



An  
Bord  
Pleanála

## Inspector's Report ABP – 306842 – 20

### Development

Demolition of existing public house and outbuildings, in its place and within the grounds of the public house the construction of a part 4-storey, part 5-storey mixed use building to accommodate containing 3 no. cafe/retail/non-retail services units and a public plaza fronting onto Main Street; at first to fourth floors 27 no. apartments; 2 bay lay-by parking spaces parallel to Main Street serving the retail units; 33 no. car parking spaces at surface level serving the apartment development; relocation of existing vehicular access onto Main Street; all boundary treatments; signage; a refuse store; bicycle parking and all associated site works and services.

Significant further information/revised plans submitted on this application.

### Location

'Clonee House', Main Street, Clonee, Co. Meath.

<b>Planning Authority</b>	Meath County Council.
<b>Planning Authority Reg. Ref.</b>	RA190648.
<b>Applicant</b>	Ciaran Smyth.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Refused.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Ciaran Smyth.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	20 <sup>th</sup> day of May, 2020.
<b>Inspector</b>	P.M. Young.

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## 1.0 Site Location and Description

- 1.1. The appeal site has a stated 0.214ha area and it is located in the centre of Clonee village, benefitting from c41m of road frontage onto the northern side Main Street (Note: R147, Regional Road). It lies c213m to the east of its junction with the R149 and c87m to the west of its junction with Summer Court, in County Meath.
- 1.2. The site contains a single storey building that was formerly used as a public house and a number of outbuilding. The main building is generally in a poor structural state and with a section of the western side of the building in use by a car sales business. According to the submitted documentation the buildings on site have a given 355.2m<sup>2</sup> floor area. This business appears to use the hardstand area to the rear and to the eastern side of the existing building. The latter area contains a low wall with railings over that returns around the eastern boundary of the site.
- 1.3. Access to the site is via an entrance located on the eastern boundary of the site. This access opens onto a cul-de-sac service road that primarily serves a residential scheme known as 'Sterling Square'. This 3-storey residential scheme bounds the rear northern boundary of the site as well as part of the north easternmost corner of the site. It also separates the appeal site from the Tolka River which lies in close proximity to the northern boundary of the site.
- 1.4. Running along the roadside edge there are a number of on-street car parking spaces.
- 1.5. The main building on site has an indented building line towards its westernmost end with this space accommodating a hard-surfaced area containing park benches and planting boxes.
- 1.6. Neighbouring the site to the east is a 2-storey mixed use building that contains a post office at ground floor level. This mixed-use building is setback from the main road by nose to kerb on-street car parking and it also bounds the aforementioned access road that serves the site and Sterling Square.
- 1.7. Neighbouring the site to the west contains a car sales business that operates from a number of single storey buildings. Within the vicinity of the site there is a c20m high telecommunications mast. This is located on the adjacent site to the west.
- 1.8. The village of Clonee itself lies to the immediate south of the M3 motorway corridor and the site lies c0.3km to the south east of Junction 4's M3 overpass and c15km to

the north west of Dublin's city centre, both as the bird would fly. It contains a range of services and amenities with the buildings predominantly 2-storey in their overall built form. Towards the fringes of this village residential becomes the predominant land use.

## 2.0 Proposed Development

2.1. Planning permission is sought for a development consisting of the demolition of existing public house (known as 'Clonee House') with a stated gross floor space of 355.2m<sup>2</sup> and its associated outbuildings and the construction in its place and within the grounds of the public house a part 4-storey, part 5-storey mixed use building with a stated gross floor space of 2,597m<sup>2</sup>.

2.2. The proposed mixed-use building would accommodate the following:

- Ground floor level

3 no. cafe/retail/non-retail units and a public plaza fronting onto Main Street.

- First to fourth floor level

27 no. apartments comprising of 6 no. 1-bed units, 17 no. 2-bed units and 4 no. 3-bed units with associated balconies in an L-shaped building with external landscaped terrace at first floor level.

2.2.1. In addition, the proposed development includes the following:

- 2 bay lay-by parking spaces parallel to Main Street serving the retail units.
- 33 no. car parking spaces at surface level serving the apartment development.
- Relocation of existing vehicular access from Main Street.#
- All boundary treatments, retail signage, refuse store and bicycle parking facilities.
- All associated site works and services.

2.3. On the 17<sup>th</sup> day of December, 2019, the applicant submitted their further information response. This included a revised development description which essentially outlines that revised development consists of the following:

- Demolition of existing public house currently in use as a car dealership and outbuildings.
- Construction of a now reduced in height, scale, and mass mainly four-storey mixed use building with setbacks at third and fourth floor levels. It accommodates:
  - Commercial service units at ground floor level consisting of café/retail and non-retail.
  - A public plaza onto Main Street.
  - 25 no. apartments at first to fourth floor level (5 no. 1 bedroom units, 17 no. 2-bed units and 3 no. 3-bedroom units with associated balconies in an L-shaped building with external landscaped terrace at fourth floor level).

These are summarised as follows:

<b>Unit Identifier No. on Documents</b>	<b>Type Identified on Documents</b>	<b>Given Total Floor Area</b>
Unit No.s 1, 4, 19 and 22.	<b>Type A</b> 2-bedroom apartment.	94.4m <sup>2</sup>
Unit No.s 2, 3, 20 & 21.	<b>Type B</b> 2-bedroom apartment.	92.5m <sup>2</sup>
Unit No.s 5 & 6.	<b>Type C</b> 2-bedroom apartment.	63.5m <sup>2</sup>
Unit No.s 7, 15 & 17.	<b>Type D</b> 3-bedroom apartment.	90m <sup>2</sup>
Unit No.s 8, 16 & 18.	<b>Type E</b> 1-bedroom apartment.	50.2m <sup>2</sup>
Unit No. 13 & 14.	<b>Type F</b> 1-bedroom apartment.	47.7m <sup>2</sup>
Unit No. 9, 12 & 23.	<b>Type G</b> 2-bedroom apartment.	88.2m <sup>2</sup>
Unit No. 10, 11, 24 & 25.	<b>Type H</b> 2-bedroom apartment.	83.5m <sup>2</sup>

- 2 bay lay-by parking spaces parallel to Main Street serving the retail units.
- 33 no. car parking spaces at surface level serving the apartment development.
- Relocation of existing vehicular access from Main Street.
- All boundary treatments, retail signage, refuse store, bicycle parking and associated site works and services.

