



An
Bord
Pleanála

Inspector's Report ABP-307369-20

Development	Retention of lamps, concrete yard, relocation of storage containers and permission for 2 no. additional lamps together with all associated site works.
Location	Maddens Hardware, Main Street, Dunshaughlin, Co. Meath.
Planning Authority	Meath County Council.
Planning Authority Reg. Ref.	RA200305.
Applicant(s)	Peter, Rosemary and John Madden.
Type of Application	Retention Permission and Planning Permission
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellant(s)	<ol style="list-style-type: none">1. Niall and Fiona Colgan.2. Sam Daly Webster and Others.3. Alison & Sean Burns.
Observer(s)	None.
Date of Site Inspection	25 th day of August, 2020.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1.1. The irregular L-shaped appeal site has a stated 0.45ha and it is located in the heart of the village of Dunshaughlin, Co. Meath, with its western boundary fronting onto Main Street, c65.5m from the Lagore Road whose T-junction with Main Street is situated to the north; and, c29m from 'The Bungalows' road whose T-junction is situated to the south.
- 1.1.2. To the western end this appeal site is comprised of a hardware store that is called 'Maddens Arro Hardware Store'. This hardware store mainly operates from a warehouse type building that addresses Main Street with its westernmost built edge containing display windows and customer street access.
- 1.1.3. Running along the northern side of this building is an access road that provides access to a modest in size concrete yard area that is located behind the aforementioned building. It also provides access to another warehouse building that has a lateral separation distance of c8.4m from the aforementioned building. This access runs along the northern boundary of the site to where it opens onto a larger in width and depth concrete yard area that contains an area of car parking, various external storage racks through to a number of metal storage containers. The later are located immediately alongside the eastern boundary of the aforementioned warehouse building.
- 1.1.4. Adjoining the site to the north is an under-construction discount food store (Note: Aldi) and its associated works. This development extends alongside the entirety of the northern boundary and it separates the appeal site from the Lagore Road which is located to the north. Adjoining the south eastern and eastern boundaries of the site is the recently constructed residential scheme consisting mainly of 2-storey semi-detached dwelling units (Note: Hanson Wood). Adjoining the westernmost southern boundary of the site is a driveway with a terrace of commercial units adjoining its southern side. This modest terrace is 2-storey in its built form and contains a restaurant, furniture, boutique, and a retail unit. Like Maddens running alongside their street frontage there are a number of indented street parking, planting, and some street signage.

2.0 Proposed Development

2.1. Retention permission is sought for the following:

- 4 no. 6m high lamp standards.
- 1,503m² concrete yard.
- Relocation of 7 no. storage containers.

2.2. In addition, planning permission is sought for:

- 2 no. 6m high lamp standards along the northern boundary.
- 2.5m high weld mesh fencing.
- Lamp fittings to be mounted on 6 no. 6m high lamp standards.
- 12 no. CCTV cameras to be mounted on the 6 no. 6m high lamp standards.
- Timber storage racking.
- Pallet racking.
- Gas cylinder storage.
- General storage of palletised outdoor goods.
- Signage to existing buildings.
- Amendments to 2 no. gate designs approved under P.A. Ref. No. RA180257.
- All associated site works (including an on-site attenuation storage tank).

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to **grant** permission subject to 10 no. conditions including:

Condition No. 2: Restricts open storage or display of goods, materials, finished or unfinished products or parts, racking, pallets, crates or refuse within 1m of the site boundary walls.

Condition No. 3:	Restricts the height of the open storage and racking to 3.5m in height.
Condition No. 4:	Requires the removal of the storage containers from the site within 3 years.
Condition No. 5:	Requires details of all CCTV cameras.
Condition No. 6:	Requires details of all floodlighting.
Condition No. 7:	Relates to signage.
Condition No. 8:	Restricts further exterior changes within the curtilage of the site.
Condition No.9:	Relates to drainage.
Condition No. 10:	Restricts the use of machinery outside of certain specified hours.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Authority's report is the basis of the Planning Authority's decision who considered the development sought to be in accordance with the proper planning and sustainable development of the area, subject to the safeguards, set out in the conditions accompanying its notification to grant retention permission and planning permission.

3.2.2. Other Technical Reports

- **Public Lighting:** No objection
- **Water:** No objection, subject to recommended conditions.

4.0 Planning History

4.1. Site: Recent and Relevant

- **P.A. Ref. No. RA/180257:** Planning permission was **granted** for the erection of 2 no. entrance gates, boundary fencing, wall and railings and relocation of 21 no. car parking spaces on a 0.31ha site as well as associated works. The proposed

development includes all site development works on the 0.31ha site. I note to the Board the following conditions attached to this grant of permission:

Condition No. 3: *“Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, no changes to the exterior of the structure of site, including the erection of additional advertising signs, flags, lighting fixtures, satellite dishes, awnings, name plates, symbols, emblems, logos, roller shutters of other security or advertising devices, shall be carried out without a grant of planning permission from the Planning Authority”. The stated reason: “in the interest of visual amenity”.*

4.2. **Adjoining Site to the North**

- **ABP Ref. No. 304121-19 (P.A. Ref. No. 92/388):** Planning permission was **granted** subject to conditions for demolition of building on site and the construction of a discount food store (including off licence) and all associated site works.

5.0 **Policy and Context**

5.1. **Development Plan**

5.2. **Meath County Development Plan, 2013 to 2019.**

5.2.1. Under the Development Plan Dunshaughlin is identified as a ‘Moderate Sustainable Growth Town’ in the third tier of the County Development Plan’s Settlement Strategy. This designation was subject to granting of permission of a railway order for the Navan Rail Line Phase II, including a station at Dunshaughlin.

5.2.2. The Core Strategy of the CDP indicates that these towns should develop in a self-sufficient manner and that growth should be balanced to ensure that any increase in population will be in tandem with employment opportunities, capacity in physical and social infrastructure and will not be based on long distance commuting.

