



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308267-20

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<b>Development</b>	Development of an access road and associated site works.
<b>Location</b>	Faughart Lower, Dundalk, Co Louth
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	20485
<b>Applicant(s)</b>	Shane McGuinness.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Shane McGuinness.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	19 <sup>th</sup> of April 2021.
<b>Inspector</b>	Stephanie Farrington

## 1.0 Site Location and Description

- 1.1. The site comprises of a greenfield site located off the Newry Road on the northern perimeter of Dundalk. The site has an area of 0.3224 ha, is currently in agricultural use and is enclosed by mature hedging. The site extends to include the existing Class 3 cul de sac road which adjoins the Old Newry Road (former N1). Access to the site is currently provided from the cul de sac road. The M1 motorway is located to the north.
- 1.2. The application site forms the south eastern corner of a larger pastoral field located to the west of the old cul-de-sac'd Newry Road (R132). The sites south western boundary adjoins the Raskeagh River which flows south-eastwards into the Castletown River Estuary. Part of the north eastern boundary comprises a dry field ditch which traverses the field and connects with the Raskeagh River.
- 1.3. The appeal site and surrounding area is semi-rural in character and use. There are a number dwellings along the cul-de sac road in the vicinity of the site. To the south, the appeal site is adjoined by lands zoned for employment mixed use purposes and currently occupied by an industrial building. Access to these lands is provided via an existing entrance from the Newry Road.

## 2.0 Proposed Development

- 2.1. The proposed development comprises construction of an access road and associated site development works, including realignment of a class 3 local road (cul de sac) to serve lands zoned as employment mixed use.
- 2.2. The layout of the proposed access road is illustrated in Drawing no. SMcG-APP-004 Proposed Road Layout Plan. The road is 7.3m in width and accommodates a 2m cycle path and 2m footpath adjacent to the road. The proposal includes partial realignment of the existing cul de sac road within the site and provision of an entrance to the undeveloped lands within the ownership of the applicant.
- 2.3. The proposed access road shall link into the permitted road network for the business park on the adjoining lands to the south as approved under planning ref 09/879. Drawing no. SMcG-PA-003 illustrates the tie in and interface of the proposed access road with the wider business park road network to the south of the site. A letter of

consent is submitted in conjunction with the application for connection to the adjoining business park lands to the south.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Louth County Council issued a decision to refuse permission for the proposal in accordance with the following reasons and considerations:

1. It is the Policy (EDE 14) of the Louth County Development Plan 2015-2021 “to require that in the event that an industrial/commercial development forms part of a larger area, including land in multiple ownership, the preparation of a master plan to ensure integrated and coherent of the lands is carried out and that the plan shall comply with the development management guidelines as set down”. The requirement for this new entrance and access road alongside an existing permitted entrance and access road to serve these lands has not been demonstrated to the satisfaction of the planning authority and in the absence of any development proposals for the subject land, it is considered that a second entrance off the public road would create a duplication of infrastructure, is unwarranted and would represent piecemeal and haphazard development. The proposed development would therefore set an undesirable precedent for similar ad-hoc development and would be contrary to the policy of the Louth County Development Plan 2015-2021 and thus contrary to the proper planning and sustainable development of the area.
2. The application documentation fails to demonstrate that adequate sightlines would be available at the junction between the proposed access road and the country road within lands under the applicant’s ownership. Accordingly, to permit the proposed development would materially contravene the standards of the Louth County Development Plan 2015-2021 and would endanger public safety by reason of traffic hazard.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The planners report recommends a refusal of permission. The following provides a summary of the issues raised:

- Concerns are expressed that permitting an access road for a development which has not yet being granted permission is premature, notwithstanding a permission previously being granted.
- Reference is made to the planning history for the site and in particular PA Ref 09/879 wherein a 10 year permission was granted for works associated with a business park and a 5 year extension of duration permitted under PA Ref 20/122. It is noted that the application and associated masterplan did not include the land to which the subject application relates.
- The proposed development is considered unacceptable on the basis of duplication of infrastructure, provision of piecemeal and haphazard development, lack of justification for the proposed entrance in proximity to an existing established entrance and access roadway and lack of details in relation to the proposed use of the land to be served by the access road.
- The delivery of the road would be dependent on the abandonment of a section of public road and the local authority extinguishing public rights of way over it.