- 2.4. The further information response resulted in a number of amendments to the initial proposal including a reduction to the height and scale of the building; modifications to the building line relative to Main Street; and a reduction in residential units to 25 no. units with a resulting reduction in density from 126 to 116 dwelling units per hectare. In addition, the revised scheme offers 262m<sup>2</sup> of communal open space including a communal terrace at 4<sup>th</sup> floor level; an increased lateral separation distance of 40m from the amended building to the nearest residential development; a revised waste storage area of 23.5m<sup>2</sup>; and, a total of 35 car parking spaces. The revised design is also accompanied by a flood risk assessment, a bat survey, and an archaeological assessment report.
- 2.5. On foot of this submission revised public notices were submitted to the Planning Authority on the 15<sup>th</sup> day of January, 2020.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. On the 10<sup>th</sup> day of February, 2020, the Planning Authority decided to refuse planning permission for the development sought for the following stated reason:

*“Having regard to the location of the proposed development adjacent to the Tolka River and within Flood Zone B, it is considered that the proposed development would be contrary to policy WS POL 29 of the Meath County Development Plan, 2013-2019, as varied, would be contrary to the DoEHLG Flood Guidelines 2009 entitled “The Planning System and Flood Risk Management” (A. The applicant has not satisfied Part 2 (ii) of the justification test as the application documentation does not consider access and egress for occupants of the proposed development in the case of a critical flood event. B. The applicant has not satisfied Part 2 (iii) of said justification test as the application documentation does not consider access or egress for emergency services). Accordingly to grant the proposed development would contravene materially a policy of the County Development Plan, would be prejudicial to public health, would pose an unacceptable risk to the owner/occupiers of the proposed development, would be contrary to ministerial guidelines issued to the planning*

*authorities under Section 28 of the Planning and Development Act 2000 to 2019, and therefore be contrary to the proper planning and sustainable development in the area.”*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The final Planning Officer's report is the basis of the Planning Authority's decision. It considered that the proposed revisions were satisfactory but that the issue of compliance with the Planning System and Flood Management Guidelines for Planning Authorities, is still a concern.

The initial Planning Officer's report concluded with a request for further information.

This can be summarised as follows:-

- Item No. 1: Relates to flooding & compliance with The Planning System and Flood Risk Management Guidelines for Planning Authorities.
- Item No. 2: Relates mainly to the building height, scale, mixture, and quantum of uses of the proposed development which was not considered acceptable.
- Item No. 3: Raises residential amenity concerns.
- Item No. 4: Concern is raised in relation to the actual density of the proposed development sought.
- Item No. 5: Requested for a daylight/sunlight analysis.
- Item No. 6: Requests clarification that the proposed development is compliant with Section 4.10 to 4.14 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018.
- Item No. 7: Requested to address the potential overlooking issues arising from the proposed development.
- Item No. 8: Requested to address Environmental Health Officer's concerns.
- Item No. 9: Requested to address the concerns of potential disturbance of bat species listed for protection under the EU Birds Directive.
- Item No. 10: Requested to address the concerns of the Chief Fire Officer.



- Item No. 11: Revised car parking provision requested.
- Item No. 12: Requested to submit an Archaeological Assessment Report.
- Item No. 13: Requested to address previous reasons of refusal relating to previous planning applications.
- Item No. 14: A response is requested for the concerns raised in the 3<sup>rd</sup> Party submission received.
- Item No. 15: Related to Revised Public Notices.

### 3.2.2. Other Technical Reports

- **Engineering:** Final report recommends refusal of planning permission based on failure to comply with the requirements of the Flood Risk Management Guidelines.
- **Water Services:** No objection, subject to safeguards.
- **Fire Safety:** The final report raised no objections raised subject to safeguards.
- **Transportation:** Initial report required a revised car parking layout compliant with Building Regulations.
- **Environmental Health:** No objection, subject to safeguards.
- **Broadband Officer:** They accepted that the information provided by Three indicates that Three do not consider that the proposed building would block signal from their antenna which is located at an adjoining building. Notwithstanding, they considered that similar affirmation was required from Eir and Vodafone who use this antenna. As a precaution the Broadband Officer indicated that these mobile providers should be made aware of the development to ensure that they can manage potential gaps in their coverage caused by this development if it were to be permitted. They also recommended that as this proposal consists of a multi-dwelling unit development that particular care should be taken by the developer to ensure that there is open access ducting from a central distribution point within the development to each unit with appropriate access provided for telecommunications providers.
- **Public Lighting and Transportation:** No objection subject to safeguards.

### 3.3. Prescribed Bodies

- **Irish Water:** No objection, subject to safeguards.
- **Department of Culture, Heritage, and the Gaeltacht:** Their submission dated the 28<sup>th</sup> day of June, 2019, included the following comments:
  - This development has the potential to disturb the roosting habitat of a significant population of bat species listed under Annex IV of the EU Birds Directive (Council Directive 79/409/EEC). This potential impact would arise from the demolition of the existing public house and outbuildings on site.
  - A bat survey is recommended.
  - No demolitions to take place during the period of the 1<sup>st</sup> day of March to the 31<sup>st</sup> day of August.
  - Any destruction of bat roosting sites must be done by a suitably qualified bat ecologist under licence.