5.3. **Draft Meath County Development Plan, 2021 to 2027.**

5.3.1. Under the Draft Development Plan Dunshaughlin is identified as a ‘Self-Sustaining Growth Town’ and it indicates that this settlement has benefitted from significant

investment in water and wastewater infrastructure creating significant capacity to accommodate medium-long term growth.

5.4. Dunshaughlin Local Area Plan, 2009 to 2015.

- 5.4.1. This remains the relevant plan for the town. Under this Plan the appeal site is zoned: 'B1' (Commercial/Town or Village Centre) which has the following stated objective: "*to protect, provide for and/or improve town and village centre facilities and uses*". The adjoining land to the east is zoned 'A2' (New Residential): "*to provide for new residential communities with ancillary community facilities, neighbourhood facilities and employment uses as considered appropriate for the status of the centre in the Settlement Hierarchy*".

5.5. Natural Heritage Designations

- 5.5.1. There are two Natura 2000 sites within a 15km radius of the site. These are the Special Area of Conservation: River Boyne & Blackwater SAC (Site Code: 002299) and the Special Protection Areas: River Boyne & Blackwater SPA (Site Code: 004232).

5.6. EIA Screening

- 5.6.1. Having regard to the nature of the proposed development to be retained and the development for which planning permission is sought, the nature of the receiving environment, and significant lateral separation distance to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

5.7. Built Heritage

- 5.7.1. The western boundary of the appeal site adjoins Recorded Monument ME01873 which is classified as a 'SEID' (Note: Settlement Cluster).
- 5.7.2. Under the Dunshaughlin Local Area Plan, 2009 to 2015, the site and its surrounds forms part of a zone of archaeological potential.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The Board received 3 no. 3rd Party Appeal from residents of properties in the immediate vicinity of the appeal site. The appellants are:

- Niall and Fiona Colgan
- Sam Daly Webster and Others.
- Alison & Sean Burns.

6.1.2. I have read the three separate appeal submissions received by the Board from the above parties and I consider that the substantive planning concerns that they raise correlate with one another. Therefore, for clarity purposes alongside avoiding repetition I propose to summarise them collectively below.

- *Procedural Concerns*
 - The Planning Authority have failed to have regard to their concerns, and they have shown a bias in their determination of this planning application in favour of the applicant.
 - No.s 23 and 24 Hanson Woods were not indicated in the submitted documentation.
 - The description given of the development does not accurately reflect what actual works have taken place.
 - The inaccurately presented and described development has prejudiced third parties from participating in this planning process.
 - There is a lack of due diligence shown by the Planning Authority in their handling of this application, in particular their failure to request accurate documentation and a description of the development.
- *Adequacy of Drawings/Lacking information*
 - The applicant has not provided a correct representation of the development sought in the drawings submitted with this planning application.

- Further information should have been requested on the matter of traffic, noise, light through to landscaping/screening mitigation.
- Outdated maps relating to a previous application P.A. Ref. No. RA/180257 were used and they do not accurately represent the site context.
- The drawings setting out the 6 no. lap fittings and 12 no. CCTV cameras is not accurate.
- *Conditions attached to the Planning Authority's grant of permission*
 - The conditions attached to mitigate adverse impact on residential properties in the immediate vicinity of the site are mere tokenism in their nature and they do not adequately address the diminishment of residential amenities that has arisen to date and that will continue by way of the grant of retention permission.
- *Planning History: P.A. Ref. No. RA/180257*
 - Condition No. 3 of P.A. Ref. No. RA/180257 prohibits the erection of lamp standard and yet the applicant went ahead and erected them anyway alongside an additional two lamp standard now permitted by way of the grant of permission for this application.
 - The Planning Authority have failed to enforce the conditions attached to RA/180257, in particular Conditions 1 to 10.
 - The applicant has continued in recent years to carry out development without getting the benefit for the same. Therefore, the applicant is not trusted to comply with any requirements of a grant of permission for the development sought under this application.
- *Compliance with Planning Provisions*
 - This development is not consistent with local planning provisions. Including Core Principle 2 of the Core Strategy of the Development Plan which indicates that proposals where no regard is shown for the owners of the adjoining properties would contravene it.
- *Land Use*
 - The Planning Authority's Planning Officer is of the opinion that the applicant's operations at this site are purely retail in nature. This conclusion is not accepted

and there have been *de facto* changes to the nature of the applicant's business to commercial/industrial which is not reflected in the development description provided.

- In 2018 there no commercial yard where trade quantities of building materials were sold, and where such materials were delivered, purchased, or dispatched by ordinary through to large HGV at every hour of the day. With this being the case, the standards pertaining to commercial/industrial developments as provided for in the LAP should apply to this development, in particular those relating to landscaping and noise mitigation.
- The Planning Authority's Planning Officer is incorrect to deduce that the land to the rear of the site had always consisted of retail space. This land up until recently was unused, fully grassed covered area bound by trees and shrubbery. It was effectively a wasteland and to say that it was established retail is completely untrue and not based in fact. It is also not an accurate representation that the additional storage is simply a relocation from lands ceded to the Aldi development. There has been a significant change of use in the land here.
- *Residential Amenity Impact*
 - It is not reasonable for the Planning Authority that development on this site should be done in a manner that can disregard the fact that it bounds residential development based on the premise that Maddens Hardware predates the completion and occupation of Hanson Wood. The Planning Authority permitted housing to be developed on adjoining land and it is not unreasonable for consideration to be given to safeguarding residential amenities in the vicinity.
 - The applicant has failed to demonstrate in their application that no undue impact would arise to residential properties in the vicinity by way of noise, light, dust, traffic through to the intensification of the land uses.
 - The intensification of use had not occurred at the time the properties at Hanson Wood were purchased and occupation commenced in them. These works have been carried out c2019 and c2020.