### 3.2.2. Other Technical Reports

Infrastructure Section: Outlines that the proposed development includes a proposal to culvert a section of the Raskeagh River. The report recommends a request for further information relating to documentary evidence of OPW consent for proposed culverting of the river and details of compliance with Inland Fisheries guidelines.

Environment Report: No objection.

### 3.3. Prescribed Bodies

### 3.4. Third Party Observations

One third party observation was received on the application during the statutory consultation period by Keith Mulholland. The following provides a summary of the main issues raised:

- Section of the lands is not in the ownership of the applicant.
- Visibility splay in a northerly direction cannot be achieved as sightline is traversing lands in the observer's ownership.
- Objects to the proposed realignment of the road that serves his dwelling and 3 other dwellings. Further options are available to the landowner.
- Safety concerns are expressed in relation to the proposed entrance which adjoins a residential garden. No boundary details are indicated.
- Negative impact on resale value of existing residential properties.
- Concerns relating to loss of existing mature trees to the west of the site.
- Existing septic tank servicing the dwelling to the north of the entrance is not indicated.
- No Traffic and Transportation Assessment, site infiltration details or Masterplan is submitted.

## 4.0 Planning History

### Appeal Site

PA Ref 08/911: planning permission granted in December 2008 for industrial estate road and associated site development works. Permission was granted for the development subject to 7 no. conditions. I note the requirements of Condition no. 2 as follows:

*Access to adjoining lands not under the ownership of the applicant shall be permitted off this road. If an agreement to this effect can not be reached between the applicant/developer and the owner(s)/developer(s) of the adjoining lands, the matter shall be referred to arbitration and the decision of the arbitrator shall be binding on all of the parties involved.*

- PA Ref 15/13 – application for permission submitted in January 2015 for an access road to serve part of proposed Business Park and associated site development works. Louth County Council issued a request for further information in March 2015 in respect of the application in relation to site masterplan, nature of works to the adjoining road network, traffic assessment,

public lighting, abandonment of rights to public road and submission of a natura impact statement. No response was received, and the application was withdrawn in October 2015.

- PA Ref 19/1103 planning permission refused in February 2020 for development comprising of an access road to serve part of proposed business park and all site development works. Reasons for refusal related to the lack of a Masterplan, Appropriate Assessment Screening report and concerns relating to sufficient sightlines.

#### Business Park lands to the south of the site

- PA Ref: 09/879: planning permission granted in February 2011 for site development works associated with the business park on lands zoned for employment mixed use purposes.
- PA Ref 20/122- planning permission granted in June 2020 for extension of duration development granted under PA Ref: 09/879 for 10 year permission for site development works associated with a business park development. The duration of the permission was extended to the 20<sup>th</sup> of February 2026.
- PA Ref 11/367 – planning permission granted in March 2012 for permission for a two storey office building in a previously approved business park (ref 09/879) with ancillary site works including new vehicular access from existing access road, car parking landscaping, foul sewerage pumping station, new rising sewer mains on Newry Road & attenuation pond.
- PA Ref 16/323 - Extension of duration PA Ref. 11/367 granted in June 2016.

## 5.0 Policy Context

### 5.1. Development Plan

#### Louth County Development Plan 2015-2021

Section 2.16.4 of the Louth County Development Plan 2015-2021 (CDP) states that the statutory Development Plan for the urban and surrounding environs area of Dundalk is currently the Dundalk & Environs Development Plan 2009-2015 (DEDP) and that the CDP will be an over-arching Development Plan for the entire county

including Dundalk and Drogheda. It goes on to state that following the adoption of the CDP, the existing DEDP will be reviewed and ultimately replaced by a Local Area Plan which will be a sub-set of and will be consistent with the provisions of the CDP.

Policy SS 3 of the County Development Plan seeks “to review the Dundalk and Environs Development Plan 2009 – 2015 and to prepare a Local Area Plan for Dundalk and Environs which will be consistent with the provisions of the County Plan”.

Section 11C(a) of the Planning and Development Act 2000, as amended, states with respect to the dissolution of town councils that the development plan for the administrative area of such a town council shall continue to have effect to the extent provided for by that plan and be read together with the development plan for the administrative area within which the dissolved administrative area is situated.

Having regard to the abovementioned provisions of the CDP and the Planning and Development Act, I have therefore had regard to both the CDP and the DEDP in my assessment.

