **Section 28 Ministerial Guidelines** considered of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Guidelines for Planning Authorities and An Bord Pleanála on Carrying out Environmental Impact Assessment (2018)
- Draft guidelines on the Information to be Contained in Environmental Impact Assessment Reports (2017)
- Retail Planning Guidelines for Planning Authorities (2012)
- Retail Design Manual
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design manual) (2009)

- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2018)
 - Design Manual for Urban Roads and Streets (2013)
 - The Planning System and Flood Risk Management (including the associated technical Appendices) (2009)
 - Guidelines for Planning Authorities on Urban Development and Building Heights (2018)
- quantity, quality and range is of a standard that contributes to the strengthening of the retail economy within Tullamore Town, the county and within the Midlands Gateway and Region as a whole.

5.1.2. **Tullamore & Environs Development Plan 2010 – 2016** (as extended)

5.1.3. The appeal site is within the designated Town Centre (Map 7.1) and is identified as Site No 7 on Map 7.3 as one of 9 potential re-development sites which would contribute to the renewal, enhancement and regeneration of the Town Centre. These sites also provide the greatest potential for development and consolidation on a sequential basis within the Town Centre without unnecessary expansion into outlying areas. The corner of the appeal site is identified in Map 7.4 as a location for a landmark / gateway / tall building.

5.1.4. Town Centre

- **TTEP 07-03** It is the Councils' Policy that any new developments within the Town Centre will be required to respect the heritage and architectural character and in particular should:
 - Respect the character of the streetscape in terms of design detail, including proposed materials.
 - Conform with scale, massing, layout, height and urban grain of the streetscape insofar as possible to ensure continuity of street frontage and definition of public and private space.
 - Observe historic building lines, avoiding unnecessary set backs or protrusions.
 - Respect and not restrict important views/vistas or landmarks within the townscape and seek to provide new views/vistas in the development of individual sites/areas.

- Enhance pedestrian movement within the Town Centre.

5.1.5. Retail

- **TTEP 07-05** It is the Councils' policy to promote Tullamore, part of the Midlands Linked Gateway, as the main retail centre in the County and to ensure that the retail quality and range is of a standard that contributes to the retail economy within the County, the Midland Gateway and Region as a whole.
- **TTEP 07-06** It is the Councils' policy to implement the Retail Hierarchy as set out in the Offaly Retail Strategy. The Councils will seek to locate retail development in the retail core areas of Tullamore, subject to normal planning and landuse considerations.
- **TTEP 07-08** It is the Councils' policy to encourage and facilitate the re-use and regeneration of derelict land and buildings for retail uses with due cognisance to the sequential approach to retail development.
- **TTEP 07-09** It is the Councils' policy to encourage retail development, including new forms of shopping which relates to the regeneration of the existing town centres. Proposals, which would undermine the vitality and viability of the Town Centre, as a whole, will not be permitted.

5.1.6. Opportunity Sites

- **TTEP 07-17** It is the Councils' policy to require that any proposal brought forward for the sites identified on Map 7.3 will include a comprehensive urban design plan showing the rationale behind the proposal and how it will interact within its context and the wider Town Centre area.

5.1.7. Landmark/Gateway/Tall buildings

- **TTEP 07-21** It is the Councils' policy to encourage landmark/gateway/tall buildings at appropriate locations within the Town Centre, subject to normal planning considerations and where the structures display exceptional design quality.

5.1.8. There are also 8 objectives for Town Centre and Retail Policy including:

- **TTEO 07-01** It is an objective of the Councils to consolidate the existing retail and commercial function of the town centre area.

- **TTEO 07-02** It is an objective of the Councils to encourage the sequential approach to retail development within Tullamore and to avoid impact on the vitality and vibrancy of the Town Centre.
- **TTEO 07-03** It is an objective of the Councils to facilitate, where appropriate, the development and renewal of sites and areas of Tullamore which are in need of regeneration and in particular to guide the holistic development of larger assembled sites. The Councils will facilitate and promote sensitive and in context re-development of underused or derelict town centre areas.

5.1.9. Chapter 8 Transport, Movement and Accessibility sets out the following Strategic/Transport and Land-Use objective:

- **TTEO 08-06** To extend and improve the existing distributor road system, where necessary, to accommodate the growing/changing movement patterns within the town. Including:
 - Improve connectivity at the interface between the southern masterplan area and Spollenstown.
 - Realign Chancery Lane.
 - Provide a link road between Riverside and Church Avenue.
 - Reconfigure the Kilcruttin intersection at the Railway Station.
 - Improve connectivity between the north-eastern quadrant of the town and the existing road network. Utilising the former access way created to construct the hospital

5.1.10. Chapter 14 provides guidance on development standards including design. Design Note A applies to development in the town centre. Section 14.2.5.3 explicitly states that “the preferred location of new retail development is within Tullamore Town Centre and / or the neighbourhood centres in order to help sustain their vitality and viability”.

5.1.11. Chapter 15 provides guidance in identifying particular lands uses at the most appropriate locations for possible new development. The land use zoning matrix (Table 15.9) details the most common forms of development lands uses in accordance with the plans zoning objectives.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site. The Charleville Wood SAC (Site Code 000571) is located at c1.9km to the west of the site.

5.3. EIA Screening

- 5.3.1. The current requirements for EIA are outlined in Part X of the Planning and Development Act, 2000, as amended and Part 10 of the Planning and Development Regulation 2001, as amended. The prescribed classes of development and thresholds that trigger a mandatory EIS are set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. Class 10 (iii) refers to the “*construction of a shopping centre with a gross floorspace exceeding 10,000 sqm*”. Accordingly, an EIA must be carried out the proposed development under appeal. An EIAR was submitted with the application.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.2. First Party Appeal against Condition No 2, 3, 10 and 12

6.3. Condition No 2

- 6.3.1. This condition required the omission of Block B (comprising 2 – 3 storey retail, café / restaurant and 8 residential apartments) in the interests of proper planning and sustainable development of the area. To be a viable project, the development is required in its entirety and the loss of the retail, residential and café floorspace from the proposal simply to “mitigate the impact on the smaller retail units in Town Centre” will jeopardize implementation of any commercial development at this site.
- 6.3.2. Submitted that the condition is invalid due to the absence of reasons for the imposition of the condition (*Damer v An Bord Pleanála (2019) IEHC 505* refers). Notwithstanding the invalidity of the condition, it is clear from the First Schedule that OCC considers that larger retail units have the potential to stimulate economic development in Tullamore and that the only apparent concern with Block B is the size of the proposed retail units. There is, no clear planning justification for this apparent concern.

- 6.3.3. The policy of the TTEDP does not seek to protect one part of the town centre from another, nor one business against another; such anti-competitive matters would be beyond the scope of planning. However, the First Schedule, in omitting Block B to “mitigate the impact on the smaller retail units in the Town Centre” is specifically protecting the existing smaller retail units from competition. This is not to the benefit of the community of Tullamore and Offaly, which should be the consideration when determining applications in the interests of proper planning and sustainable development.
- 6.3.4. The appellant is also concerned with the requirement that this area be provided as a “public open space”. It would exceed that which is reasonable to serve the proposed development and it could only have been imposed subject to the inclusion of the requirement in Section 34(4)(m) of the 200 Act for the payment of a contribution.
- 6.3.5. If the Board deems that the retail units in Block B will have an adverse impact on the town centre. Then it is requested that a revised wording for Condition No 2 is imposed as follows:

Prior to commencement of the development, the developer shall provide for the written agreement of the Planning Authority revised floor plans for Block B (comprising 2 – 3 storeys retail, café / restaurant and 8 residential apartments) which shall include retail units comprising a gross floor area not less than 271 sqm

Reason: In the interests of proper planning and sustainable development of the area as the Planning Authority considers that smaller units would adversely affect the vitality and viability of the town centre.

- 6.3.6. If however the Board agrees with the appellant that the condition is invalid, unreasonable and unnecessary, then it is requested that Condition No 2 be deleted from the planning permission.