### 3.4. Third Party Observations

- 3.4.1. The Planning Authority raised one 3<sup>rd</sup> Party submission from an adjoining property owner on Main Street during the course of their determination of this application. The content of which I have noted. I further note that the applicant as part of the Planning Authority's further information request was requested to respond to the concerns raised in this submission. Following the applicants further information response the same 3<sup>rd</sup> Party lodged a further submission with the Planning Authority in relation to the revised design in which they considered that it would result in overlooking from the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floors on the west side; it would result in a devaluation of property; and, it would restrict future development of his property.

## 4.0 Planning History

### 4.1. Site

- **P.A. Ref. No. DA70608:** On the 6<sup>th</sup> day of June, 2008, planning permission was **granted** for the demolition of the existing public house and its associated outbuildings and the construction of a mixed use building which essentially

contained three number retail units at ground floor level and 25 apartments over together with a relocated access, parking which also included a basement level and all associated ground works and services.

- **P.A. Ref. No. DA70317:** On the 19<sup>th</sup> day of July, 2007, planning permission was **refused** for the demolition of the existing public house and its associated outbuildings and the construction of a mixed use building containing three retail units at ground floor level and 28 no. apartments above together with new vehicle access, parking and all associated site works. There were four reasons of refusal including firstly a concern over density, overall design and its relationship with its setting; residential amenity impact concerns; traffic safety; and, the proposed development was considered to be premature due to deficiencies in the sewerage facilities.
- **P.A. Ref. No. DA/60455:** On the 1<sup>st</sup> day of December, 2006, planning permission was **refused** for the demolition of existing public house and its associated outbuildings and the construction of a mixed use development which consisted of two blocks which together contained three retail units and 20 apartments. There were four reasons of refusal. These related to traffic safety concerns; over development of the site alongside the establishment of an undesirable precedent; flood risk concerns and it was considered that the overall design was of poor quality as well as failed to integrate with its setting.

## 5.0 Policy & Context

### 5.1. Local Planning Provisions

- 5.1.1. The Meath County Plan, 2013 to 2019, is the applicable plan for Clonee and its wider hinterland.
- 5.1.2. This plan includes the following policies in relation to the matter of flooding:
  - WS POL 29 To have regard to the “*Planning System and Flood Risk Management – Guidelines for Planning Authorities*” (DoEHLG/OPW, 2009) through the use of the sequential approach and application of the Justification Tests for Development Management and Development Plans, during the period of this Plan.

- WS POL 30 To have regard to the findings and recommendations of the current Strategic Flood Risk Assessment prepared as part of the County Development Plan review.

## 5.2. Local Area Plan Development Plan

- 5.2.1. Under the Dunboyne, Clonee, Pact Local Area Plan (LAP), 2009 to 2015, as amended by Variation No. 1, which is the applicable plan in so far as it is consistent with the Meath County Development Plan, 2013 to 2019.
- 5.2.2. Under the LAP the site is zoned 'B1' – Commercial/Town or Village Centre. The stated land use objective for this land is: *“to protect, provide for and / or improve town and village centre facilities and uses”*.
- 5.2.3. Section 9.1 of the LAP indicates that vision for 'B1' zoned land is as follows: *“The primary purpose of this zone is to sustain a vibrant mix of uses in the town centres and to create a sense of community and identity. Preferred uses are retail, retail services, commercial, residential, office use, etc. Retail and retail services are the preferred uses at ground floor level”*.
- 5.2.4. According to Section 1 of the LAP indicates that Clonee is a designated local centre in the Dunshaughlin Development Area. It sets out the following 'Specific Development Objectives for it:
- CE1: *“To strengthen the village core of Clonee by establishing a strong building line along the main street and facilitate appropriate mixed use/town centre type development in the village centre”*.
  - CE3: *“To facilitate the relocation of uses from the main street of the village to facilitate urban consolidation”*.
- 5.2.5. Section 2.2 of the LAP sets out that Clonee has a fragmented and weak core and it indicates that: *“the Tolka River flood plain to the west, the N3/M3 motorway to the north, and the country boundary with Fingal to the east has resulted in recent residential being orientated away from the Village core to the south”*.
- 5.2.6. Section 2.4.3 indicates that there is written evidence of the destruction of churches in Clonee, but no above ground evidence exists and there is a possible Fulacht Fia in

Clonee. This settlement also contains a number of structures that afforded protection under the RPS.

- 5.2.7. According to Section 4.2.3 of the said plan the strategy is to seek to consolidate the existing town and village centres of Dunboyne and Clonee with an estimated c15,000m<sup>2</sup> available B1 zoned lands capable of providing additional retail floorspace. In tandem with this Section 4.2.4 of the said plan sets out the retail policies which includes policy RET POL 1 which states that the Planning Authority shall “*have regard to the Retail Planning Guidelines and the Meath County Retail Strategy when assessing proposals for new retail developments, in particular the overarching objective of protecting and promoting town and village centres as the main retail destinations*”. It also indicates that Clonee is a designated Level 4 – Neighbourhood Centre/Small Town within the Metropolitan Area of Dublin.
- 5.2.8. Objective RES OBJ 1 which is set out under Section 4 of the LAP indicates that the Planning Authority will ensure that future development in Clonee complies with the Meath County Development Plan.
- 5.2.9. Section 8 of the LAP indicates that regard shall be had relevant Flooding Guidelines and it indicates that a large area of land within this plan area is flood plain of the Tolka River and it acknowledges that whilst this is a relatively small river, serious flooding of Clonee has occurred in the past with the flood event of November, 2002, considered to be a 1:100 year event and which is noted to have caused extensive damage. It further indicates that the River Flood Study was published in 2003. With this document assessing flooding issues and putting forward alleviation works along the Tolka River from lands immediately to the west of Dunboyne to Dublin City Centre. The LAP notes that most of these works have been completed.
- 5.2.10. Section 9 also indicates that where feasible a 30-metre buffer zone between floodplains and riparian corridors will be provided for significant new development.
- 5.2.11. Of further note are the following flood related policies:
- **FP POL 1:** “*Require that new development illustrate how it would itself not be subject to an inappropriate risk of flooding or cause/exacerbate such a risk at other locations*”.