#### Dundalk and Environs Development Plan 2009-2015

The site is zoned for “Employment Mixed Use” in the Dundalk and Environs Development Plan. This zoning objective seeks *“To provide for employment and supporting uses”*.

The following uses are listed as permitted on Employment and Mixed Use zoned lands:

- Car park (commercial), car showroom, conference centre, creche/childcare facility, industrial light, industrial heavy, office – class 3, park and ride facilities, recycle facilities, training centre, transport depot, warehouse.

The following uses are listed as open for consideration on Employment and Mixed Use zoned lands:

- Abattoir, allotments, cash and carry, cemetery, church, community facility, funeral home, garden centre, hostel, hotel/motel, medical surgery, motor sales/repair, petrol station, residential (ancillary), restaurant/café, shop local (2), sports facilities, takeaway, telecommunication structure, tourism facility, veterinary surgery, wholesale warehousing.

Chapter 3 of the DEDP relates to economic development. This outlines that Dundalk need to expand its enterprise and economic structures.

Policy EC5 5 seeks to: “support the development of trade clusters at suitably zoned locations within the plan area”.

#### Louth County Development Plan 2015-2021

Section 6.3.5 sets out design guidelines for Commercial/ Industrial buildings the following is noted in this regard:

*Where two or more commercial or industrial buildings are being developed, a uniform design for boundary treatments, roof profiles and building lines is recommended. The scale, design and material utilised should be cognisant of its setting and be in keeping with the surrounding area and adjoining developments.*

*In the event that an industrial/ commercial development forms part of a larger area, including where such land is in multiple ownership, a Master Plan should be prepared. Master Plans should be submitted for lands identified in the relevant local area plan or when requested by the planning authority.*

A Master Plan should consider inter alia the following:

- Consistency with policies and objectives of the relevant plan/local area plan, Topography and land form, protection of existing trees, hedgerows and nature conservation areas, protection of archaeological remains, ACA's, protected structures and other historic buildings, safeguard protected fauna, flooding, roads, cycling and pedestrians paths and bus infrastructure provision, inclusion of SuDS and water conservation measures, phasing to ensure roll out of required physical and social infrastructure, protection of scenic views, road infrastructure and layout, mobility management, renewal energy strategy (RES), advertising, boundary treatments, building design, materials and layout, landscaping.

Policy EDE 14 seeks: “to comply with development management guidelines for industrial and commercial developments as set out in Section 6.3 above unless otherwise provided for in a local area plan”.

#### 6.3.8 Roads and Footpaths



All applications for industrial or commercial developments within the 60km speed limit shall be designed in accordance with the Design Manual for Urban Roads and Streets (DMURS) produced by the Department of Transport, Tourism and Sport (DTTS) and Department of Environment Community and Local Government (DECLG). All applications outside the 60km speed limit shall be designed in accordance with the Design Manual for Roads and Bridges produced by the Department of Transport Tourism and Sport (DTTS).

Policy TC 6 seeks: *“To adhere to the principles contained within the guidance document, Design Manual for Urban Roads and Streets (2013) Department of Transport, Tourism and Sport (DTTS)/ Department of the Environment, Community and Local Government (DECLG)”*.

Policy TC 12 seeks: *To apply the visibility standards and vehicle dwell area requirements as set out in Tables 7.4 and 7.5 in accordance with the National Roads Authority Design Manual for Roads & Bridges (DMRB) for the national road network and to ensure that the standards set out in the Design Manual for Urban Roads & Streets (DMURS) apply to all urban roads & streets.*

## **5.2. Natural Heritage Designations**

The appeal site is not located within or immediately adjacent to any sites with a natural heritage designation. The closest such sites are the Dundalk Bay SPA and SAC (Site Codes 004026 and 000455, respectively) which are c. 1.2km to the east. Dundalk Bay is also a pNHA. The Raskeagh River which runs along the south western boundary of the appeal site ultimately connects to the Bay.

## **5.3. EIA Screening**

Having regard to the nature and scale of the proposed development and nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal prepared by EHP Services has been submitted on behalf of the applicant. The following provides a summary of the grounds of appeal.