6.4. **Condition No 3**

- 6.4.1. This condition requires that the range of goods to be sold in the Garden Centre Unit E1 shall be limited to “bulky goods”. The applicant requests that this condition is omitted. As with Condition No 2 above, it is considered this reason is too vague and imprecise to comply with the statutory requirement to provide reasons for the imposition of conditions.

6.4.2. The Board is referred to the planning application site plan which clearly identified two units within Block E – “Unit E1 Garden Centre” and Unit E1 respectively. No part of the application documentation proposed any part of either unit of Block E as retail warehousing. It is considered that it is perverse to seek such control over the E1 garden centre at this in-town centre site. The RIA and associated documents, including the response to the RFI provide clear evidence of the benefit of the town centre development, particularly for the sale of unrestricted retail goods.

6.5. **Condition No 10**

6.5.1. This condition requires the provision of a (a) fully serviced vehicular link from the Riverside Bridge (north west corner of the site) to the proposed access road, following the current line of the proposed footpath, (b) the proposed access road at the north east of the development shall be extended to connect to the boundary of the adjacent landholding through the proposed loading yard for unit E1, Garden Centre and this may require repositioning of buildings and (c) provision of bicycle parking facilities in accordance with the details submitted. The appellant requests that this condition is omitted. Part (c) of this condition is not appealed.

6.5.2. No other vehicle access is required to meet road safety requirements and the condition, therefore, exceeds that which is reasonable to serve the proposed development the interests of traffic safety. The appellant has taken legal opinion which concludes that it is uncertain as to whether the condition actually imposes an obligation on the applicant to construct the link road given that the obligation is expressed to apply to “the proposed development”. Clearly the link road was not part of the proposed development as per the statutory notices.

6.5.3. Counsel has also given their opinion that if the condition were interpreted as requiring the applicant / developer to construct the connector road, it is not required to serve the development, but is in effect being used to avoid the planning authority having to use its CPO powers to construct the road, which would mean that the authority would be liable to pay compensation to the applicant / landowner. Such requirements, for the appellant to provide any part of the connector road, is ultra vires as it, in effect, amounts to the imposition of obligations which should be borne by OCC as Road Authority.

- 6.5.4. Further no third party has had the opportunity to consider and make representations on the traffic impacts of a connecting road which was not referred to in the statutory notices relating to “the proposed development” to which the Council refers in its condition. This is clearly in breach of for procedures and in breach of the public participation provisions of the EIA Directive and the Aarhus Convention.
- 6.5.5. Should the Board deem that the condition and the road linkage is necessary, the appellant considers that the condition could be revised as follows:

To facilitate the Councils objective to secure connection form Riverside to Church Avenue the developer shall, prior to commencement of the development, provide details of the following for the written agreement of the Planning Authority

- a) *The reservation free from development of a corridor not less that 6 metres wide to enable the provision of a future connector road future connector road between Riverside and Church Avenue for vehicular traffic by repositioning the E1 Garden Centre unit and adjacent car parking. The Garden centre shall not be used after 28 days of the first use of the connector road, unless all structures on the site which may prevent such access have been removed.*
- b) *Temporary boundary structures between the edge of the reserved land as detailed in a) above to the potential connector road and the adjacent landholding*
- c) *Bicycle parking facilities shall be provided in accordance with the details submitted*

Reason: *To meet objective TTEO 08-06 as sated in the Tullamore Town and Environs Development Plan, Chapter 8, Section 8.4 Objectives (Strategic / Transport and Land Use)*

6.6. **Condition No 12**

- 6.6.1. This condition requires that no impediment to movement, such as gates or other structures, shall be erected along internal roads in the development or footpaths to allow access to adjacent land holdings. It is considered that this condition is unnecessary as access is not available to those lands at present, being vacant with no proposals in place for their development.
- 6.6.2. Until such time that a linkage road is demonstrated to be required, funding is in place for the completion of the road and the road is built in its entirety, then it is considered

unreasonable to restrict the erection of structures. It requested that this condition is amended as follows:

In order to facilitate access to adjoining land holdings and improve accessibility and permeability within the site and throughout the town centre:

a) No impediment to movement, such as gates or other structures, shall be erected along internal roads in the development of footpaths, unless as otherwise approved by the Planning Authority pursuant to condition No 10(b) above

b) The structures to be erected pursuant to Condition No 10(b) shall be removed in their entirety and the internal roads and footpaths made good within a period of 28 days following completion of development on that neighbouring land.

Reason: *In the interest of traffic safety and accessibility.*

6.6.3. The appeal was accompanied by the following:

- Economic Assessment of Riverside Centre
- Copies of correspondence between the appellant and OCC during the course of the application
- Extract of Tullamore Town and Environs Development Plan 2010 (Chapter 8), Section 7 (Maps 7.1, 7.2 and 7.3 and Map 15)
- Extract of Tullamore Transportation Study 2010
- Retail Impact Assessment and updated Further information RIA
- Photographs of Unit G, Tullamore Retail Park (Home Savers)

6.7. **Third Party Appeal – Lena Powers & Others, Riverside, Tullamore, Co Offaly**

- **Construction Method** - Written confirmation of the type of piling to be used immediately to the rear of appellants homes is required. Cored and poured is the preferred method.
- **Condition No 10** – Complete opposition to Condition No 10 as it will cause mayhem to residents' road. This road was not sought by the applicant. The road is already problematic for residents accessing their homes at certain times as there is a secondary school on the road and large volumes of traffic block the road at school times and when there are additional activities.

- **Overshadowing** – Some indication of the effects of the buildings immediately to the rear of residents properties with regard to overshadowing would be welcomed.
- **Block B** – Noted that it has been excluded by condition. The residents have or had no problem with this block.
- **Conclusion** – Broadly supportive of the development but. Written confirmation of type of piling to be employed and overshadowing would be welcomed.

6.8. Applicant Response

6.8.1. The first party response to the third-party appeal may be summarised as follows:

- **Construction Methods** – The first party considered that it is too early to confirm the exact methods of construction, including piling details. This will be determined before development starts. The first party is willing to continue dialogue with the third party. Reference is made to Condition No 5 & 9. The first party confirms that it will comply with these requirements.
- **Overshadowing** - Attached are diagrams of the nearest building, Block C, on the neighbouring property. There is a small increase in shading of the rear part of the garden of one property at 9am only and which demonstrate that there will be no adverse impact on the adjacent properties by means of overshadowing.
- **Condition No 10** - The road did not form part of the application – pedestrian access only was proposed. The first party agrees that it was not proposed to use Riverside for through traffic at this time. The objective of OCC to secure access from Riverside to Church Avenue is acknowledged (as stated in the TTEDP) but Condition No 10 will not achieve this objective. The through road will worsen traffic problems with increased volumes

6.8.2. Requested that the Board exercises its discretion and considers only the issue of the appealed conditions as it is clear that no other party is concerned with OCCs Notification to Grant Permission.

6.9. Planning Authority Response

6.9.1. First Party Appeal

- **Condition No 2** – Considered that the reasoning on this point is clear. OCC has had concerns with the provision of residential units in an area which is predominantly car based with an absence of public open space. The omission of these units requires an alternative use of this urban space and open space is deemed appropriate.
- **Condition No 3** – Policy TTEP 07-09 was the basis this condition was imposed.
- **Condition No 10** – This condition is required to comply with Objective TTEO 08-06. In the event that ABP considers it appropriate to grant the development and ABP considers OCCs suggested Condition No 10(a) is unduly onerous on the applicant, OCC would suggest that the applicant be required to submit a revised proposal that would facilitate the construction of a road following the current line of the proposed footpath between C6 and D1.
- **Condition No 12** – It is noted that the road network of the proposal is **unlikely** to be taken in charge by OCC and in order to facilitate permeability and a working traffic network for the Town of Tullamore Condition No 12 is required.

6.9.2. **Third Party Appeal**

- The upgraded road networks throughout the town of Tullamore occur in an incremental fashion and Condition No 10 is required both to comply with the relevant objective of the Tullamore Town and Environs Development Plan and to provide road linkages in future which may include upgrading of the existing Riverside Bridge over the Tullamore River.