- **FP POL 2:** “Control development in the natural flood plain of rivers and to take account of any guidelines regarding flooding issued by the DoEHLG or OPW in the assessment of planning applications”.
- **FP POL 3:** “Require all significant developments impacting on flood risk areas to provide a Flood Impact Assessment, to identify potential loss of flood plain storage and how it would be offset in order to minimise impact on the river flood regime and to show that the development would not give rise to flooding on the application site or any surrounding lands”.

### 5.3. National

5.3.1. The following section 28 Ministerial Guidelines are relevant:

- ‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (including the associated ‘Urban Design Manual’).
- ‘Sustainable Urban Housing: Design Standard for New Apartments’, Guidelines for Planning Authorities.
- ‘Urban Development and Building Heights’, Guidelines for Planning Authorities.

5.3.2. **Other relevant national documents include but are not limited to:**

- National Planning Framework: Ireland 2040 Our Plan, under which Athlone, is identified ‘Regional Centre’.

### 5.4. Natural Heritage Designations

5.4.1. Within a 15km radius there is one Natura 2000 site. This is the Special Area of Conservation: Rye Water Valley/Carton SAC (Site Code: 001398) which is located c5.7km to the south west of the site.

### 5.5. Environmental Impact Assessment

5.5.1. As set out in the previous section above there is one Natura 2000 site within a 15km radius of the site, i.e. Special Area of Conservation: Rye Water Valley/Carton SAC (Site Code: 001398) which is located c5.7km to the south west of the site.

5.5.2. The proposed development is of a type that constitutes an EIA project (involving demolition and construction works). However, it is not of a scale likely to give rise to

significant environmental effects to warrant environmental impact assessment (Class 10, Part 2, Schedule 5, P&D Regulations, 2001 (as amended), urban development) given the significant separation distances between and the nearest Natura 2000 site.

5.5.3. Further, having regard to the nature, scale and extent of the development proposed on brownfield serviced lands, the site's location not being included inside, adjoining or outside of any protected Natura 2000 site together with the nature of the receiving environment, the limited ecological value of the lands in question having been substantially developed in the past, the lack of any quantifiable connection and/or interconnectivity with any Natura 2000 site, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 5.6. Built Heritage

5.6.1. The site is located within a zone of archaeological interest.

5.6.2. There are a number of Recorded Monuments in the vicinity of the site. The nearest are:

- ME02788 – Classification 'FUF1' which lies c52m to the north of the site.
- ME03017 – Classification 'BUGR' which lies c68m to the south west of the site.
- ME03855 – Classification 'GRAV' which lies c113m to the south west of the site.
- ME02021 – Classification 'CHUR' which lies c130m to the south west of the site.

5.6.3. There is one NIAH registered site in the vicinity of the site:

- Reg. No. 14.342.001 – Type 'Water Pump'.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The First Party appeal can be summarised as follows:

- Prior to making this application the development sought was subject to rigorous assessment which concluded that: the principle of the development, as revised, was acceptable; the building heights accorded with the recommendations set out

in the Urban Development & Building Height Guidelines (2018) and was therefore deemed to be acceptable; the revised design was generally deemed to be acceptable other than the concerns relating to the potential for flood risk impact.

- In response to the Planning Authority's further information request a flood risk assessment and justification test was submitted. This indicated:
  - Site was situated in a location defended against flood events;
  - For the purposes of flood risk such defences are ignored;
  - The subject lands are zoned for development;
  - The proposed development maintains the footprint of the existing building on site.
  - No additional potential flood waters will be displaced and there would be no downstream consequences.
- The Planning Authority were not satisfied that occupants of the proposed development could safely access their properties in a 1,000-year flood event or that emergency services could access this development in this scenario.
- The OPW CFRAM Maps for Clonee were under review at the time the planning application was submitted therefore the Meath County Development Plan, 2013 to 2019, Strategic Flood Risk Maps were used.
- A recently commissioned Dunboyne Flood Study was not available when the initial application was submitted. This study indicates that the site is located in Flood Zone C lands.
- The Flood Risk Assessment has been reviewed and it is considered that the entire site is within Flood Zone C and therefore a justification test is not required under the OPW Guidelines. In addition, the site is not located within a defended area and the OPW have a maintenance programme in place for the Tolka Flood Defence system in this locality.
- The Planning Authority has made its determination on the matter of access based on the conservative scenario flood event.



- The assessment should be based on recently completed Dunboyne Flood Study which indicate that the site is in Flood Zone C where the probability of flooding is low.
- It is demonstrated that the site is not at flood risk and that there is no impediment to access or evacuation in the event of a flood event as well as no need for emergency vehicles to access the site to evacuate occupants.
- The reason for refusal cannot be reasonably sustained and this technical concern can be resolved through detailed design, without specific adjustment to any of the parameters of the commercial or residential elements of the proposed development which are otherwise deemed to be satisfactory by the Planning Authority.
- The Board is requested to grant permission for the development sought.
- This submission is accompanied by a number of documents including but not limited to:
  - A Technical Note prepared by AWN Consulting.
  - OPW/MCC Clonee Flood Map.
  - Flood Level Calculations prepared by AWN Consulting.

## 6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Planning Authority are satisfied matters raised in the appeal submission have been considered during the course of their assessment of this planning application.
- Sections 2(ii) and 2(iii) of the Flood Risk Management Guidelines for Planning Authorities were and have not been satisfied.
- The appellant contends that the site is situated in its entirety in Flood Zone C. This is not correct.
- Reference is made to the OPW/Meath County Council Flood maps. These maps are Flood Extents maps and are not Flood Zone maps. As such they do not show Flood Zone A or Flood Zone B. In addition, Flood Zone maps ignore any relevant flood defences as per the Flood Risk Management Guidelines for Planning Authorities and as such Flood Zone B is not included in them.