- The limiting of machinery operation, processes, and deliveries in and out of the site to the hours of 0700 and 1900 Mondays to Saturdays is inadequate to ensure reasonable quiet enjoyment for the residents of Hanson Woods. The permitted hours of operation are considered unreasonable on Saturday and excessive as is the very early start of 0700. In addition, no maximum noise levels have been conditioned for the noise that they generate.
- The applicant has not included or shown any regard to residential properties amenity in the vicinity of the site.
- The reduction in height of the timber racking from 4.6m to 3.5m is welcomed but is still considered to be an inappropriate and an excessive height relative to the height of the existing boundary walls for which no improvements are proposed for under this application.
- The 1-meter buffer in the vicinity of the boundary walls is not sufficient.
- *Nuisance: Light*
 - The lamp standards are inappropriately located in close proximity to residential properties and they result in light pollution that cumulative with the lighting on the buildings at the Maddens Hardware site significantly diminishes their residential amenity in the evening and at night.
 - One of the lamp standards is within 7m of one of the appellants living room.
 - It is contended that the lighting is kept on during the entire night-time hours.
- *Nuisance: Noise*
 - The activities in the rear yard area and the intensification of the same has resulted in a significant diminishment of amenity by way of excessive noise.
 - The intensification of the applicant's commercial activities has resulted in increased traffic and footfall to the rear of their premises. This cumulatively adds to noise nuisance arising from the applicant's activities.
 - No noise mitigation measures have been proposed as part of this application.
- *Public Hazard*
 - Concerns are raised in relation to the danger of storing large quantities of gas on the premises and further concern is raised in relation to haphazard and

substandard practices in place by the appellant in relation to their storage of this potentially dangerous substance.

- The manner in which items are stored against shared boundaries and the use of heavy machinery has the potential to give rise additional hazards for adjoining residents. Some of the timber racking structures are 4.5m high and yet the boundary walls indicated to be c2.18m high.
 - This proposal intensifies the applicants commercial use including the quantity of materials stored including hazardous products like gas cylinders they can accommodate.
- *Nuisance: Privacy*
 - The applicant has excessive number of CCTV cameras in place around their property including those for which this application relates. The necessity for this level of visual surveillance of the site and its perimeters with potential for visual surveillance covering adjoining rear gardens and rear elevation is questioned. It is considered that these cameras significantly diminish privacy of adjoining residential properties. The CCTV as they currently are positioned directly overlook No.s 17, 23, 24, 25, 26, 27 and 28 Hanson Woods as well as public spaces. This is objected too.
 - *Adverse Visual Impact*
 - The rear yard is not generally well kept throughout with many items stored in a haphazard nature. In addition, many items are stored excessively high in proximity to shared boundaries and are of a height that are visible from outside of the site and above the boundary walls. As a result, it diminishes residential visual amenity of adjoining properties but also views of the site as observed from the public domain.
 - The light over spilling into adjoining and neighbouring residential properties visually diminishes their amenity.
 - The proximity of high lamp standards in close proximity to shared boundary walls is considered to be visually overbearing.
 - Visual landscaping and screening were required for Aldi. Why was it not required under the grant of permission for the development sought under this

application. It was not considered an issue for a 1-m landscaping strip to be provided by way of condition for the development of the Aldi site, but it is seen as unreasonable in this case. There is a lack of equity in making this conclusion. It is also not reasonable to conclude that vesting a landscaping strip at the applicants side of boundaries shared with residential would potentially be detrimental to the integrity of the boundary wall provided around the Hanson Wood properties as part of this residential development but yet it is permissible in the Planning Authority's view that the stacking and storage against this wall is acceptable. This is not a logical conclusion for the Planning Authority to make. If the soundness of this wall is of a concern the applicant should be required to provide their own load bearing wall on their side of the property.

- The applicant has no visual landscaping on the site of any features to mitigate the significant light pollution nor have they been require to provide compensatory planting for the loss of natural features, in particular, trees that were present on the site prior to the unauthorised development occurring.
- *Property Depreciation*
 - This development has and will depreciate the value of properties in its vicinity.

6.2. Applicant Response

6.2.1. In relation to the applicant's responses to the 3rd Party appeals received by the Board I consider that in order to avoid repetition that these can be summarised collectively as follows:

- Reference is made to the drawings submitted as part of the planning application for the adjoining Hanson Woods development under P.A. Ref. No. RA/170366 which indicated that a hedgerow along the eastern boundary separating the site from this development would be retained. It was not. This is an issue that the residents of Hanson Woods need to take up with the developer. This hedge would have provided the necessary screening.
- As a result of the lands owned by the applicant that were sold to Aldi to facilitate their planning application and the need to provide a dedicated car parking area as

approved under P.A. Ref. No. 180257 the applicant extended their yard eastwards into lands owned by them.

- There is no objection by the Planning Authority to this development.
- The light resulting from the lamp standards are controlled by timer up to 7pm in the autumn/winter months. The light emanating from them does not fall outside of the confines of the site and the light is needed for health as well as security reasons.
- Lighting beyond 7pm only comes on if movement is detected for security purposes.
- As noted by the Planning Authority's Planning Officer there are 3 no. public lamp posts located between Houses No.s 25 and 28 with these having far more impact than the lights involved in the current application which are further away.
- Building Lamp labelled 13B has been *in situ* on this building since 1979 and does not form part of the application. The applicant was not aware of the concerns arising from this light and they are committed to reviewing the angle of this light as well as the length of time it is in operation.
- The reason why materials are currently stacked against the boundary walls is because they are awaiting finalisation of this application before they complete and implement the development sought for. As such this is only a temporary measure.
- In relation to the 1m buffer the applicant is only required to adhere to planning conditions when a decision has been finalised and they are willing to paint a 1-m yellow line from the boundary of the wall in order that operatives are clear that no open storage or display takes place in this zone. The applicant is also open to providing a 500mm motorway type crash barrier at a distance of 1m from the boundary should that be considered necessary.
- The location of the gas cylinders is not a planning issue. These are stored in a compliant manner.
- All CCTV cameras will face into the site only and will be in a permanently fixed. These are also small and will have no visual impact.
- Security is paramount for the applicant as they have expensive product stored in its open yard. As such they require full CCTV coverage of this yard.