6.9.3. The submission was accompanied by a report from the Road Design Department and indicative map prepared by OCC Roads to inform ABP as regards the proposed linkage from Riverside to Church Avenue

6.10. **Observations**

6.10.1. None

6.11. **Further Responses**

6.11.1. **Third Party Appellant (Lena Powers & Others)** – In response to the first party comments to the third party appeal the appellant submits the following as summarised:

- **Block B** - As stated previously no objection to Block B
- **Piling** – While the developer has promised to comply with Condition No 5 the nearest residents are concerned. Cored and poured piles as distinct from driven piles will eliminate the problem (no noise and more importantly no vibration) and the appellant would like some assurance that this will be the method employed.
- **Access** – If the pedestrian access was allowed the road would in all likelihood become a car park for some wishing to access the new development given that it is closest to the town. The road terminates with a fifteen-foot-wide bridge (3.8 metres approx.) it is only suitable for one vehicle to cross at a time and has no footpaths either side of the bridge. The proposal would contravene all acceptable standards of traffic design and constitute a significant danger to road users.
- **Condition No 10** – It was not in the original submission / plans by the developer for planning permission. That the bridge is unsuitable. Traffic volumes will increase exponentially. The conversion of what is essentially a cul de sac to a major through road will completely alter the nature of the area and have a permanent and negative impact on the quality of lives on Riverside.

6.11.2. **Offaly County Council** – OCC notes the comments dated 7th February from the applicant and refers the Board to its previous reports on file.

7.0 **Assessment**

7.1. This assessment is based on the plans and particulars submitted to the Planning Authority on the 6th March 2019 as amended by further plans and particulars submitted by way of further information the 30th September 2019 and further plans and particulars received by An Bord Pleanála.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle
- Traffic Impact
- Condition No 2

- Condition No 3
- Condition No 10
- Condition No 12
- Residential Amenity
- Construction Impact
- Other Planning Issues
- Appropriate Assessment
- Environmental Impact Assessment
- Retention Permission

8.0 Principle

- 8.1. The Tullamore Town and Environs Development Plan 2010 – 2016 (TTEDP) was adopted in May 2010 and outlines an overall strategy for the proper planning and sustainable development of Tullamore Town and Environs. The TTEDP has since been extended to cover the period until 2020. The Tullamore Town Council area is defined in Map1.2 (purple) and the appeal site is within the defined town centre. The site is further identified on Map 7.3 as “Potential Opportunity Site 7”. These opportunity areas are considered to provide the greatest potential for development and consolidation on a sequential basis within the Town Centre without unnecessary expansion into outlying areas. These areas have been identified for various reasons such as dereliction, low density, presence of structures of architectural merit, underutilisation of areas and former industrial areas not readily adaptable for new uses. The corner of the site is identified in Map 7.4 as a location for a landmark / gateway / tall building.
- 8.2. The appeal site is a previously developed, degraded brownfield site within the centre defined town centre of Tullamore and that is identified as a potential location for retail development appropriate to the Town Centre. It is further noted that the development site has a previous permission for a larger scale retail and mixed use development with basement car parking. This permission has expired. The application before the Board is for a retail-led mixed use development as follows:

Class of Development	Gross Floor area in sqm
Retail	11,369 sqm
Café / Restaurant	273 sqm
Cinema	961 sqm
Garden Centre	800 sqm
Residential (8 no apartments)	556 sqm
Ancillary / Walls / ESB Substations / Circulation	896 sqm
Total	14,0055 sqm 800 sqm Garden Centre

- 8.3. The building, which is proposed to be demolished, is not listed on the record of protected structures and is not located within any designated conservation area. Further the structure does not in my view have any distinctive architectural merits and does not contribute significantly to the area in terms of visual amenity, character, or accommodation type. Accordingly, there is objection to the proposed demolition of this building.
- 8.4. Overall the proposal will deliver significant gain in redressing this vacant brownfield site within the Tullamore Town Centre. Having regard to the zoning objective for this opportunity site taken together with its planning history, I am satisfied that the demolition of the existing buildings on site and the construction of a retail-led mixed use is acceptable in principle at this location.

9.0 Traffic Impact

- 9.1. Having regard to the appeal against Condition No 10 (Link Road) I consider it prudent to address the wider issue of traffic impact in order to focus on policy matters below. To this end I refer to the Transport Assessment Report submitted with the application together with the internal technical reports from OCC Area Engineer, Road Design and the District Engineer. Matters pertaining to the provision of a link road between Riverside and Church Avenue (Condition No 10) are discussed separately in Section 12.0 below.

9.2. Given the location of the appeal site within the town centre together with the layout and design I am satisfied that the vehicular movements generated by the proposed development would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area. A total of 423 car parking spaces will be provided. A 20% reduction has been allowed to accommodate the dual use of parking based on the mixed uses which have different operating times. No objection to this proposal have been raised. This reduction is considered acceptable.

9.3. I agree with the conditions as recommended by OCC Road Design as follows and recommended that should the Board be minded to grant permission that similar conditions re attached:

- proposed footpath at the south west end of the development shall be extended to the boundary with the adjacent landholding (Kelly's Toymaster Store) (Condition No 11 of the notification of decision refers)
- details of road signage and lining in order to ensure the traffic flow exiting the proposed development onto the R410 (Church Road) shall turn left (east) only (Condition No 13 (a) of the notification of decision refers)
- Stage 2 & 3 Road Safety Audit (Condition No 13 (b) of the notification of decision refers) and
- design, location and selection of LED lighting for the installation along the proposed roads and car parking area shall be agreed (Condition No 13 (c) of the notification of decision refers)

9.4. Overall I consider that subject to the conditions outlined that the proposal for parking and access to be acceptable and I am satisfied that the proposed development will not result in the creation of a traffic hazard.

10.0 Condition No 2

10.1. The first party has appealed Condition No 2 as follows:

Block B (comprising 2 – 3 storey retail, café / restaurant and 8 residential apartments) as indicated on the site layout plans / drawings, submitted on

06/03/2019 and amended by revised details submitted 30/09/2019 shall be omitted in its entirety from the proposed development.

Prior to commencement of the development, the developer shall provide for the written agreement of the Planning Authority, proposals for the provision of public open space on this portion of the subject site.

Reason: *In the interests of proper planning and sustainable development of the area.*

- 10.2. As documented previously the appeal site is located within the designated “Town Centre” of Tullamore (Map 7.1 of the Town Development Plan refers), is an identified opportunity site suitable for retail development and had the benefit of a permission for a significantly larger scale retail development albeit now expired. It is stated that the demand for retail floor space is not present today for such a large quantum of retail space as was previously permitted and accordingly the proposal has been scaled down to meet current demand both in terms of quantity, quality and type to meet the requirements of national and international retailers to locate within the town centre of Tullamore. It is further stated that the space, form and quality of floorspace is currently not available within the town centre, evidenced by the fact that no such retailers have taken existing units within the Town Centre. The applicants detailed research has indicated that the market exists to bring new entrants to Tullamore, which will improve the retail offer.
- 10.3. All strategic, regional and local policy seek to direct retail development to the defined town centres of existing settlements, the scale of development being appropriate to the defined status of the settlement in the retail hierarchy. Tullamore is defined as a principal town within the Midlands and at the top of the retail hierarchy in Offaly within the policy documents. The Town Development Plan defines the town centre of Tullamore and to which it seeks to direct retail development, although acknowledging that retail warehousing development can take place outwith the town centre. Policy TTEP 07-09 encourages retail development, including new forms of shopping which relates to the regeneration of the existing town centres and only presumes against development which would undermine the vitality and viability of the Town Centre, as a whole. The Town Development Plan does not provide any barrier to any form of retail development within any part of the town centre.