- Reference on the mapping that give an indication for Flood Zone B are the levels that relate to node 09TOL1820 on Figure 1.1 which is borrowed from the OPW website (Note: [www.floodinfo.ie](http://www.floodinfo.ie)). The 1000-year flood level for the river Tolka at this node is 63.12m AOD. It is considered that this is the nearest and most relevant node/flood levels that relates to the subject site. With reference to the existing levels on the site it is indicated that the 1000-year event floodwaters and Flood Zone B do encroach onto the site. The site is therefore situated in Flood Zone B and there is a requirement for this development to satisfy the Justification test.
- It is technically correct to say that the site is not located within an area that is defended against the 100-year flood event.
- It is highlighted that the extent of flood that would occur at Flood Zone B during a 1000-year flood extent while ignoring the flood defences does not extend much farther beyond the shaded areas and encroaches onto the site.
- It is in correct to state that the OPW have a maintenance programme for the Tolka Flood Relief System in this locality. The Tolka is not one of the OPW's arterial drainage schemes.
- The 100-year plus climate change flood level has not been submitted.
- Part 2(iii) of the Justification test requires that flood risk management measures and emergency services access be provided, and it is further required that emergency access be provided for up to the 100-year plus climate change event.
- It is not appropriate that a new development be permitted without provision for proper emergency access on sites vulnerable to flooding.
- The documentation suggesting that emergency access can be provided during a 100-year plus climate change flood event using the applicant's method based on a 30% increase in flood depths at particular locations is not deemed to be appropriate. It would be more appropriate that increase in flood levels due to climate change should be based and calculated using percentage increases in flow due to climate change in the river Tolka.
- Permission could be granted if the applicant submitted further information for consideration such that emergency access to satisfy Justification Test Part 2(iii) be clearly demonstrated at all parts of the development for the 100-year plus climate

change flood event and thereby reducing flood risk to people/residents in a manner that also satisfied Justification Test Part 2(ii).

- The Board is requested to have regards to their recommendations.

### 6.3. Observations

6.3.1. None.

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. This is a 1<sup>st</sup> Party Appeal whereby the applicant seeks that the Planning Authority's decision to refuse planning permission for the proposed development, which as revised on the 17<sup>th</sup> day of December, 2019, essentially is comprised of the demolition of an existing public house and its associated outbuildings and to construction in its place an architecturally designed contemporary part four storey and part five storey mixed use building containing three serviced commercial units (Note: café, restaurant and retail) and a public plaza at ground floor level; and, 25 apartment units in the floor levels above together with car parking, a revised entrance serving the site and all associated works, is overturned.
- 7.1.2. Having carried out a site inspection, examined the documentation associated with this appeal case together with having had regard to the issues raised in the grounds of appeal and the responses received by the Board, I consider that the substantive issue in this case relates to the matter of 'flooding' and whether or not the proposed development is compliant with the requirements set out under the Section 28 Ministerial Guidelines titled: 'The Planning System & Flood Risk Management Guidelines for Planning Authorities', dated 2009.
- 7.1.3. This conclusion is based firstly upon the fact that the existing buildings on site are of no architectural value and/or other merit with the current appearance of the public house as well as its outbuilding as appreciated from the public domain not contributing to the vitality and vibrancy of Main Street, which is Clonee's main thoroughfare; an examination of the proposed development as initially submitted to the Planning Authority for their determination on the 24<sup>th</sup> day of May, 2019, and the significant

revisions made by the applicant to the proposed development on foot of the Planning Authority's request for further information which resulted in significant qualitative improvements to the proposed development in a several areas. As previously noted, this response was received by the Planning Authority on the 17<sup>th</sup> day of December, 2020. But most notably in my view was the reduction in overall building height, massing and scale as one of the substantive redesign measures that sought to ensure that this significant addition into the heart of this modest settlement of Clonee integrates in more respectful and harmonious manner with its existing buildings, spaces and land uses.

- 7.1.4. Despite the revisions put forward by the applicant in my view the proposed development still achieves a high level of consistency with local through to national planning provisions in terms of achieving compact settlements through still achieving increased heights, density through to scale and mass of buildings within an urban context. An approach that is advocated in the Section 28 Ministerial Guidelines titled 'Urban Development & Building Heights Guidelines', dated 2018 and an approach that is also consistent with National Planning Framework.
- 7.1.5. The revised design through reducing the number of apartment units from 27 to 25 still achieves 116 unit per hectare density alongside still maintains three serviced units which are anticipated to cater for café, retail and non-retail land uses that would address a new public plaza proposed for Main Street and Main Street in general.
- 7.1.6. This density which is consistent with planning provisions including the Meath County Development Plan, 2013-2019, which permits high densities in suitable locations.
- 7.1.7. In addition, the mixture of land uses is generally consistent subject to safeguards with the local planning policy provisions including the Dunboyne, Clonee, PACT Local Area Plan (LAP), 2009 to 2015, which is still applicable, under which the site is zoned 'B1': *"to protect, provide for and/or improve town and village centre facilities and uses"*.
- 7.1.8. The revised scheme also addressed significant concerns raised in relation to the potential for adverse impact to arise on residential properties in its vicinity. I accept that such established developments are highly sensitive to change despite them being located within an urban context where there is more hustle and bustle alongside some level of overlooking, reduction in privacy through to overshadowing can be expected

to occur due to the closer proximity there often is between properties through to the tighter grain that characterises such areas.