- The proposed development is consistent with the strategic vision of developing the surrounding Employment Mixed Use zoned lands.
- The proposed access is fully compliant with relevant design requirements and specifications set out within the Design Manual for Urban Roads and Streets (DMURS) and policy requirements set out within the Louth County Development Plan 2015-2021.
- The proposal is a critical initial stage in the development of surrounding zoned lands that are important in achieving Dundalk's progressive and sustainable economic growth.
- Reference is made to the planning history pertaining to the site wherein permission was refused by Louth County Council under PA Ref 19/1003 on grounds of lack of a Masterplan, Appropriate Assessment Screening and concerns relating to sufficient entrance sightlines. The reasons for refusal did not cite an objection to the principle of the proposed second vehicular entrance as included within the 1<sup>st</sup> reason for refusal.
- The planning authority did not give proper consideration to the previous planning permission and accompanying Masterplan that acts as the parent permission for all development proposals within the surrounding Employment Mixed Use zoned lands.
- The proposed vehicular entrance and access road is illustrated within the Masterplan submitted and approved under PA Ref 09/879.
- The proposed development is neither ad hoc, piecemeal or haphazard but benefits from a historic planning context. The masterplan submitted in support of the application complies with the requirements under Policy EDE1 of the Louth County Development Plan.

- The refusal of planning permission would have the consequential effect of landlocking the appellants lands and severely impeding any realistic chance for the northern environs of the EMU zoned lands from ever being developed as provided for within the Dundalk and Environs Development Plan.
- In the absence of the proposed development the adjoining EMU zoned lands can only be accessed via an extension to the existing internal estate road. The planning authority's decision to refuse permission imposes an undue and unfair disadvantage on the applicant's property.
- The second reason for refusal lacks merits and is not supported by guidance set out within DMURS. Appropriate visibility standards as set out within DMURS can be achieved between the proposed vehicular access and the existing public road without impacting on 3<sup>rd</sup> party lands. No objection to the proposed access is raised within the report by the Infrastructure Department on the application.
- Reference is made to the observation on the application and in particular the reference to landownership. It is stated that legal claims of property ownership are not within the remit of the planning process to resolve.

## 6.2. Planning Authority Response

- The planning authority supports to development of lands for employment purposes.
- Concerns are expressed that the proposed entrance is piecemeal and uncoordinated. The access road is proposed in isolation of a defined use for the site. This gives uncertainty for the future use of the lands and the extent of traffic and pedestrian volumes.
- A proper assessment cannot be undertaken particularly in light of proximity to a residential dwelling.
- The planning authority do not want to encourage a suite of entrance points to the lands which do not have the benefit of planning permission for either a commercial or industrial use.

- Reference is made to the legal dispute with a neighbouring property over access to the lands. The applicant has to demonstrate sufficient legal interest to carry out the proposed works.
- The realigned section of the local road will have implications for neighbouring properties. Having regard to the location of the access road and close proximity of the neighbouring house, the applicant has not given sufficient consideration to the residential amenity of the adjoining residents. Section 6.3.1 of the Development Plan relates to the provision of a 15m buffer zone to ensure the amenities of adjacent properties are not adversely affected.
- The planning authority is not against the principle of development at this location. Concerns raised relate to piecemeal and premature nature of proposed entrance which comprises of a commercial entrance to lands in agricultural use. A comprehensive application is requested which would allow for consideration of all matters including residential amenity, compliance with zoning and other assessments including the use, infrastructure requirements, piped services and appropriate assessment.

### 6.3. **Observations**

- None.

### 6.4. **Further Responses**

- None.

## 7.0 **Assessment**

7.1. I consider that the main issues in this appeal are as follows:

- Principle of Development
- Rationale for Development
- Layout and Sightlines
- Other Issues
- Appropriate Assessment

## **7.2. Principle of Development**

- 7.2.1. The proposed development comprises construction of an access road and associated site development works, including realignment of a class 3 local road (cul de sac) to serve lands zoned as employment mixed use.
- 7.2.2. The site is zoned for “Employment Mixed Use” purposes in the Dundalk and Environs Development Plan. This zoning objective seeks “To provide for employment and supporting uses”. The principle of the proposed access road to serve the lands can be considered in accordance with this zoning.