- The Board is requested to include Condition No. 6 as part of any grant of retention permission.
- The applicant requires the land to the rear of the site for storage of products as it is large enough to facilitate access and manoeuvring by vehicles. The space between the two buildings is inadequate in terms of size to facilitate such internal traffic movements.
- The use of Maddens has not changed since 2018. All that has occurred is a rearrangement of their existing outdoor arrangement. No material intensification has occurred.
- Maddens was *in situ* when Hanson Wood was developed, and the rear portion of the site formed part of the Maddens site and it is only logical that it would be developed over time.
- It is not accepted that the Planning Authority's Planning Officer did not take on board the 3rd party submissions.
- A lighting report was included with the documentation submitted with this application and it was deemed that a traffic as well as noise impact assessment was not necessary given the nature of the activity taking place combined with the opening hours.
- The Planning Authority's lighting section had no concerns in relation to the lighting sought under this application. The pole lighting is angled in a fixed manner and therefore does not over spill onto adjoining properties. In addition, the lamp standards are slender and not visually intrusive. The light standards are the same height as those in Hanson Woods.
- The pole mounted lamp in the north eastern corner they are reluctantly open to remove having regard to the concerns raised.
- Higher racking will be placed away from the boundaries and the area to the north east will not contain any timber racking as it will be used for as a garden centre area.
- It is not possible to provide racking between the two buildings as there is insufficient room for vehicles to manoeuvre.

- Tree planting requires more than a 1m landscaping strip to establish and it would impact on the integrity of the existing wall.
- The operating hours imposed by the Planning Authority would have severe implications on its ability to operate as well as its viability.
- Enforcement is the responsibility of the local planning authority.
- The concerns raised by the appellants are without substance or due foundation.
- It is rejected that their land use should be categorised as industry or warehouse use as the applicant is not involved in the making of any article (industry) or providing storage only (warehouse). They are involved in the sale of retail products to members of the public and they are hardware/building supplier as well as sale garden centre type products.

6.3. **Planning Authority's Response**

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

- The issues raised by the appellants in their appeal submissions to the Board have been substantially considered by them in their determination of this application.
- This development would not adversely impact on the residential amenities.
- The landscaping requested could undermine the integrity of the shared boundary wall.
- The Board is requested to uphold its decisions.

6.4. **Observations**

6.4.1. None.

7.0 **Assessment**

7.1. **Overview**

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and the responses received by the Board from the 1st Party. Having inspected the site, its surrounds and relevant planning provisions I am generally satisfied that no other

substantive planning issues arise outside of the issue that this application relates to a site that lies inside of a zone of archaeological potential and a Recorded Monument.

- 7.1.2. I therefore raise a concern that the applicant has provided no clarity on the matter of archaeological impact on the site and that the works carried out to date in terms of creating the concrete yard did not disturb any potential archaeological remains that could have been *in situ*. Further, the applicant has provided no clarity on the matter of the extent of ground manipulation and alteration that was carried out in order to create the concrete yard to the rear of the subject site.
- 7.1.3. I consider that this is a reasonable concern given that the site itself is situated within the confines of a designated Recorded Monument (ME01873 – ‘SEID’ – Settlement Cluster). Moreover, it is also located within a zone of archaeological potential under the current Dunshaughlin Local Area Plan. This plan and the overarching current Meath County Development Plan seek to protect archaeological sites and monuments which are listed as Record Monuments.
- 7.1.4. For example, Development Plan objective CH OBJ 7 states that the Planning Authority shall seek: “*to protect archaeological sites and monuments, underwater archaeology, and archaeological objects, which are listed in the Record of Monuments and Places, and to seek their preservation in situ (or at a minimum, preservation by record through the planning process)*”.
- 7.1.5. In addition, Section 11.18 of the Development Plan indicates that the Planning Authority considering developments which might impact on archaeology that it will seek archaeological impact assessment as part of the planning submission when a development could affect a Recorded Monument, a zone of Archaeological Potential and/or as yet unidentified element of archaeological heritage.
- 7.1.6. I also consider it prudent to note that the Board in their assessment of the appeal case relating to the Aldi food store on land that incorporates part of the land that was functionally used in their day to day operations of a food store included a condition requiring that the mitigation measures set out in the Archaeological Testing Report accompanying this application be implemented in full. The majority of this site prior to the current construction works was greenfield land and appears to be similar in its greenfield nature to that of the area now accommodating the concrete yard which is

one of the components for which retention permission is sought for under this planning application.