- 7.1.9. In particular, the revised design significantly moderated and revised the buildings massing, height, solid to void relationship, the design of associated private and communal amenity spaces for the proposed dwelling units through to now provides a greater separation distance between it and the nearest residential properties to it which are those of Sterling Square which are located to the north, with this revised lateral separation distance increased to c40m.
- 7.1.10. The significant redesign has in my view satisfactorily addressed the potential of the initial design to give rise to significant adverse residential amenity impact by way of overlooking, reduction in daylighting/sun lighting, overshadowing and by visual overbearance. The proposed development as revised, would not give rise to any undue diminishment of established residential amenities and standard abatement conditions could be included to any grant of permission to provide added assurance on noise, odours, vibrations, hours of operation and the like.
- 7.1.11. As should the services units be occupied by cafe and restaurant land uses identified, these types of land uses can often give rise to such nuisances. It is common practice for a grant of permission for such uses to include abatement conditions that seek to safeguard and maintain the established amenities of properties in its vicinity by way of controlling noise, noxious odours, hours of operation and the like.
- 7.1.12. Further improvements were made in terms of the residential amenities for the now reduced 25 number apartment units. Particularly in terms of their open space amenity provision is greatly improved in terms of its quality for future occupants and in terms of how the building relates to Main Street it now maintains the building line established by the existing public house on site for which demolition of it and its outbuildings are sought under this application. The internal amenity standards of the apartment units alongside the parking through to waste storage provision appearing to be consistent with required standards. In addition, the site being located in the heart of the settlement of Clonee, it is located close to bus stops accommodating which include a regular bus service to Dublin through to the village itself contains a number of services, amenities and facilities all of which would benefit future occupants of the proposed scheme, if it were permitted.

7.1.13. Moreover, there is sufficient spare capacity within the public infrastructure to accommodate the quantum of development sought under this application and various documents submitted with the applicants response including the Bat Survey and Archaeological Impact Assessment, subject to the inclusion of standard safeguards should permission be granted, provide in my view satisfactory assurance that no undue environmental, built through to natural heritage issues would arise, if the proposed development were permitted.

7.1.14. I therefore consider that the proposed development is generally consistent with local through to national planning provisions. I also consider its overall design, layout, quantum of uses is a satisfactory resolution for a centre of settlement site like this where there is an array of amenities, services, facilities through to good transportation links present and where there is spare capacity in the existing infrastructure alongside the additional traffic movements can be catered for without any undue traffic hazard or road safety issues arising for other road users. I further consider that it would contribute to the vitality and vibrancy of Clonee's Main Street by providing further activation at ground floor level by way of the proposed plaza, the serviced units and by bringing additional dwelling units into the heart of this settlement. Altogether positively contributing to this settlement.

7.1.15. Therefore, the only outstanding concern that arises is the matter of flood risk which I propose to deal with separately in the following section below.

7.1.16. In addition, the matter of 'Appropriate Assessment' also requires consideration.

## **7.2. Flood Risk**

7.2.1. The Planning Authority, having sought further information to deal with their flood risk concerns in relation to the proposed development were not satisfied that the proposed development, if permitted, would not be contrary to policy WS PLO 29 of the Meath County Development Plan, 2013 to 2019, as varied, the applicable Development Plan at the time this report is being prepared. Nor were they satisfied that the proposed development, if permitted, would not be contrary to the Planning System and Flood Risk Management Guidelines for Planning Authorities, 2009. This was due to the applicant not satisfying Justification Test Part 2(ii) and Part 2(iii) of the said Guidelines which deals with the matter of access and egress for occupants of the proposed development in the case of a critical flood event and the matter of access and egress for emergency services. For these reasons, the Planning Authority considered that to permit the proposed development

would contravene materially the above stated Development Plan policy as well as it would be contrary to the said Ministerial Section 28 guidelines. On these considerations the Planning Authority decided to refuse planning permission for the development sought under this application.

- 7.2.2. I am cognisant that it is generally accepted in planning provisions that future development should avoid areas at risk of flooding.
- 7.2.3. Notwithstanding, they also recognise that there are existing well established urban structures throughout the country that are located in such areas and therefore they will continue to be at risk of future flooding events and that developments will still be sought in such locations going forward.
- 7.2.4. I am further cognisant that planning provisions also seek the continued consolidation, growth through to regeneration of existing settlements in order to ensure compact and sustainable development going forward for the country's settlements. Moreover, they also seek their sequential development.
- 7.2.5. As such it is therefore not unreasonable that a brownfield and underutilised site like the appeal site within the heart of the settlement of Clonee which is situated on a floodplain, that in its current state contributes little to the vibrancy and vitality of this settlement as well as is devoid of deep soil due to it being substantially covered with buildings and containing no permeable surfaces, subject to appropriate safeguards being demonstrated, be considered for appropriate redevelopment, in order for it to fulfil its potential alongside more positively contribute to its urban setting.
- 7.2.6. The site and its setting are identified under the currently under review as per [www.floodmaps.ie](http://www.floodmaps.ie).
- 7.2.7. From an examination of available documentation, including having regard to the appeal submission and responses received by the Board, I note that the applicant in response to the Planning Authority's further information response submitted a Flood Risk Assessment.
- 7.2.8. This Flood Risk Assessment is indicated to have been undertaken to determine the risk of flooding to the site and the impact the proposed development would have on the floodplain, upstream and down stream levels alongside consider mitigation measures deemed necessary. It also indicates that due to the site being situated within Flood Zone A, i.e. 1 in 100-year flood impact, on available flood risk maps and having regard to previous fluvial events at this locality a Stage II Flood Risk Assessment was undertaken as required under the Flood Risk Management Guidelines.