## **7.3. Rationale for Proposed Development**

- 7.3.1. Louth County Council’s first reason for refusal cites insufficient rationale for the proposed entrance and access road in the absence of development proposals for the lands. Concerns are raised in relation to the piecemeal and haphazard nature of the proposal which would result in a duplication of infrastructure and be contrary to policy EDE14 of the Louth County Development Plan. Concerns in relation to the principle of the proposed access road are also raised within the first reason for refusal.
- 7.3.2. The appeal site forms part of a larger landholding in the ownership of the applicant as outlined in blue within the application drawings. The site is currently in agricultural use. No defined use is provided for the adjoining lands within the application or appeal documentation.
- 7.3.3. A case is made within the first party appeal that the proposed access road represents an initial critical stage in the development of the enterprise and employment zoned lands. Significant reference is made within the grounds of appeal to the planning history for the site and adjoining employment zoned lands wherein the principle of a second access road to the overall employment zoned lands was established. In this regard it is stated that the proposal is not piecemeal or haphazard but benefits from a historic planning context.
- 7.3.4. A masterplan document submitted under PA Ref 09/879 is submitted in conjunction with the appeal documentation. The extent of the masterplan relates to lands to the south of the site and does not include the appeal site. Figure 5 of the masterplan

illustrates a second access road on the appeal site which connects to a central avenue on the adjoining masterplan lands to the south.

- 7.3.5. As detailed within the planning history section of this report permission was granted for extension of duration of this permission to February 2026 under PA Ref 20/122. The application is accompanied by extracts of approved site layouts permitted under PA Ref 09/879 and PA Ref 11/367 which illustrate an outline of an access road from the site.
- 7.3.6. Reference is made within the appeal to the planning history pertaining to the site. Under PA Ref 08/911 planning permission was granted on the subject site for an access road and associated site development works. The report entitled “Background Information and Infrastructure Design Details” prepared by P. Herr and Associates outlines that the application is essentially a repeat of a similar application that was approved in 2008 under PA Ref 08/911. This permission was never implemented and has now expired.
- 7.3.7. Each subsequent application for an access road on the site requested details of the proposed use of the site including the request for further information issued under PA Ref: 15/13 and refusal issued under PA Ref: 19/1103.
- 7.3.8. Policy EDE14 of the Louth County Development Plan seeks: *“to comply with development management guidelines for industrial and commercial developments as set out in Section 6.3 above unless otherwise provided for in a local area plan”*. The guidance set within Section 6.3 relates to guidance for the scope and content of masterplans for industrial/commercial development.
- 7.3.9. A masterplan for the appeal site is submitted as Appendix 5 of the appeal. A case is made within the appeal that the masterplan submitted sufficiently meets in the requirements of assessing the development proposed under planning ref. 20/485 and complying with the requirements of Policy EDE14 of the Louth County Development Plan. This illustrates how the proposal will connect with the existing and future road network on the adjoining business park lands to the south of the site. However, no details of the use of the associated use of the lands within the ownership of the applicant or use of the access road are provided.
- 7.3.10. On review of the information submitted in conjunction with the application and appeal and notwithstanding the case made by the applicant I share a number of the

concerns raised by the planning authority within the first reason for refusal in relation to the creation of an access to an undefined use. I consider that insufficient information is provided in relation to the use of the access road both in the context of the permitted business park development and undeveloped lands to the north in the ownership of the applicant.

- 7.3.11. I consider that points raised within the Infrastructure Report prepared under PA Ref 19/1033 remain unresolved within the current application including the need for a TTA in accordance with the NRA Traffic and Transportation Assessment Guidelines (May 2014) and demonstration that the junction arrangement is adequate for the anticipated vehicle type – including auto track analysis. In this regard, I consider that the granting of the entrance would be premature.
- 7.3.12. In terms of the reference within the reason for refusal to the requirement for the new entrance, I note the planning history for the adjoining business park lands to the south which indicated the provision of a second access point to the business park lands and the layout of the permitted road network on the adjoining lands which ties into the proposed access road. Furthermore, no objection to the overall principle of the creation of an access road at this location was raised within previous applications pertaining to the lands.
- 7.3.13. I accept the case made within the first party appeal relating to the landlocked nature of the appeal site and reliance on third party right to access in the absence of an independent access to the site. In this regard I do not consider that the reference within Louth County Council's decision to refuse permission for the development to duplication of infrastructure is warranted. I have no objection in principle to the creation of an entrance to serve zoned lands.
- 7.3.14. Notwithstanding this, I consider that a full and comprehensive rationale for the proposed access road should be provided in terms of the nature of proposed uses on lands in the ownership of the applicant and dual usage with the existing business park lands and compatibility with adjoining residential landuses.
- 7.3.15. On an overall basis I consider that insufficient information has been provided within the application in relation to the nature and purpose of the proposed access road and I recommend that planning permission is refused on this basis.