- 10.4. The Retail Guidelines requires that retail development is plan-led, and refers to strategic retail policy matters. It requires the development management process to support applications for retail development which are in line with the role and function of the city or town in the settlement hierarchy of the relevant development plan and which accords with the scale and type of retailing identified for that location. Section 4.4 Sequential Approach to the Location of Retail Development of the Retail Planning Guidelines states that where the location of a proposed retail development submitted on a planning application has demonstrated to the satisfaction of the planning authority that it complies with the policies and objectives of a development plan and/or relevant retail strategy to support city and town centre, additional supporting background studies such as a demonstration of compliance with the sequential approach, or additional retail impact studies are not required.
- 10.5. As the proposed development is for a major retail-led mixed use development within the identified and defined town centre boundary it falls that the development is in accordance with the Retail Guidelines. Further Objective TTEO 07-02 is clear in its objective to distinguish between retail development within Tullamore as a whole and the town centre by *encouraging the sequential approach to retail development within Tullamore and to avoid impact on the vitality and vibrancy of the Town Centre*. As the site lies wholly within the town centre and is zoned as an area with opportunity for mixed use development, primarily retail and other commercial / leisure uses, and there are no obvious planning objectives to be served by omitting Block B it is recommended that should the Board be minded to grant permission that Condition No 3 be omitted.

11.0 Condition No 3

- 11.1. The first party has appealed Condition No 3 as follows and requests that it be omitted:

The range of goods to be sold in the proposed garden centre Unit E1 shall be limited solely to “bulky goods” (as defined in Annex 1 of the Guidelines for Planning Authorities Retail Planning issued by the Department of the Environment, Community and Local Government in April, 2012)

Reason: *In the interest of proper planning and sustainable development of the area.*

- 11.2. As with Condition No 2 above, it is considered this reason is too vague and imprecise to comply with the statutory requirement. Furthermore, submitted that the Councils

planning assessment report cannot be relied upon to provide any justification in this regard in the circumstances. OCC in their submission outline their concerns regarding impact on the Town Centre and refer to Policy TTEP 07-09 of the Tullamore and Environs Development Plan 2010 – 2016 as the basis upon which this condition was attached.

- 11.3. Policy TTEP 07-09 states that *“it is the Councils policy to encourage retail development, including new forms of shopping which related to the regeneration of the existing town centres. Proposals, which would undermine the vitality and viability of the Town Centre as a whole will not be permitted”*.
- 11.4. As documented on numerous occasions the appeal site is located within the designated “Town Centre” of Tullamore (Map 7.1 of the Town Development Plan refers), is an identified opportunity site suitable for retail development and that has previously had the benefit of a permission for a significantly larger scale retail development albeit now expired. The Town Development Plan does not provide any barrier to any form of retail development within any part of the town centre. In addition, I refer to the Retail Impact Assessment and associated documents, including the response to the request for further information that provide clear evidence of the benefit of the town centre development, particularly for the sale of unrestricted retail goods.
- 11.5. Similar to Condition No 2 above there are no obvious planning objectives to be served by limiting the use to bulky good only at this unit. Accordingly, it is recommended that should the Board be minded to grant permission that Condition No 3 or similar is omitted.

12.0 **Condition No 10**

- 12.1. Both the first and third party have appealed Condition No 10 as follows:

As per the Tullamore Town & Environs Development Plan, Chapter 8, Section 8.4 Objectives (Strategic / Transport and land use) subsection TTEO 08-06, the developer shall, prior to commencement of the development, provide details of the following for the written agreement of the Planning Authority:

- a) *A fully serviced vehicular link from the Riverside Bridge (north west corner of the site) to the proposed access road, following the current line of the proposed*

footpath. The road must be designed in accordance with DMURS requirements and include a footpath on both sides and may require repositioning of buildings. The modifications shall take account of the Matthew Kane Memorial.

b) The proposed access road at the north east of the development shall be extended to connect to the boundary of the adjacent landholding through the proposed loading yard for Unit E1, Garden Centre and this may require repositioning of buildings.

c) Bicycle parking facilities shall be provided in accordance with the details submitted.

The proposed development shall be constructed in accordance with these particulars, which shall be agreed in writing, prior to commencement of development.

Reason: *In the interests of traffic safety and accessibility*

12.2. The first party submits that while the condition refers to Objective TTEO 08-06 to secure a connection between Riverside and Church Avenue, the reason for the condition is “in the interest of traffic safety and accessibility” and this is considered to be inaccurate. It is submitted that the linkage is not required for traffic safety and will result in a connection to Church Road which is not a requirement of the Town Development Plan. The first party considers that this condition should be amended as follows:

To facilitate the Councils objective to secure connection from Riverside to Church Avenue the developer shall, prior to commencement of the development, provide details of the following for the written agreement of the Planning Authority

a) The reservation free from development of a corridor not less than 6 metres wide to enable the provision of a future connector road between Riverside and Church Avenue for vehicular traffic by repositioning the E1 Garden Centre unit and adjacent car parking. The Garden centre shall not be used after 28 days of the first use of the connector road, unless all structures on the site which may prevent such access have been removed.

b) Temporary boundary structures between the edge of the reserved land as detailed in a) above to the potential connector road and the adjacent landholding

c) *Bicycle parking facilities shall be provided in accordance with the details submitted*

Reason: *To meet objective TTEO 08-06 as sated in the Tullamore Town and Environs Development Plan, Chapter 8, Section 8.4 Objectives (Strategic / Transport and Land Use)*

12.3. The third party is also concerned with Condition No 10 as it would entail crossing a one lane bridge and lead to large volumes of traffic which would be unacceptable to the residents of Riverside.

12.4. Condition No 10 follows the recommendation of OCC Road Design that required the (1) provision of a fully serviced vehicular link from Riverside Bridge (north west corner of the site) to the proposed access road opposite Unit B5 and the extension of the proposed access road at the north east of the development to connect to the boundary of the adjacent landholding through the proposed loading yard for Unit E1, Garden Centre. No further reasoning was provided in the report.

12.5. OCC in their response to the appeal confirmed that this Condition is required in order to comply with Objective TTEO 08-06 of the Tullamore & Environs Development Plan 2010 – 2016 (as extended) that set out the following stated objective (emphasis added):

TTEO 08-06 *To extend and improve the existing distributor road system, where necessary, to accommodate the growing/changing movement patterns within the town. Including:*

- *Improve connectivity at the interface between the southern masterplan area and Spollenstown.*
- *Realign Chancery Lane.*
- ***Provide a link road between Riverside and Church Avenue.***
- *Reconfigure the Kilcruttin intersection at the Railway Station.*
- *Improve connectivity between the north-eastern quadrant of the town and the existing road network. Utilising the former access way created to construct the hospital*

12.6. The response by OCC to the appeal was accompanied by a further report from OCC Road Design. The report re-emphasises the position of OCC that a 6m wide corridor

as an alternative to OCC requirements falls short of what's required and is not in line with the current requirements of DMURS. The report further states that "the link from Riverside to Unit B5 and the extension of the roadway at the north east of Unit E1 (Garden Centre) is an essential element of the link between Riverside and Church Avenue". For the avoidance of doubt OCC Road Design also included annotated map of the site and environs that provides clarity on the intention of Condition No 10 whereby a suitable vehicular and pedestrian connection is sought from the Matthew Kane Memorial through the appeal site to the loading area of Unit B where it would connect with Church Avenue to the north.

- 12.7. I refer to Section 9.0 Traffic Impact above. Subject to conditions the scheme is acceptable in terms of traffic safety.
- 12.8. As pointed out by OCC the revised condition proposed by the applicant would not provide the required link to Riverside from Church View / Avenue and it would necessitate the development of lands which are outside the applicants and the Local Authority's control. Further the 6-metre-wide road space as suggested by the applicant would not make provision for any footpaths, reinforcing the position that if built, this road would be purely to facilitate car traffic and by reason of its location the route would be unattractive and potentially dangerous for pedestrians.
- 12.9. The provision of this link road is an important and significant piece of infrastructure that has been identified as a long term objective of the development plan. Objective TTEO 08-06 is very clear in its intention to extend and improve the existing distributor road system and to provide a link road between Riverside and Church Avenue.
- 12.10. Having regard to the site plans submitted on file together with my site inspection it is my view that the most obvious route that this link would take is from the Matthew Kane Memorial site in a straight line in an easterly direction along the existing laneway at a location outwith the appeal site to the north where it would eventually connect with Church Avenue further east. This would link in with the layout for ABP 304562 (Reg Ref 18356) (see Section 4.0 Planning History above – Section 137 issued) where a residential development on lands to the north of the appeal site indicted the provision of an access road from the bridge / Matthew Kane Memorial Site in a easterly direction. Screen shot of layout attached. To this end I agree with the Inspectors comments on this adjoining site that *it is regrettable that a masterplan was not prepared for the wider*

area so that incremental and / or piecemeal development of individual sites does not hinder the development of the area as a whole and to include Objective TTEO 08-06.