- 7.1.7. Whilst an examination of the aerial photography and historical mapping of the site appears to show that the rear of the site prior to the works for which this application relates show that the main area of the site to the rear was greenfield land. Notwithstanding, there is insufficient clarity given on file to make a determination on what impact the creation of the concrete yard could have had on any potential archaeology within its confines by way of the ground works required to create this component of the development now sought.
- 7.1.8. There is also no clarity provided on how the waste generated during the construction of the concrete yard was dealt with and I am cognisant that under a recent previous grant of permission (Note: P.A. Ref. No. RA180257) Condition No. 4 required that all waste generated during construction including surplus excavation material should be done in a manner consistent with the Waste Management Acts, 1996 to 2008.
- 7.1.9. As such I consider that in the absence of any archaeological impact assessment and assurance that no destruction of any archaeological remains within a zone of archaeological potential and within a Recorded Monument provided as part of this application is contrary to Development Plan objective CH OBJ 7 and Section 11.18 of the Development Plan. The approach taken by the applicant to the works carried out has not set a desirable precedent for other developments within this settlement and is not an approach in my view that would have been considered an appropriate approach and response in an archaeologically sensitive site as well as setting should planning permission been sought for the concrete yard and its associated works in the first instance. The Board may consider this matter a **new issue** in their determination of this case.
- 7.1.10. I also consider it appropriate to make comment upon the applicant's enforcement concerns relating to the manner in which the recent residential development, i.e. Hanson Woods, was completed.
- 7.1.11. I also note that the land associated with Hanson Woods was part of the applicant's larger parcel of land at this location which also appears to have extended northwards towards into the now under construction Aldi discount food store and its associated works. The boundary wall which now exists between the appeal site and Hanson

Wood residential scheme consists of a c2.18m high solid wall. Moreover, it is unclear what civil agreements may have been agreed between the developers of Hanson Woods and the applicants with these possibly including the removal in consent of the mature hedgerows and trees that were *in situ* up until recently. It is also unclear whether or not this is a shared boundary. Irrespective of this ambiguity enforcement is a matter for the Planning Authority to deal with as they see fit. Therefore, such concerns should be directed to them for examine and determine.

7.1.12. The matter of 'Appropriate Assessment' also requires consideration.

7.1.13. The relevant issues are addressed under the following headings:

- Procedural Matters.
- Principle of the Proposed Development also including Residential Amenity Impact & Visual Amenity Impact.
- Depreciation of Property Values in the Vicinity.

7.2. Procedural Matters

7.2.1. Concerns are raised by the appellants that the description of the development provided with this application fails to accurately describe the actual development works that have been carried out to date. In that it fails to include the change of use of greenfield land that has occurred to form part of the applicant's hardware retail and commercial activities within the confines of the settlement of Dunshaughlin.

7.2.2. From an examination of the planning file it appears that the Planning Authority considered that the development description is adequate in relation to the development sought under this application with the Planning Officer considering that the site is in the long-term control of the applicant, a long established hardware retailer, builder's merchant and garden centre operator. I also note that the application was also deemed to be a valid application and validation of planning applications is one of the roles of the Planning Authority in determining a planning application.

7.2.3. The applicant refutes that this is not necessary as this land was part of their overall landholding and that they had sold 'ceded' land to Aldi's adjoining development and in essence have simply extended the land eastwards to make up for this loss of land.

Moreover, it would appear that they also sold the land on which the Hanson Wood development was constructed.

- 7.2.4. Having regard to the planning history of the site it is quite evident that the previous applications did not include the western portion of the land now subject of this application. For example, in relation to the previous and quite recent planning application P.A. Ref. No. RA/180257 this is clear in its associated maps and documentation including but not limited to its Site Location Map. Moreover, under this application the site area has a given 0.31ha site whereas the current given site area for this application is a larger 0.45ha. Thus, an increase of 0.14ha in terms of its size with this equating to a 45% increase in size area. I do not consider this to be insignificant particularly when this expanded concrete yard area is used for not only storage, collection but also a retail space for many of the applicants retail offer with the majority of the land which comprises the concrete yard area being up to recently greenfield land and segregated from the applicants retail as well as associated activities of their hardware store. Thus, I am of the view that there has been a functional change of use of green land to accommodate the applicants retail and associated activities onto land that never functioned previously in this manner and also in terms of applicants associated functional area associated with their commercial activities as a hardware store there has been an intensification of use.
- 7.2.5. On this basis I concur with the concerns of the appellants that the description of development does not accurately reflect the nature, scale, extent and scope of activities by way of excluding the retention of the change of use for the lands associated with the concrete yard.
- 7.2.6. In my view this is a significant omission from the description of the development and this concern should not be disregarded as the given public notice description does not accurately reflect the actual development that has occurred on this 0.45ha site and what in essence is the actual scope, nature, extent and scale of the development now sought. This requires rectification prior to any positive determination being made by the Board.
- 7.2.7. Having inspected the site I raise a further concern in relation to the description of the development sought in that components for which planning permission is sought are

already *in situ*. This adds further to my concerns in relation to the adequacy of the description of the development given in the public notices.

- 7.2.8. For example, this application arbitrarily seeks planning permission for signage to existing buildings and the submitted drawings do not show the full extent of actual signage attached to these buildings as observable on site. Nor do they show that there is additional advertising signage within the confines of the site itself.
- 7.2.9. In my view this is quite clear when one examines Drawing No. 2002-3 in elevations labelled as 'Signage – Elevation B-B' and 'Signage Elevation Key'. When this is cross referenced to the photographs taken on the day of my site inspection it is quite clear that the proposed Maddens Signage on Elevation B-B is partially already *in situ* alongside other signage with some being signage being banner in form.
- 7.2.10. There is also signage present on the roller doors of the building to the rear of the main retail store facing onto the street including a large mounted sign on its western elevation. All of this signage is highly visible from the public domain.
- 7.2.11. As such there is ambiguity and a lack of clarity in relation to what level of signage is actually proposed on the buildings and within the curtilage of the applicant's site.
- 7.2.12. Of further concern the extent of lighting and CCTV cameras are not also accurately depicted in the submitted drawings of the buildings on site. Again, these items arbitrarily are alluded to in the description of the development under what is proposed but are already *in situ*.
- 7.2.13. As such there is ambiguity and a lack of clarity in relation to these components of the development alongside an apparent conflict between the conditions attached to the previous grant of permission (Note: P.A. Ref. No. RA/180257).
- 7.2.14. Additionally, the car parking area is not laid out as per what was permitted under the previous referred to grant of planning permission (Note: P.A. Ref. No. RA/180257) and this is obviously another cause of planning compliance concern with no clarity given as to whether or not this would be rectified going forward.
- 7.2.15. In addition, the drawings appear to suggest that timber racks through to that the storage of items as well as the containers on site are set back from the boundary wall when this is not what is present on site. The applicant appears to suggest that this is because they are under no obligation to do so until there is a grant of permission for