- 7.2.9. This report notes that it was observed that the flood walls located to the north of the site along the River Tolka had a top level of c63.25m AOD, and that the proposed finished floor level of the development is c62.30m AOD which is 1m greater than the 2000 flood event in Clonee (Note: 61.30m AOD). It was also observed that the height of the riverbank was 2.5m above the river level during their survey due to a preceding heavy period of rainfall. To this a climate change factor of 0.51m was applied and with this considered it notes that the proposed finished floor level is 0.49m above the previously recorded flood depths. It therefore considers that there would be no impediment to flow off site and that run-off conditions would be maintained.
- 7.2.10. In addition, this report also highlights that the site is currently hardstand and that this application puts forward measures to manage surface water run-off including permeable paving and the proposed development would result in a minimal increase in run-off post any development.
- 7.2.11. This report concludes that the proposed development is not at risk from flooding with the proposed finished floor level of 62.30m AOD and the provision of retail at ground floor level is as per the Flood Risk Management Guidelines.
- 7.2.12. As part of the appeal submission the authors of the Flood Risk Assessment indicate that as the OPW CFRAM maps for this area were under review at the time of the original submission the flood risk maps from the Meath County Development Plan, 2013 to 2019, Strategic Flood Risk Assessment were used. Since that time, the Dunboyne Flood Study by JBA Consultants, they contend indicate that the site is located in Flood Zone C. They note that in such zones the probability of flooding from rivers and sea is identified as low, i.e. less than 0.1% or 1 in 1000 for both river and coastal flooding. In such a zone the type of land uses proposed on the ground floor of the mixed use building proposed is deemed to be acceptable under the Flood Risk Management Guidelines.
- 7.2.13. The Planning Authority's argument that the site is partially located within Flood Zone B, where the risk of flooding is between 1 in 1000 and 1 in 100, is not accepted by them and they further note that the site is not within a modelled defended area. In such location while it is recognised that a Justification Test can apply to such defended locations under the said Guidelines this is not a requirement in this situation.
- 7.2.14. It is further noted that the Planning Authority were not satisfied that adequate information had been provided to demonstrate that occupants could safely access their properties in a 1,000-year event nor could emergency services in such circumstances. They considered



that the Planning Authority in this case interpreted the flood levels along the access road on the most conservative 0.1% AEP modelled levels, i.e. 1 in 1000 year flood event level, as modelled in the Dunboyne Flood Study at the nearest modelling node of 09TOLK1820, which is located along the river on the north side of the site.

- 7.2.15. They argue that a more suitable conservative approach to assessing the potential for egress and ingress in flood conditions would be to assess modelled water levels from a 1% AEP, i.e. 1 in 100 chance of flooding as modelled in the Dunboyne Flood Study at the nearby 09TOLK1820 node (62.07 AOD) located to the north of the site in a modelled 10% AEP Zone. Alongside the addition of a freeboard allowance of 300mm which is what is proposed in the Flood Risk Assessment and Management Plan under the Draft Meath County Development Plan, 2020 to 2026, and the further addition of a 30% increase in flood levels in a high end future climate change scenario as per OPW Assessment of Potential Future Scenarios, Flood Risk Management Guidelines. In this situation the site, the access road and the main road are above flood levels.
- 7.2.16. They further argue that the current ground levels are above the modelled Flood Zone B levels of 62.07 AOD as taken from the nearest modelled node 09TOLK1820.
- 7.2.17. They therefore conclude that the proposed development is not contrary to the Flood Management Guidelines that the proposed development has been designed so that access and egress for residents and emergency vehicles is suitable and in accordance with guidance.
- 7.2.18. The Planning Authority in their response to the grounds of appeal reference the Flood Risk Management Guidelines and it is their opinion that the proposed development is a highly vulnerable development as it is situated in Flood Zone B. Therefore, they must be satisfied that that the proposed development satisfies all the criteria of the Justification Test as it applies to Development Management standards and the like, as outlined in Section 5.15 of the said Guidelines. Having regard to the application, reports and other information submitted with the Council it was their view that Section 2(ii) and 2(iii) had not been satisfied. This is the reason as to why planning permission was refused.
- 7.2.19. The appellant is incorrectly now stating that the entire site is within Flood Zone C and justifying this conclusion on their interpretation of the recent Dunboyne Flood Zone Study. In relation to this study it is noted by the Planning Authority that these are flood extent maps and not flood zone maps. As such they do not show Flood Zone A and Flood Zone

B. The shaded area in these maps provide an approximation of Flood Zone A, i.e. the area that would be flooded in the 100-year flood event should the defences be ignored.

7.2.20. References on the OPW mapping that provides an indication for Flood Zone B are the levels that relate to node 09TOLK1820. This is referred to on OPW map labelled E09DUN-EXFCD-F6-07.pdf on the OPW website [www.Floodinfo.ie](http://www.Floodinfo.ie). The 1000-year flood event level for the river Tolka at this node is 63.12m AOD and it is considered that this is the nearest and most relevant node/flood level that relates to this site with reference to its existing levels with this indicating that the 1000-year event floodwaters and Flood Zone B do encroach on the site. As such the proposed development is required to satisfy the Justification Test.

7.2.21. The Planning Authority note that the site is not located within a defended against the 100-year flood event and that it must be appreciated that Flood Zone B, i.e. the flood event that would occur during the 1000-year flood extent while ignoring the flood defences does extent much further than the shaded areas on the maps and would encroach onto the site.

7.2.22. The Planning Authority indicate that the appellant has also incorrectly stated that the OPW have a maintenance programme for the Tolka Flood Relief Scheme and it notes that the OPW arterial drainage schemes does not include the river Tolka nor are they responsible for the maintenance of the said scheme. As the site is located in Flood Zone B the Justification Test is required.

7.2.23. The Planning Authority agreed that the flood level of 63.12m AOD is conservative. However, the appellant never submitted a flood level for the 100-year plus climate change event flood level as this is reasonably a measure of the lifetime of the proposed development. Given the relevant 1000-year flood level and the road levels outside and adjacent to the proposed development, it is the considered that there could be flood depths of c600mm. This is greater than that of the 250mm maximum flood depths that are considered acceptable for emergency access. It is also considered that emergency access from the main street and the provision of the same may also be similarly deficient in this proposed development.

7.2.24. For these reasons it is not considered appropriate that Section 2(iii) of the Justification Test, which requires that new developments will not be permitted without provision for proper Emergency Access.