- 12.11. However as documented in the foregoing OCC have taken the definitive position that this link road would meander through the appeal site and that this route *is an essential element of the link between Riverside and Church Avenue*. To this end the requirement that the pedestrian link be upgraded is reasonable. Further the recommendation of OCC that a revised proposal that would facilitate the future construction of a road following the current line of the proposed footpath between Units C6 and Block D1 whereby an appropriate area of lands is sterilised is in my view the most reasonable and appropriate method for achieving the objective in the circumstances. I further consider this approach to be prudent having regard to the existing vehicular bridge at the Matthew Kane Memorial that is substandard in terms of accommodating significant additional traffic movement associated with this link road.
- 12.12. I note that OCC requested that in the event that the Board considers Condition No 10(a) to be unduly onerous that the applicant be required to submit a revised proposal that would facilitate the construction of a road following the current line of the proposed footpath between Units C6 and Block D1. This revised condition would include provision to sterilize this area of lands from any development other than open space and road use. I agree with this approach.
- 12.13. The requirement that the proposed access road at the north east of the development be extended to connect to the boundary of the adjacent landholding through the proposed loading yard for Unit E1, Garden Centre is necessary to meet the requirements of the Planning Authority and it is recommended that this condition be attached.
- 12.14. Having regard to the foregoing it is recommended that should the Board be minded to grant permission that Condition No 10 be amended. The works required may have an impact on the positioning of Block C and D. I note that the Planning Authority was satisfied to accommodate a repositioning of relevant buildings within the site. However, any repositioning may have knock on effect for car parking and service route access and possibly the residential amenities of adjoining residential amenities. For these reasons I consider it more appropriate that the relevant building be reduced in

floor area where necessitated in order to accommodate the Riverside to Church Avenue link.

Prior to commencement of work on site the developer shall submit the following amendments for the written agreement of the Planning Authority:

- a) A strip of land, wide enough to accommodate a suitably designed link road in accordance with the requirements of DMURS, shall be reserved free from development from the Riverside Bridge (north west corner of the site) to the proposed internal access road opposite Block B and following the current line of the proposed footpath. The width of this strip of land shall be agree with Planning Authority in consultation their Road Design Department. The modifications shall take account of the Matthew Kane Memorial and may require a reduction in the floor area of Block C.*
- b) The proposed internal access road at the north east of the development shall be extended through the proposed loading yard serving Unit E1 / Garden Centre to connect to the boundary of the adjacent landholding. This may require a reduction in the floor area of Unit E1 / Garden Centre.*
- c) Bicycle parking facilities shall be provided in accordance with the details submitted.*

Reason: *In order to provide a link road between Riverside and Church Avenue in accordance with Objective TTEO 08-06 of the Tullamore & Environs Development Plan 2010 – 2016 (as extended) and in the interests of the proper planning and sustainable development of the area.*

12.15. While I note the concerns raised by the third party and residents of Riverside it remains that the requirement to deliver this link from Riverside to Church Avenue has been a long-standing objective of the Town Development Plan since 2010. The development plan has been through the rigours of the development plan making process and public consultation and therefore the consideration of same from first principles is not applicable in this case.

13.0 Condition No 12

13.1. Condition No 12 of the notification states as follows:

In order to facilitate access to adjoining land holdings no impediment to movement, such as gates or other structures, shall be erected along internal roads in the development or footpaths.

Reason: *In the interests of traffic safety and accessibility*

13.2. The first party considers that this condition is unnecessary as access is not available to adjoining lands at present, as they are vacant with no proposals in place for their development. Reference is made to Condition No 10 above, Policy Objective TTEO 08-06 and the requirement to provide a link road between Riverside and Church Avenue through the site. The matter of this link road has been addressed above. The wider issue of ensuring unencumbered permeability through the site and the potential to facilitate future access to adjoining zoned and serviced sites is a fundamental principle of good planning and urban design. Such permeability and “future proofing” benefits not only the site and its immediate environs but also the wider legibility and sustainable growth of the town. It is recommended that should the Board be minded to grant permission that a similar condition be attached.

14.0 Residential Amenity

14.1. The third-party appellants on Riverside raise concern with regard to the overshadowing effects of the proposed buildings immediately to the rear of their properties.

14.2. The nearest proposed building that may have an impact on the residential amenity of housing at Riverside is Block C located to the south of these houses. This block comprises 6 no units with an overall height of c8.2m. Block C is separated from the housing on Riverside by a rear loading yard and the Tullamore River. I refer to the overshadowing diagrams submitted by the applicant in response to the appeal, taken at 1st March at 9am, 12pm, 3pm and 6pm. There is a small increase in shading of the rear part of the garden of one property at 9am only with the impact reducing as the day progresses (demonstrated in the 12pm, 3pm and 6pm diagrams) and as the days lengthen. Taken together with the separation distance between Block C and the properties at Riverside I am satisfied that the proposed development will not adversely affect the residential amenities of adjoining properties by reason of overshadowing.

- 14.3. Notwithstanding the foregoing I am concerned with the location of the loading yard to the rear of Block C and the potential for night light pollution and general disturbance to adjoining residential properties. It is recommended that should the Board be minded to grant permission that a condition be attached requiring the submission of a lighting and operational report for the loading yard for written agreement of the Local Authority having particular regard to the residential amenities of adjoining properties.
- 14.4. I have considered the scheme before the Board and I am satisfied that the use, design, scale, form and positioning of the proposed scheme strikes a reasonable balance between the protection of the amenities and privacy of the dwellings at Riverside with the specific objectives for the appeal site as set out in the Development Plan and that it will not result in any significant overlooking, over shadowing or night light pollution of these properties subject to conditions as recommended. I therefore consider the proposed scheme to be acceptable

15.0 Construction Impact

- 15.1. The third-party appeal raises specific concern in relation to the type of piling to be used, the proximity of works to their dwellings along Riverside and the potential negative impact to the structural integrity of their houses. Cored and poured is their preferred method of construction. I note that the applicant has engaged directly with the appellants and that they are willing to continue dialogue at the appropriate stages of construction and comply with Conditions No 5 (compliance with EIAR mitigation measures) and No 9 (noise, odour and dust nuisance mitigation measures). Engagement with third parties is to be encouraged.
- 15.2. The specific concerns raised are an engineering issue and not a planning issue, whereby it falls to the applicant to ensure that no damage or deterioration occurs to adjoining properties. While the construction impacts associated with this development will be temporary, they are likely to last between 18 - 24 months and may have significant impact on the residential amenity of the adjoining properties. In this regard should the Board be mindful to grant permission for the proposed development I consider that a detailed Construction and Environmental Management Plan (CEMP) should be submitted for written agreement prior to commencement of development, in order to address construction management concerns. The detailed method of

construction should be included and agreed having particular regard to adjoining neighbours. With the attachment of such a condition I do not consider that the construction phase of the development would give rise to an unreasonable impact on neighbouring properties in this instance.

16.0 Other Planning Issues

16.1. **Development Contributions** - I refer to the Offaly County Council Development Contribution Scheme 2021-2025 and Condition No 6 of the notification of decision. It is recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

17.0 Appropriate Assessment

17.1. I refer to the Screening for Appropriate Assessment Report submitted with the application. The site is not located within a designated Natura 2000 site and so there is no risk of habitat loss, fragmentation or any other direct impacts. The Charleville Wood SAC (Site Code 000571) is located c1.9km to the west of the site where the conservation objective is "to maintain or restore the favourable conservation condition of the qualifying interests for which the SAC / SPA has been selected". The qualifying interests are old sessile oak woods (Annex I Habitats) and Desmoulins Whorl Snail Vertigo Moulinsiana (Annex II Species).