#### 7.4. Layout and Sightlines

- 7.4.1. Louth County Council's second reason for refusal outlines that the application documentation fails to demonstrate that adequate sightlines would be available at the junction between the proposed access road and the country road within lands under the applicant's ownership. Accordingly, to permit the proposed development would materially contravene the standards of the Louth County Development Plan 2015-2021 and would endanger public safety by reason of traffic hazard.
- 7.4.2. Policy TC 6 of the Louth County Development Plan seeks *"to adhere to the principles contained within the guidance document, Design Manual for Urban Roads and Streets (2013) Department of Transport, Tourism and Sport (DTTS)/ Department of the Environment, Community and Local Government (DECLG)"*.
- 7.4.3. Policy TC 12 seeks: To apply the visibility standards and vehicle dwell area requirements as set out in Tables 7.4 and 7.5 in accordance with the National Roads Authority Design Manual for Roads & Bridges (DMRB) for the national road network and to ensure that the standards set out in the Design Manual for Urban Roads & Streets (DMURS) apply to all urban roads & streets.
- 7.4.4. A case is made within the first party appeal that the second reason for refusal lacks merits and is not supported by guidance set out within DMURS. It is stated that appropriate visibility standards as set out within DMURS can be achieved between the proposed vehicular access and the existing public road without impacting on 3rd party lands.
- 7.4.5. The layout of the proposed access road is illustrated in Drawing no. SMcG-APP-004 Proposed Road Layout Plan. The road is 7.3m in width and accommodates a 2m cycle path and 2m footpath adjacent to the road. On an overall basis, I have concerns in relation to the and layout of the proposed access road and its overall compliance with the guidance set out within DMURS. I have concerns in relation to junction treatment and the proposed tie in of the footpath and cycle path on the northern extent of the access road with the existing public footpath and cycle path along the Newry Road as illustrated within Drawing no SMcG-PA-004.
- 7.4.6. The application proposes a realignment of an existing county road that will involve abandonment of a portion of a public road which currently provides access to a number of residential properties. I do not consider that the impact of the proposal on



adjacent residential properties has been comprehensively addressed within the application. I consider that this should be addressed within a revised application. Furthermore, I consider that the applicant should provide detailed drawings indicating extent of existing public road affected by the proposal and demonstrating clearly that third party properties are not impacted.

- 7.4.7. In terms of proposed sightlines, I note that the proposed development is located within a 60 km/hr speed limit. No bus route operates along the adjoining road network and in this regard the appropriate sight distance provision is 59m as per Table 4.2 of DMURS. A case is made within the appeal that Drawing no. SMG APP-04 demonstrates that it is possible to achieve the required visibility at the proposed vehicular entrance of 59m x 2.4m x 1.05/2.0m to 0.6/2.0m when measured along the nearside running edge in both directions with no impact on any third party lands.
- 7.4.8. Section 5.26 of the appeal refers to the observation on the application and in particular the reference to ownership of a plot of land adjacent to the existing residential property at the junction of the cul de sac access road and the Newry Road which is included within the application boundary. It is stated that legal claims of property ownership are not within the remit of the planning process to resolve. Reference is made to the requirements of Section 5.13 of the Development Management Guidelines for Planning Authorities in this regard which states that:
- ‘the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts’.*
- 7.4.9. However, in the instance of the proposal I note that the planning authority’s second reason for refusal questions the applicant’s ability to deliver adequate sightlines on lands within the applicant’s ownership to the north along Newry Road. I note that the issue of land ownership and sufficient legal interest to undertake the works was raised within all previous applications for the site. In this instance, I consider that the onus is on the applicant to demonstrate that appropriate and required sightlines can be facilitated and the works do not involve infringement on third party lands.
- 7.4.10. The applicant makes a case that the lands in question form part of the public domain. However, this is disputed by the planning authority within the response to the grounds of appeal wherein it is stated that *‘the planning authority cannot*

*determine with any certainty the rights of the applicant to undertake the works*". On this basis it is stated that it is not acceptable that the objectors' claims can be dismissed by the applicant. I do not consider that this point has been sufficiently addressed within the first party appeal.