the development sought under this application but that if permission is granted they would be willing to paint a yellow line 1-m away from the boundary wall or a crash barrier 1-m away from the wall so that this area is not used for storage, turning of vehicles and the like. They also indicate that a 1-m landscape boundary would undermine the existing boundary between their property and Hanson Woods. Alongside they are of the view that there was a natural landscaping boundary present that was removed by the developers of Hanson Woods. Moreover, they do not propose any reinforcement, visual, screening through to mitigative buffers along the site boundaries to address the appellants concerns to reduce the diminishment of their residential amenities this development has and would give rise to, if permitted, in the manner proposed.

- 7.2.16. The appellants raise further concerns on the height of stacking present on site. With particular concerns being the stacking in significant excess above and alongside the boundary walls adjoining residential properties and public domain through to the storage and stacking that is occurring on the top of containers for which retention permission is also being sought. These practices on site give rise to several residential amenity concerns, visual amenity concerns, health, and safety concerns.
- 7.2.17. I am cognisant that the suite of drawings do not indicate the level of stacking above the height of boundaries on site and I am cognisant that the Planning Authority as part of their notification to grant permission including conditions to reduce the height of stacking racks to 3.5m, they allowed the containers for a temporary duration of 3-years with permission being required to keep them thereafter and a setback buffer of 1m from the perimeter boundary walls. They did not include any restriction of the use of the roof levels of containers on site for storage of materials.
- 7.2.18. With the significant level of ambiguity presented in the description of the development and the drawings submitted accompanying this application I consider that the Board is precluded from granting retention permission and planning permission in this case.
- 7.2.19. Whilst it may be arguable that the photographs taken may allow the Board to make some level of determination of the planning merits of the development sought. It is questionable how it can be reasonably concluded what is actually granted if one is dependent upon the details provided with this application going forward. Particularly if any breaches arise in the future and this could potentially disenfranchise the public

which I do not consider to be acceptable. In the latter case while I acknowledge that enforcement is a matter for the Planning Authority to deal with as they see fit it is also a requirement under relevant planning legislation that a planning application makes an accurate representation of the development sought so that the public are not disenfranchised in the process. This has not been done in this planning application.

7.3. Principle of the Proposed Development

- 7.3.1. The appeal site is located on land zoned 'B1' (Note: Commercial/Town or Village Centre) which has a stated objective of protecting, providing for and/or improving town and village centre facilities and uses. Within this land use zone, the local planning provisions set out that it intends to accommodate the majority of new commercial and retail uses within these lands. The land also adjoins land zoned 'A2' (New Residential): *"to provide for new residential communities with ancillary community facilities, neighbourhood facilities and employment uses as considered appropriate for the status of the centre in the Settlement Hierarchy"* with this land recently been residentially developed to create the residential scheme known as 'Hanson Woods' and with one of Hanson's Woods semi-detached properties sharing a boundary with the application site along the majority of the appeal sites eastern boundary (Note: No. 24 Hanson Woods). As such it would be appropriate in planning terms to consider that the eastern and southern rear boundaries behind the buildings on this appeal site has a transitional character. Whereas the western portion of the site which contains the two warehouse buildings have the advantage of having access and road frontage onto the Main Street, Dunshaughlin with Main Street being predominated by the 'B1' land use zoning.
- 7.3.2. I acknowledge that the applicants have an established business on the western portion of the site and were recently granted planning permission for the erection of 2 no. entrance gates, boundary fencing, wall and railings and relocation of 21 no. car parking spaces under P.A. Ref. No. RA/180257. Under the suite of drawings submitted for P.A. Ref. No. RA/180257 at the nearest point the relocated car parking was c20m from the shared boundary with Hanson Woods site and c26m from the rear southern boundary. In addition, there was c56m between the easternmost building on site to the eastern boundary shared with Hanson Wood which was in the process of being constructed at this time.

- 7.3.3. As said the site in its entirety is zoned 'B1' but the land uses sought under this application which relate to land that essentially did not historically form part of the applicants land associated with their business enterprise are not listed as land uses that are permissible. However, under open for consideration uses arguably such uses could be considered subject to the Planning Authority being satisfied that the proposed development would be compatible with the overall policies and objectives for the zone alongside that they would not result in any undesirable effects on permitted uses. On this matter of particular concern is the adjoining and neighbouring residential development of 'Hanson Woods' which are solely located on residentially zoned land. I therefore consider this residential development is particularly sensitive to change.
- 7.3.4. Furthermore, on the matter of Transitional Zones of land the local planning provisions, including the LAP for Dunshaughlin, state that: *"it is important to avoid abrupt transitions in scale and use at the boundaries of adjoining land use zones"* and *"in dealing with development proposals in contiguous zone areas, it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. For instance, in zones abutting residential areas, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of these residential properties"*.
- 7.3.5. In relation to this application I raise it as a concern that the design of the development sought shows little regard to ensuring that it avoids detrimental impact upon the amenities of the more environmentally sensitive zone, i.e. the residential properties in its immediate vicinity and the newly created public domain associated with Hanson Woods. Whether that is in the form of providing mitigating screening measures, for example including semi-mature landscaping buffer; a noise attenuating boundary along the perimeter of the new concrete yard; through to heightened and more robust perimeter walls to mention but a few. In my view inspiration could as pointed out by the appellants have been taken from the landscaping boundary required as part of the Aldi construction which bounds the northern boundary of the site and which encompasses part of the applicants former landholding.
- 7.3.6. Indeed further measures to abate noise nuisance that would arise in the extended concrete yard area that accommodates collection and delivery by large vehicles includes a number of what appears to be proprietary vehicles relating to the applicants operational activities could also have been incorporated by looking at appropriate

arrangement of activities so that the more noise generating activities are kept away from the boundaries of adjoining residentially zoned land.