17.2. The proposed development will involve extensive construction works, which may cause release of suspended sediments and could potentially cause accidental spills of oil or other toxic chemicals (in a worst case scenario). These pollutants could have negative impacts on water quality in the Tullamore River, and could cause impacts on aquatics habitats and species. The Tullamore River passes through the Charleville Wood SAC approx. 2km downstream of the proposed project site. However it is noted that the qualifying interests of the SAC are old sessile oak woodlands (a terrestrial habitat) and Desmoulins whorl snail (a terrestrial species), neither of which is associated with the river. Furthermore, there is no mention of the Tullamore River in the site synopsis for the SAC. Therefore, even if there was a significant pollution event in the Tullamore River, it would be highly unlikely to have a significant effect on either

of the qualifying interests of the downstream Charleville Woods SAC. It is concluded that potential changes in water quality during the construction of the proposed development would not cause likely significant effects on the SAC.

- 17.3. During the operational phase all surface water runoff will be carefully controlled and will receive the appropriate treatment prior to discharge and will not cause pollution of the Tullamore River. These measures are considered to be part of the design of the proposed development and are not considered to be mitigation measures.
- 17.4. Foul water will be channelled to the municipal sewer on Hophill Road and sent for treatment in the Tullamore Waste Water Treatment Plan that has a population equivalent of 45,000. In 2018 the annual report stated that the WWTP was operating within its limits, with no exceedances.
- 17.5. As the proposed development will not have any impacts on nearby waterbodies or Natura 2000 sites, there is no risk of in-combination effects with other developments.
- 17.6. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site No 000571 or any other European site, in view of the sites Conservation Objectives and Appropriate Assessment (and submission of a NIS) is not therefore required.

18.0 Environmental Impact Assessment

18.1. Introduction

- 18.1.1. The relevant classes of development that require EIA are set out in Schedule 5 of the Planning and Development Regulations 2001 (as amended). Schedule 5 transposes Annex 1 and Annex II of the EU EIA Directive (85/337/ECC as amended) into Irish Law as Parts 1 and 2 of the Schedule. Part 1 of Schedule 5 sets out the categories and scale of development that qualify for mandatory EIA. The most relevant activity class for the proposed mixed-use development is listed under Class 10(b)(iii) (Infrastructure Projects), defined as follows:

“Construction of a shopping centre with a gross floor space exceeding 10,000 square metres.”

18.1.2. The proposed development will exceed the threshold of 10,000 sqm retail gross floor space and requires a mandatory EIA. Both the 2014 amending EIA Directive (Directive 2014/52/EU) and the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 are applicable in this instant case.

18.2. Compliance with Legislation

18.2.1. The EIAR consists of three sections grouped as follows:

- Non-Technical Summary
- Environmental Impact Assessment Report
- Appendices

18.2.2. In accordance with Article 5 and Annex IV of the EU Directive, the EIAR provides a description of the project comprising information on the site, design, size and other relevant features of the project. It identifies, describes and assesses in an appropriate manner, the direct and indirect significant effects of the project on the following environmental factors: (a) population and human health; (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; (c) land and soils, water (hydrology and hydrogeology), air quality, noise & vibration and climate; (d) material assets, cultural heritage and the landscape and it considers the interaction between the factors referred to in points (a) to (d).

18.2.3. The contributors / competent experts involved in the preparation of the EIAR are set out in Section 1.6. Details of the consultations entered into by the applicant as part of the preparation of the application and EIAR and prior to the lodgement of the application are set out in Chapter 1. No specific difficulties are stated to have been encountered in compiling the required information or in carrying out the assessment. The EIAR provides a description of forecasting methods and evidence used to identify and assess the significant effects on the environment. It also provides a description of measures envisaged to avoid, prevent or reduce and, if possible, offset likely significant adverse effects. The mitigation measures are presented in each chapter and are summarised in Chapter 18 (Summary and Conclusions) of the EIAR where proposed, monitoring arrangements are also outlined. Environmental Interactions are

addressed in Chapter 17. I am satisfied that the information provided in the EIAR is sufficiently up to date and is adequate for the purposes of the environmental impact assessment to be undertaken.

18.2.4. The information provided is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment.

18.3. **Vulnerability to Risk of Major Accidents and / or Disaster**

18.3.1. The requirements of Article 3(2) of the Directive include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disaster. The EIAR addresses the risk of potential accidents and unplanned events in Chapter 16. Table 16.1 includes potential major accidents and disasters and includes an indication of how likely these events are to occur at the proposed site. It is not considered that any of the identified potential major accidents or disasters are likely to occur at the site and therefore no further consideration was considered necessary in preparing the EIAR. The proposal is no more vulnerable than any other development of this type. Having regard to the nature and scale of the development itself, there are unlikely to be any effects deriving from major accidents and or disasters and I am satisfied that this issue has been addressed satisfactorily in the EIAR.

18.4. **Alternatives**

18.4.1. Article 5(1)(d) of the 2014 EIA Directive requires a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment. Chapter 5 addresses site selection and design. The site was selected as it is the only opportunity site currently available for development within the town centre of Tullamore. The previous consent for a significantly larger mixed use development was also a key factor. Other sites for development in Tullamore town centre were considered but each was constrained and therefore unavailable for the type of development proposed. Numerous alternative layouts were considered throughout the design process and EIAR. None of the environmental aspects considered identified any constraint to development although mitigation is recommended to minimise impacts. It is considered that the final layout, as submitted is the optimum layout for the site having considered all environmental

and policy considerations. The consideration of alternatives is reasonable and commensurate with the project. I am satisfied that the requirements of the Directive in terms of consideration of alternatives have been discharged.

18.5. Assessment of Likely Significant Direct and Indirect Effects on the Environment

18.5.1. In total the main EIAR includes 18 chapters. Chapters 1 to 5 provide an introduction to the project, description of the proposed site and development, relevant legislation and policy, alternatives considered, and consultations undertaken. Chapter 6 addresses population and human health, Chapter 7 addresses landscape and visual impact, Chapter 8 and 9 addresses noise, air quality and dust, Chapter 10 address access and transport, Chapter 11, 12 and 13 addresses soil, ground conditions, hydrology and hydrogeology, Chapter 14 addresses ecology, Chapter 15 addresses cultural heritage, Chapter 16 addresses major accidents and disasters and Chapter 17 addresses interactions. Chapter 18 sets out the conclusions. Each of the above chapters are considered in detail below, with respect to the relevant headings set out in the Directive.

18.6. Population

18.6.1. EIAR Chapter 6 considers Population and Human Health. The project has the potential to create economic impacts including the creation of jobs during the construction and operational phases of the development bringing investment to the local area and town centre. The main impacts to population on human health arises as a result of landscape and visual, noise, air quality, access and transport and socio-economic impacts. The majority of these issues are dealt within in other chapters of the EIAR and are considered below. The various impacts range from having a short term (slight to moderate or even significant) negative impacts during the construction phase to long term (neutral to moderate) negative impacts during the operational phase. All predicted negative impacts will be mitigated by using standard mitigation measures and site specific mitigation measures.

18.6.2. The economic and social impacts will impact on a wider area and population based on a 15-minute drive time from the appeal site. The catchment area population at the 2016 census was just under 37,000 an increase of around 13% on the 2011 catchment area. The population has been projected forward to the predicted design year of 2021 through the use of the CSO population and mitigation estimates of April 2018 and

resulting in a catchment area population of just over 37,900. The implementation of the development will result in investment in the town, currently estimated as some €20m in construction costs, will possibly add an additional €12 in fit out. It is likely that some 100 jobs will be created during the construction period over an 18 to 24 month period. It is envisaged that post construction the fully trading / built scheme will have full and part time employment numbers between 250 and 350 people. The socio-economic impacts are positive and are not considered to constrain development at the site.

18.6.3. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of population and human health can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on human health.