7.4.11. In general terms I have concerns in relation to the overall compatibility of the scheme with the requirements of DMURS. I also have concerns in relation to the proposed tie in of the footpath and cycle path on the northern extent of the access road with the existing public footpath and cycle path along the Old Newry Road as illustrated within Drawing no SMcG-PA-004.

7.4.12. On the basis of the above reasons and considerations, I recommend that permission is refused broadly in accordance with the planning authority's second reason for refusal.

## 7.5. **Other Issues**

### *Proposed Culvert of Raskeagh River*

7.5.1. The application drawings illustrate the partial culverting of the Raskeagh River to accommodate the proposed access road. I note the reference in the application drawings to such works being carried out in accordance with the development approved under 09/879.

7.5.2. Notwithstanding this, I note that the on file from the Infrastructure Department in Louth County Council recommends a request for further information in relation to this element of the proposal including consent from the OPW together with compliance with Inland Fisheries Guidance. This information is not addressed within the first party appeal. I consider there are information deficiencies within the application in this regard.

### *Impact on Residential Amenity*

## 7.6. **Appropriate Assessment**

7.6.1. A Natura Impact Statement prepared by EHP Services is submitted in conjunction with the application.

7.6.2. Section 2.1 of the report sets out a description of the proposal. The study area is described as being semi-rural in nature, character and use and is located in the northern periphery of Dundalk. The application site forms the south eastern corner of

a larger pastoral field located to the west of the old cul-de-sac'd Newry Road (R132). The habitat is classified as GA1- Improved Agricultural Grassland within the report.

7.6.3. The sites south western boundary adjoins the Raskeagh River which flows south-eastwards into the Castletown River Estuary. The NIS outlines that this section of the Raskeagh River comprises of an artificially straightened section of slow moving water. Part of the north eastern boundary comprises a dry field ditch which traverses the field and connects with the Raskeagh River.

7.6.4. This identifies that the appeal site is neither directly connected to nor necessary to the management of the Natura 2000 sites. The proposed development would not be located within the SAC or SPA and there would be no direct effects as a result.

7.6.5. Table 1 of the study identifies that the site is located within 15km of a number of designated sites including the following:

Special Protection Areas:

- Carlingford Lough – (Site Code 004078)
- Carlingford Lough – (Site Code UK9020161)
- Dundalk Bay – (Site Code 004026)
- Strabannan-Braganstown – (Site Code 004091)

Special Areas of Conservation:

- Carlingford Shore (Site Code 002306)
- Carlingford Mountains (Site Code 000453)
- Derryleckagh (Site Code UK00166200)
- Dundalk Bay (Site Code 000455)
- Rostrevor Wood (Site Code UK0030268)

7.6.6. The study outlines that having regard to distance, topographical considerations, and the nature of intervening landuses between the appeal site and designated conservation sites including Carlingford Lough SAC and SPA, Strabannan-Braganstown SPA, Carlingford Mountains SPA, Carlingford Shore SPA, Derryleckagh SAC and Rostrevor Wood SAC would not be prone or probable to direct or indirect impacts arising from the proposed development.

- 7.6.7. Having regard to the characteristics of the development, the location of the appeal site, the absence of a pathway to and the separation distance to the aforementioned sites, I am satisfied that these sites can be screened out of any further assessment.
- 7.6.8. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in-combination with other plans or projects could have a significant effect on European Site No. 000455 or 004026, in view of the site's Conservation Objectives, and Appropriate Assessment and submission of a NIS is, therefore, required.

### ***Natura Impact Statement***

- 7.6.9. The site is located within 1.2km from the designated European sites of Dundalk Bay Special Area of Conservation (site code 000455) and Dundalk Bay Special Protection Area (site code 004026). The site is bound to the south west by the Raskeagh River which drains to Dundalk Bay. Therefore, there is a potential hydrological pathway to the SAC and SPA.
- 7.6.10. The Dundalk Bay SAC and the Dundalk Bay SPA overlap. Dundalk Bay is a very large open, shallow sea bay with extensive saltmarshes and intertidal sand / mudflats, extending some 16 km from Castletown River on the Cooley Peninsula in the north, to Annagassan / Salterstown in the south. The bay encompasses the mouths and estuaries of the Rivers Dee, Glyde, Fane, Castletown and Flurry. The following provides a summary of the qualifying interests and special conservation interests for these sites.