- 7.3.7. I note also that no noise impact assessment has been prepared to clarify that no noise nuisance would arise during the applicants commercial operations of the site and in the absence of the same alongside the absence of any particular mitigation measures to deal with noise nuisance there is nothing that substantiates that this particular nuisance would not cause any undue diminishment of residential amenities in its vicinity.
- 7.3.8. Of further concern the 'Outdoor Lighting Report' does not examine all the mounted lighting present on the building and within the confines of the site alongside the lighting proposed under this application. Therefore, it does not represent the actual situation, or the situation sought under this application. Moreover, the justification for the level of lighting proposed along the boundaries with residential and neighbouring residential properties is not appraised in this document nor is the rationale in terms of the overall security options available which may more appropriately be served by more robust in height and construction perimeter boundary walls where boundaries are considered to have potential for security issues through to the provision of lower level lighting with less need for imposing light standards particularly when one considers the juxtaposition of the lighting standards relative to properties on the eastern and south easternmost perimeters of the site.
- 7.3.9. As such it similarly cannot be concluded that there would be no adverse impact arising from the site on residential properties in its immediate vicinity by light overspilling into their property.
- 7.3.10. I also consider that the residential boundaries but in place as part of the Hanson Woods development were not designed to be of a height and solidity to accommodate the level of storage placed directly alongside them or indeed of sufficient solidity to withstand and accidental hit by a vehicle moving into position or removing the various heavy items in their immediate proximity. Arguably a crash barrier could more effectively abate this nuisance over that of a yellow line painted 1-m back from the boundary walls on site. Notwithstanding, having regard to the existing height of these boundaries at c2.18 they do not lend themselves to being highly secure for the nature

of land uses and the level of storage of goods to the rear of the applicants buildings on site.

- 7.3.11. I also raise significant concern in relation to the excessive number of CCTV cameras on this appeal site including the buildings thereon and the lack of any assurance that these do not invade the privacy of adjoining and neighbouring third party properties having regard to the angles they are placed at on the day of my inspection of the site. I am not satisfied that there is sufficient assurance given that no invasion of privacy is occurring or that they would not result in a diminishment of residential amenities in their present form going forward. Any grant of permission would be required to examine this as well as ensure that the number of CCTV cameras or indeed any other projecting items from the buildings and other structures on site are accurately presented for consideration.
- 7.3.12. I also consider that the operational hours for any grant of permission should not deviate significantly from that normally associated with retail within a village centre when this use includes significant potential for noise, light and other nuisances to arise for more sensitive neighbouring properties for significant periods and for all days of the week with the exception of Sunday.
- 7.3.13. On this matter I also note that the applicant objects to the 0700 to 1900 Mondays to Saturday's restriction placed on them by way of Condition No. 10 in the Planning Authority's notification to grant permission for the development sought under this application. With this specifically relating to the operation of machinery, deliveries, and the like as this would have significant adverse impact on their economic viability at this location. Whereas the appellants to this appeal consider these hours to be excessive and would provide them with little peaceful enjoyment of their homes.
- 7.3.14. I also note that the hours imposed by this condition would result in the western portion of the site to which the majority of this application relates operating beyond the retail hours of the applicants hardware store which is given and advertised as 0800 to 1800 Monday to Saturday.
- 7.3.15. Any grant of permission by the Board may wish to seek to restrict the use of machinery to be operated on site, the collection through to deliveries to 0800 in order to safeguard and protect the residential amenities or properties in the vicinity of this development.

- 7.3.16. In light of the above considerations I am not satisfied that sufficient qualitative design through to layout considerations have been given to the development sought under this application so as to ensure that the development does not contravene the types of development that would be considered to be acceptable on transitional zoned land. Particularly in terms of mitigating potential adverse impacts on residential properties in its vicinity. I consider that the development as sought is haphazard in this regard and I am not convinced that the level of signage proposed when taken together with the existing level of signage that is *in situ* would not give rise to visual clutter as viewed from the public domain nor is it of a sufficient qualitative standard. Thus, it has the potential to adversely diminish the visual amenities, particularly the streetscape scene of Main Street.
- 7.3.17. I therefore consider until these concerns are addressed that the principle of extending the applicants hardware operations towards and immediately in the vicinity of residential adjoining and neighbouring properties, in particular with limited lateral separation distance between it and the residential properties of Hanson Woods is not in accordance with the proper planning and sustainable development of the area. This is not to say that subject to substantive improvements to the design and layout of the development that seeks to meaningfully address the concerns raised above that the enlarged site that the applicant now operates from could not be a good neighbour development.
- 7.3.18. However, due to the significant concerns raised in the previous section I do not consider it appropriate to deal with the concerns raised in this section by way of condition.
- 7.3.19. In addition, having regard to the planning history of the site whereby the applicant by way of condition was made clear what development on their lands would first require permission but appears to have disregarded this I raise it as a concern that to permit the proposed development would contravene conditions attached to the previous grant of permission under P.A. Ref. No. RA/180257. On this point I raise particular concerns with regards to Condition No. 3.
- 7.3.20. The Board could, if they decided it appropriate and reasonable to do so, request further information to address the concerns raised and revised public notices.