7.2.25. They conclude that subject to a demonstration that the applicant demonstrates Section 2(iii) of the Justification Test planning permission could be permitted. However, as this

has not been demonstrated by the appellant in the appeal submission it is requested that the Board uphold its decision to refuse planning permission.

- 7.2.26. In relation to the above while I am of the view that the proposed development generally accords with the types of development permitted on land zoned for Commercial/Town or Village Centre land uses which in part seeks to provide for as well as to improve the town and village centre facilities and uses a balance needs to be achieved between avoiding flood risk and facilitating appropriate future development. This therefore requires appropriate measures to be taken to reduce flood risk to an acceptable level for those developments to take place in such locations vulnerable to flooding.
- 7.2.27. In this case I concur with the Planning Authority that the site is encroached by Flood Zone B lands and that the necessary Justification Test are required. In this case as the Justification Tests set out under Section 2(ii) and 2(iii) have not been satisfactorily demonstrated it is my view that to permit the proposed development would materially contravene policy WS POL 29 of the Meath County Development Plan, 2013 to 2019, as varied, which is the applicable Development Plan. It indicates that proposed developments shall have regard to the 'Planning System and Flood Risk Management – Guidelines for Planning Authorities' (DoEHLG/OPW, 2009) through the use of the sequential approach and application of the Justification Tests for Development Management during the period of this Plan and consequently to the permit the proposed development would be contrary to the said Section 28 ministerial guidelines.
- 7.2.28. On the above basis the proposed development would pose an unacceptable risk to the owners and occupiers of the proposed development as well as would pose an unacceptable potential risk to owners and occupiers of the proposed development in terms of access and egress during a critical flood event alongside in such event provide inadequate access and egress for emergency services. I therefore consider for these reasons the proposed development would be contrary to the proper planning and sustainable development of the area.

### 7.3. **Appropriate Assessment**

- 7.3.1. The proposed development is located within an urban area on zoned lands that are serviced. It is not located within or adjoining any Natura 2000 sites. The nearest such site relative to it is Special Area of Conservation: Rye Water Valley/Carlton SAC (Site Code: 001398) which is located c5.7km to the south west of the site.

- 7.3.2. This application is accompanied by a Bat Survey which concludes that there is no evidence to support that the site is used as a habitat for feeding, roosting, no evidence of any activity in and around the building any protected bat species. It also indicated that no bats were detected flying around the building during their dusk emergence watch despite that this general area supports a range of bat species. Having regard to the limited time that the survey was carried out I consider that as a precaution the conditions advised by the NPWS would provide further assurance should the Board be minded to grant permission for the proposed development as revised that the proposed development would not give rise to any adverse harm to any bat species.
- 7.3.3. The site in its current state contains mainly hardstand and is degraded. It contains no flora and fauna. I consider it reasonable to conclude from my inspection of the site, the documentation available on file and otherwise that it is of no ecological value.
- 7.3.4. On balance, it is reasonable to conclude on the basis of the information on file, together with that available in the public realm and having inspected the site, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on any Natura 2000 designated sites. A Stage 2 Appropriate Assessment is, therefore, not required.

#### 7.4. **Other Matters Arising**

- 7.4.1. **Civil Matters/Landownership:** Should the Board be minded to grant permission for the proposed development I recommend that it should include an 'Advisory Note' setting out Section 34(13) of the Planning and Development Act, 2000, as amended, as a precaution. This section of the act states that the granting of permission does not entitle a person to carry out development and covers the eventuality that the development cannot be implemented for legal reasons. I consider that this would address the civil matters raised in relation to the boundaries shared with a 3<sup>rd</sup> Party adjoining property owner.
- 7.4.2. **Devaluation of Property:** I note that concern was raised during the determination of this application by the Planning Authority, including after the applicant submitted their further information response that if permitted it would give rise to a devaluation of their property alongside reduce its future development potential. There is no evidentiary proof provided that would support that this would be the case.

7.4.3. **Archaeology:** Should the Board be minded to grant permission for the proposed development I recommend that include a standard archaeological condition. The Archaeological Impact Assessment carried out found that the site was located over 100m away from the site, that there was no upstanding monuments on site, that it had not been developed prior to the 19<sup>th</sup> Century and it is unclear if any of the vernacular built structure from this time remains. From my measurements there are two recorded monuments within 100m of the site. These are: ME02788 – Classification ‘FUFI’ which lies c52m to the north of the site and ME03017 – Classification ‘BUGR’ which lies c68m to the south west of the site. In addition, there is ME03855 – Classification ‘GRAV’ which lies c113m to the south west of the site and ME02021 – Classification ‘CHUR’ which lies c130m to the south west of the site. The site is also within a zone of archaeological potential. In my view it would be appropriate and reasonable at such a location that an appropriate archaeological condition is included with any grant of condition as a safeguard.

## 8.0 Recommendation

8.1. I recommend that planning permission be **refused**.

## 9.0 Reasons and Considerations

### **As per the Planning Authority’s reason for refusal which reads:**

1. Having regard to the location of the proposed development adjacent to the Tolka River and within Flood Zone B, it is considered that the proposed development would be contrary to policy WS POL 29 of the Meath County Development Plan, 2013-2019, as varied, would be contrary to the DoEHLG Flood Guidelines 2009 entitled: “The Planning System and Flood Risk Management” (A. The applicant has not satisfied Part 2 (ii) of the justification test as the application documentation does not consider access and egress for occupants of the proposed development in the case of a critical flood event. B. The applicant has not satisfied Part 2 (iii) of said justification test as the application documentation does not consider access or egress for emergency services). Accordingly to grant the proposed development would contravene materially a policy of the County Development Plan, would be

prejudicial to public health, would pose an unacceptable risk to the owner/occupiers of the proposed development, would be contrary to ministerial guidelines issued to the planning authorities under Section 28 of the Planning and Development Act 2000 to 2019, and therefore be contrary to the proper planning and sustainable development in the area.

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Patricia-Marie Young  
Planning Inspector

18<sup>th</sup> September, 2020.