18.7. Biodiversity

18.7.1. EIAR Chapter 14 Biodiversity identifies, quantifies and evaluates the impacts of the proposed development on ecosystems and their components, including designated site, habitats, flora and fauna. The proposed development is not within any designated sites, so there is no risk of direct impact (e.g habitat loss or fragmentation). One hydrological feature that adjoins the site – the Tullamore River – was identified that could potentially provide a pathway for indirect impact on the Charleville Woods SAC. A stand alone assessment of potential indirect impacts on Natura 2000 site is provided in the accompanying Screening for Appropriate Assessment.

18.7.2. Potential impacts arising from the construction phase of the development are considered to be accidental pollution incident affecting surface water or groundwater quality, surface water run-off of sediments and/or pollutants affecting surface water or groundwater quality, air quality impacts, habitat loss, fragmentation and degradation, disturbance and displacement of fauna species, loss of potential nesting/roosting sites, and artificial lighting impacts. Potential operational impacts are considered to be surface water run-off of sediment and/or pollutants, disturbance and displacement of fauna species and artificial lighting impacts.

- 18.7.3. In response a range of pollution prevention measures will be implemented during the construction and operational phase. Section 14.8 refers. Surface water will be discharged to the river during the operation of the development but it will pass through interceptors, silt traps and an attenuation tank prior to discharging so it will not carry any pollutants. Therefore, there will be no significant impacts on the watercourse or the SAC.
- 18.7.4. Habitats within the proposed development site include recolonising bare ground, scrub, hedgerow and treeline. The hedgerow and treelines in some parts of the site are of local value, and they will be retained and incorporated into the new development. All other habitats are of negligible floral value, and they will be removed during site clearance works. The dense foliage of trees and hedgerows may provide nesting opportunities for birds so site clearance works will be undertaken outside the nesting season (i.e. between October and February inclusive) or a pre-clearance survey will be carried out by a suitably qualified ecologist. It is noted from the further information submitted to OCC that the length of hedgerow to be lost is approx. 127m on the northern boundary and is sparse and of negligible value. This will be offset by substantial planting of new trees throughout the site, including a riverside walkway, a patch of open space on the eastern boundary and lines of new trees along the side of internal roads.
- 18.7.5. The proposed site does not support a bat roost but there appears to be a soprano pipistrelle roost outside the site approx. 50m from the eastern corner. The Tullamore River and its associated strip of woody vegetation appears to be an important feeding and commuting route for a number of bat species but the remainder of the site has little bat activity probably due to light spill from surrounding developments. In response some "bat sensitive" lighting techniques will be incorporated into the lighting plan to ensure that there is no light spill towards the Tullamore River.
- 18.7.6. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of biodiversity can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on biodiversity.

18.8. Lands & Soils

18.8.1. EIAR Chapter 11 considers Soil and Ground Conditions. A geotechnical site investigation was carried out at the development site in March and April 2018. The soils do not present a risk to construction workers or future site users. There are no areas of geological interest currently proposed for either Natural Heritage Status of County Geological Status within or adjacent to the site. None of the parameters detected during intrusive site investigations exceed the Land Quality Management / Chartered Institute of Environmental Health (LQM / CIEH) S4UIs Human Health Risk Assessment Risk Levels (S4ULs) which establishes the risk posed (if any) to construction workers or future users of the developed site. Therefore, there are no constraints to developing the site in terms of soil and ground conditions. Potential impacts could occur during the construction phase during site clearance works to establish formation levels. Dust emissions could occur if groundworks are undertaken in dry or windy weather. Fuel, lubricating oils or other potentially contaminating liquids could leak or spill during the construction or operation phase. I refer to Section 11.8 where standard mitigation measures are recommended to avoid contamination e.g dust suppression measures, no refuelling of vehicles in the construction area and all liquid chemicals to be stored in bunded areas during the operational phase. The operational phase will have no impact on soil or geology.

18.8.2. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of land and soils can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on lands and soils.

18.9. Water (Hydrology & Hydrogeology)

18.9.1. EIAR Chapter 12 considers Hydrology. The main potential impacts on the hydrological environment during construction include increased surface water run off and sediment loading, contamination of local water courses and during the operation phase include surface water runoff, localised accidental discharge of hydrocarbons, wastewater discharge and water requirement for the site. The central and eastern section of the site are identified in the Shannon CFRAM as being located within Flood Zone A while

the western section is in Flood Zone B. However, a detailed Flood Risk Assessment was carried out and the detailed hydraulic model developed for the site confirms that the site is located within Flood C based on the latest available survey information. Therefore, flood risk is not a constraint to the development at the site although a minimum finished floor level of 57.91 is recommended to ensure flood risk is not an issue for the proposed development. In the case of the proposed development there is no evidence of any significant predicted hydrological impacts during operation. I refer to section 12.8 where standard mitigation measures are recommended for the construction and operational phases to avoid contamination of local watercourses.

18.9.2. EIAR Chapter 13 considers Hydrogeology. Site drainage is described further in Chapter 12 of the EIAR. Due to historic information regarding contamination at the site groundwater samples were undertaken to establish heavy metal concentrations in the groundwater. The majority of the parameters are below the limits of detection throughout the monitoring boreholes. The results show that there are no exceedances above regulatory threshold values in any other of the samples. In summary the groundwater quality based on the recent site investigation is generally of good quality. As such the underlying groundwater body is considered to be free of contamination. The aquifer is a poorly productive bedrock aquifer and not used for public water supply or generally for potable use. The importance of the hydrogeological features at this site is rated as low importance. There are no hydrogeological constraints to the development at the site but mitigation as set out in Section 13.9, has been recommended to reduce potential impacts during construction for example to prevent the risk of accidental spills and leaks and minimise surface water run-off. Mitigation includes soil removal and compaction, fuel and chemical handling, surface water runoff and a project specific Construction Environmental Management Plan (CEMP).

18.9.3. The potential impacts on the hydrological and hydrogeological environment of the development have been assessed and mitigation measures have been included in the proposed design. I am satisfied that the design has taken into account of the potential impacts of the development and the risks to the hydrological environment of the area. During the operational phase of the development there will be no direct discharge to the groundwater body or, without mitigation. The site will be covered in hardstanding area and a stormwater drainage system installed to protect the receiving hydrological environment. Stormwater from high risk areas will be discharged directly to the foul

system while low risk areas will pass through silt traps, hydrocarbon interceptors and attenuation tank before discharge to the Tullamore River. The predicted impact during the construction phase with the proposed mitigation measures is considered to be short term, imperceptible impact with a neutral impact on quality i.e. a change which does not affect the quality of the environment. The predicted impact during the operational phase with the mitigation measures is considered to be long term, imperceptible impact with a neutral impact on quality i.e. an impact capable of measurement but without noticeable consequences. Mitigation measures have been designed to minimise the impact of the proposed development. No significant residual or cumulative impacts on the water environment are predicted.

18.9.4. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of water (hydrology & hydrogeology) can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on water (hydrology & hydrogeology).

18.10. Air Quality

18.10.1. EIAR Chapter 9 considers Air Quality and Dust. There are 4 individual sensitive receptors within 20 metres of the site including residential housing and a school. It is considered that sensitivity of the area to human health impacts is low it is considered that sensitivity of the area to human health impacts is low and therefore impact of dust on human health during construction is considered not significant. The results from the air quality assessment do not indicate any constraints to the site layout however in order to preserve residential amenity, mitigation has been recommended to minimise and manage potential dust emissions during the construction phase. Emissions from boilers are unlikely to cause any impact on the air quality in the vicinity of the site is installed, operated and maintained in accordance with manufacturers specifications. Mitigation has also been recommended for the operational phase to minimise the potential air quality impacts from boilers. In relation to air quality impacts arising from additional traffic and associated transmissions, the model shows that there would be an imperceptible increase in all parameter compared to both the background concentrations and baseline traffic impacts.

18.10.2. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of air quality can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on air quality.