Notwithstanding, considering the substantive concerns raised I consider permission should be refused for the development sought under this application due in part o

7.4. Depreciation of Property Values

- 7.4.1. As part of the 3rd Party Appeals a report prepared by an estate agent that was prepared for the owners of No. 24 Hanson Woods, with this property sharing 29.5m boundary with this appeal site. This report was prepared on foot of an inspection carried out by the real estate expert on the same date the report is dated, i.e. the 15th day of April, 2020.
- 7.4.2. This report concludes that despite the uncertain times we are in due to the Covid 19 Pandemic and the impact that this has had on the retail market, their appraisal is based on the 'Material Valuation Uncertainty', but they were of the view that the development sought under this application would have a detrimental impact on the value of this property as well as the properties of No.s 25, 26, 27 and 28 Hanson Woods, by way of noise nuisance, visual deterioration of their setting arising from the manner in which this development has been designed and laid out.
- 7.4.3. They state that would-be home purchasers expect quiet enjoyment of their outdoor and indoor space without being overlooked or indeed having to withstand reduced natural light from the stacking of goods on racks adjoining boundaries through to having the potential dangers and hazards that arise from the proximity of gas storage in close proximity to their homes.
- 7.4.4. I consider that there is merit in the conclusions of this report despite the fact that the site itself is zoned B1 which should subject to appropriate design accommodate expansion of existing established uses. In this case the proposed design has provided little in the way of measures to mitigate nuisances that have arisen to date and have the potential to continue going forward resulting in undue diminishment of amenities of properties in the vicinity.

7.5. Appropriate Assessment

- 7.5.1. As set out in Section 5.6.1 of this report above this appeal site is substantially removed from any Natura 2000 sites, i.e. in excess of 10km, and there are also no watercourses directly adjoin or run across the site which essentially is now hardstand. Any discharges that would have occurred during construction of the concrete yard in particular e.g. contaminated spills, unless removed would have percolated through

underlying soils but any such contamination is unlikely to have any significant effect on European sites, given the dilution and attenuation capacity of soils and the substantial distance of the site from them. The proposed works yet to be carried out would have little potential for ground disturbance and/or other give rise to the potential for contaminated spills and the like. However, as part of the retention works it would appear that fuel/oil separators have been provided with the site connecting to the public mains drainage infrastructure with this directed to the Dunshaughlin municipal wastewater treatment plant.

- 7.5.2. The Dunshaughlin plant outfalls into the River Boyne and River Blackwater SAC/SPA. The latest Annual Environmental Report (2017) states that loadings on the plant are within its Peak Treatment Capacity and that effluent arising (i.e. discharges from the agglomeration) are compliant with emission limit values and have no impact on receiving waters (section 2.3 of the report – see attachments).
- 7.5.3. Having regard to the above, notably the location of the proposed development within an established urban area, integrated with existing services and significantly removed from any European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.6. Other Matters Arising

- 7.6.1. **Boundary treatments:** In relation to Drawing No. 2002-08 I raise concern in relation to the juxtaposition of the panel fence proposed and the Aldi Wall Railing with a small strip of land in between. I do not consider this to be a well resolved boundary treatment in the context of the appeal site itself, the adjoining Aldi site and the resultant visual amenities of this settlement centre where this would be highly visible and visually incoherent with the potential of the narrow tract of land in between becoming unkempt by weeds through to litter. A more coherent boundary is required along the northern boundary that is appropriate to its setting and its high level of visibility from the public domain of Main Street.
- 7.6.2. **Storage of Gas in Proximity and Alongside the Perimeter Boundaries of the Site:** Having inspected the site I do not consider the concerns of the adjoining and neighbouring residential properties of Hanson Woods unfounded in relation to the location and matter of storage of gas storage cylinders in proximity to and immediately

alongside the south easternmost boundaries of the site should any unforeseen hazardous event occur which would cause them to ignite. At such close proximity to residential properties having regard to the manner in which they are sited and stored this a reasonable residential amenity concern in my view. However, it may be a matter that is more appropriately dealt with under other codes. Nonetheless at such transitional zonal sites like this and having regard to the limited separation distance between residential properties to this potential hazard the applicant should consider a more appropriate location and methodology for these to be sited and stored on site.

- 7.6.3. **Surface Water Drainage:** I concur with the Planning Authority's conclusions on this regard and recommended that should the Board be minded to grant permission Condition No. 9 of the Planning Authority's notification to grant permission should be imposed.

8.0 Recommendation

- 8.1. I recommend that retention permission and planning permission be **refused** for the reasons and considerations set out below. The Board may consider the 3rd reason and consideration for refusal a **new issue**.

9.0 Reasons and Considerations

1. It is considered that details of the development submitted for retention permission and planning permission differ materially from the actual development carried out to date on this site and contains ambiguous as well as conflicting details in terms of the scope of the development sought under this planning application. The Board is, therefore, precluded from granting permission for the proposed development.
2. Notwithstanding that the site is zoned 'B1', the western boundary of the site to which the concrete yard adjoins and the associated infrastructure both for retention permission for which planning permission is sought has a transitional zonal character with the eastern and southeasternmost boundaries of the site adjoining 'A2' residential zoned land. The development sought under this planning application, because of its lack of mitigation measures to ensure that no undue

diminishment arises to adjoining and neighbouring residential properties on the adjoining 'A2' zoned land would result in poorly considered piecemeal development that would seriously injure the residential amenity of properties in its vicinity by way of undue nuisances, including noise, reduced privacy, visual intrusion through to potential overspilling of light. It is also considered that the design and layout of the development as proposed is poorly considered and it would detract from the visual amenity of the area by way of visual clutter of signage and by way of lack of appropriate visual buffers along the perimeters of the site. Accordingly, would be contrary to the proper planning and sustainable development of the area.

3. Notwithstanding the nature, scale and scope of the development sought under this application it is considered that the archaeological significance of the site is such that any development of the site, including the provision of a concrete yard, in advance of a comprehensive archaeological assessment, carried out to the requirements of the appropriate authorities, would be premature and would, therefore, be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector

18th day of September, 2020.