18.11. Noise & Vibration

18.11.1. EIAR Chapter 8 addresses Noise Impact Assessment. I also refer to the Construction Noise Management Plan and the Technical Noise Report as submitted at further information stage. An assessment of impacts on noise was undertaken that provides a description and assessment of the likely impact of the proposed development on noise and vibration. Acoustic monitoring was also undertaken on the 26th and 27th June 2018. There are sensitive receptors in close proximity to the site including residential housing and a primary and secondary school. The construction phase will involve works such as site preparation, site development, construction of the main buildings, road surfacing and landscaping etc which will result in the use of various machinery as well as the movement of HGVs on and off the site.

18.11.2. Vibration can arise as an issue where heavy plant, piling or drilling occurs in close proximity to buildings, particularly older construction where foundations may be decaying. The general site layout includes for separation distances from all proposed structures to existing neighbouring buildings. The Tullamore River to the north and west of the site offers a vibration break between the site and to properties on the other side.

18.11.3. The nearest noise sensitive receptors are likely to experience noise nuisance during construction, depending on the activity being carried out. Standard mitigation measures as outlined in Section 8.8 are to be implemented including operational times for construction, placement of hoarding around the site, shielding generators, powering down plant when not in use etc. To ensure the measures are fit for the project, the appointed contractor will prepare a Construction Noise Management Plan to outline specific mitigation for each phase of the construction works and monitoring to be conducted to ensure noise nuisance is prevented in compliance with the limits outlined in Section 8.7.1. This will prevent undue noise disturbance occurring at the

noise sensitive receptors during the temporary construction works. The proposed development will not adversely impact the receiving environment during normal operations.

18.11.4. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of noise and vibration can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on climate.

18.12. Climate

18.12.1. This was addressed throughout the EIAR at several different sections rather than a separate chapter. Chapter 9 – Air Quality, Chapter 12 – Hydrology and Flood Risk Assessment refers.

18.12.2. I have considered all the submissions and having regard to the above, I am satisfied that impacts that are predicted to arise in respect of climate can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on climate.

18.13. Material Assets (Traffic & Transport)

18.13.1. EIAR Chapter 10 considers impacts related to access and transportation. The Board is referred to section 9.0 above in respect of traffic impact. The above assessment concludes that the development would not have such a significant adverse impact on traffic and transport in the area as would warrant a refusal of permission. The site is of sufficient scale, in area terms, to allow all construction operations and staff traffic to be managed and contained within the site confines. It is anticipated that the final vehicular access junction will be constructed at an early stage to serve the construction related activities. In terms of traffic impact of construction activities, there are expected to be no significant effects arising. It is considered that the traffic during the operational phases of the development will have a greater impact than the construction phase. A comprehensive assessment of the operational phases has been undertaken and the impacts were determined to be acceptable. In addition,

a comprehensive assessment of parking provision demonstrates that the proposed parking is more than adequate to accommodate the worst case demands on site.

18.13.2. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of traffic and transport can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on traffic and transport.

18.13.3. **Material Assets (Waste)**

18.13.4. I refer to the Drainage Report and details including letter from Irish Water, Foul Water Pump Sump Proposal submitted by way of further information. No significant residual impacts are predicted.

18.13.5. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of waste can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on waste.

18.14. **Cultural Heritage**

18.14.1. EIAR Chapter 15 addresses Cultural Heritage. An assessment of the impacts of the proposed development on cultural heritage was undertaken. There are no archaeological or cultural heritage constraints at this site and therefore the site layout has not been impacted by archaeological constraints. No significant residual impacts are predicted.

18.14.2. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of archaeology can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on archaeology.

18.15. **Landscape & Visual Impact**

18.15.1. EIAR Chapter 7 addresses Landscape and Visual Impact. I also refer to the updated LVIA submitted by way of further information including three update photomontages from along the Tullamore River. The site is within the town centre as defined in the Tullamore Town Development Plan and is also identified as an opportunity site. The site is classified as a “low sensitivity” area as is much of Tullamore town centre. There are no protected views, corridors or prospects in close proximity to the site. It is likely the site will be developed at some stage in the future, especially due to the sites town centre location and the presence of existing commercial development in the lands surrounding the site. Therefore, landscape and visual impacts are not a constraint to development at the site although as with any development some degree of impact is inevitable and wherever possible measures have been proposed to mitigate the adverse nature of these impacts. The visual impacts range from imperceptible and neutral to slight and negative to moderate negative and even moderate positive. There are no predicted significant, very significant or profound effects.

18.15.2. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of landscape and visual impact can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on landscape and visual impact.

18.16. Interactions

18.16.1. EIAR Chapter 17 examines cumulative impacts and interactions between the above factors. I have considered the interrelationships between factors and whether these might as a whole affect the environment, even though the effects may be acceptable on an individual basis. In conclusion, I am generally satisfied that effects arising can be avoided, managed, and mitigated by the measures which form part of the proposed development, mitigation measures, and suitable conditions. I am also satisfied that no significant cumulative impacts will arise in association with other permitted or proposed developments.

18.16.2. Table 16.1 summarises the interaction of the factors discussed in the preceding chapters. Generally, the negative impacts relate to the construction phase of the

project and are slight. There are some positive impacts largely related to population. I consider that this summary of the potential for interacting impacts is reasonable.

18.17. Reasoned Conclusion

18.17.1. Having regard to the examination of environmental information contained above, and in particular to the EIAR and the submissions from the planning authority in the course of the application, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- There are potential positive impacts for employment opportunities and retail activities. Impacts arising from noise, dust, traffic, and construction will be mitigated by a Construction Management Plan including traffic management measures. There will be no negative impacts subject to mitigation measures outlined or otherwise addressed by condition.
- Construction phase impacts are recognised and addressed in the EIAR. The mitigation measures are reasonable and practicable. Noise and vibration levels would be within acceptable emissions limits during normal operation.
- The proposed development entailing a series of large modern buildings would have an impact on the visual character of the area. This impact is considered acceptable given the location of the site within the Town Centre on zoned lands
- Potential environmental impacts arise from surface water runoff. Having regard to the EIAR and the mitigation measures contained in same and subject to full compliance with all mitigation measures listed in the documentation, there is no potential for significant adverse impact on the receiving environment proximate or removed from the site
- Biodiversity impacts, which will be mitigated by a range of pollution prevention means to protect surface water quality during construction and operation; landscaping or replacement of trees and hedgerows; lighting control measures and post construction monitoring.

18.17.2. Having regard to the above, it is my view that the likely significant environmental effects arising as a consequence of the proposed development have been satisfactorily identified, described and assessed. I consider that the EIAR is compliant with Article 94 of the Planning and Development Regulations, 2001, as amended.

19.0 Retention Permission

19.1. I refer to the public notices that state that “retention permission” is sought for the Matthew Kane Memorial at Riverside Road. There is no evidence on the file to indicate how long the memorial is in situ, whether or not it is an unauthorised development or whether or not it has the benefit of planning permission. While it is not appropriate to speculate and it is not explicitly stated, in all likelihood this element was referenced in the public notices to provide assurance that the memorial would be retained and afforded suitable protection during both the construction and operational stage of the scheme. The plans and proposal submitted would substantiate such a position. While such an approach is reasonable in normal circumstances in this case the overall development triggered the requirement for an EIA and was accompanied by an EIAR and this is where a technical difficulty arises.

19.2. The Board will be aware that permission cannot be granted in such circumstances. I refer to S34(12) of the Planning and Development Act, as amended, where it states that a planning authority must refuse to consider an application for retention planning permission for a development which requires an EIA. As set out in the foregoing assessment there is no objection to the proposed scheme however, as this appeal relates to an application for permission for retention of development for which an EIA would have been required before the development was commenced the Board is precluded from further consideration of the appeal. Refusal is therefore recommended.

20.0 Recommendation

20.1.1. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be **REFUSED** for the following reason and considerations.

21.0 Reasons and Considerations

- 1) Section 34 (12) of the Planning and Development Act 2000, as amended, provides that a planning authority shall refuse to consider an application to retain

unauthorised development of land where the authority decides that the proposed development would have required an environmental impact assessment before the development was commenced. This appeal relates to an application for permission for retention of development for which an EIA would have been required before the development was commenced and, therefore, the Board is precluded from further consideration of the appeal.

Mary Crowley

Senior Planning Inspector

12th April 2021