#### **Dundalk Bay SAC (site code 000455)**

- Estuaries, Mudflats and sandflats not covered by seawater at low tide, Perennial vegetation of stony banks, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows, Mediterranean salt meadows.

- 7.6.11. The Conservation Objective for Dundalk Bay SAC seeks to maintain the favourable conservation status of habitats and species.

#### **Dundalk Bay SPA (site code 004026)**

- Great Crested Grebe Podiceps, Greylag Goose, Light-bellied Brent Goose, Shelduck, Teal, Mallard, Pintail, Common Scoter, Red-breasted Merganser, Oystercatcher, Ringed Plover, Golden Plover, Grey Plover, Lapwing, Knot,

Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank, Black-headed Gull, Common Gull, Herring Gull, Wetlands & Waterbirds.

7.6.12. The Conservation Objective associated with the Dundalk Bay SPA seeks to maintain or restore the favourable conservation status of habitats and species.

Identification of likely effects

7.6.13. Table 6 and Section 4.4 of the NIS provides an overview of the likely direct, indirect and secondary impacts associated with the proposed development. The following provides a summary of potential impacts:

- Construction related impacts: .
- Eventual use by traffic presents minimal threat to water quality from associated hydrocarbon spillages i.e. diesel, petrol, engine oil etc from construction or operational vehicles. Contaminated matter entering the Raskeagh River could compromise localised water quality and Dundalk Bay.
- Potential impacts upon existing air quality from the proposed development.
- Use of the site as a business park is markedly different from present agricultural use.
- Associated construction and operational traffic will increase localised emissions of airborne hydrocarbons.
- Excavation works in proximity to Raskeagh River has the potential to impact water quality and consequently the conservation interests of the downstream Conservation Areas.

In-Combination/Cumulative Impacts

7.6.14. Table 10 of the NIS addresses cumulative impact. This provides an overview of extant permissions on adjoining and/or downstream sites in proximity to the course of the Raskeagh River.

Mitigation Measures

7.6.15. The following mitigation measures are identified within Section 4.6 of the study:

- Aware of Nature of Conservation Objectives: Prior to commencement of any works on site, contractors shall be made aware of the Raskeagh River's

proximity to the application site and the conservation objectives of designated sites.

- Sediment Control: the proposed new vehicular entrance will be equipped with all appropriate vehicle entry/exit pad and sediment trap to minimise tracking of dirt, dust or other materials onto the roadway for the duration of construction. Safeguards shall be put in place to ensure that the wheel wash does not discharge into the adjoining river.
- Litter Management Plan: A litter management plan shall be prepared and implemented on site during all stages of construction.
- Water and Ground Controls: At no stage shall material or effluent associated with the proposal be washed from the development site into adjoining watercourses.
- Hazardous Materials: Any mobile toilet units shall be stored away from the application site's northern drainage ditch at Raskeagh River,
- Assessment and Monitoring of Mitigation Measures:

### Conclusion

7.6.16. Section 5.0 of the NIS concludes the following in respect of the proposal:

*"The mitigation measures set out above reflect best practice in construction and development. Such measures will be effective in minimising as much as is possible any potential residual environmental impacts.*

*It is therefore concluded that the proposed development in conjunction with these measures will not present any direct or indirect detrimental impact, either alone or in combination with any other plan or project, upon the integrity and qualifying interests of the protected species or habitats within the Natura 2000 site network or the Conservation Objectives of Dundalk Bay SPA or SAC".*

7.6.17. The conclusions of the study are accepted by Louth County Council. The AA concludes the following:

*"I consider it reasonable to conclude on the basis of the information on file, which I consider adequate to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not*

*adversely affect the integrity of the European Sites (Dundalk SPA/SAC) or any other European site, in view of the sites Conservation Objectives.*

#### Assessment

- 7.6.18. Notwithstanding the above conclusions of the NIS, I have concerns in relation to the scope and content of the study. The onus is on the applicant to ensure that adequate and relevant information is submitted to enable an Appropriate Assessment to be carried out. Such an assessment should be based on the best scientific knowledge in the field, of all aspects of the development project which can, by itself or in combination with other plans and projects, adversely affect the European site in light of its Conservation Objectives.
- 7.6.19. In particular, I consider there are information deficiencies in relation to the proposed works to the Raskeagh River which I do not consider are adequately described or assessed within the study. The report on file from the Infrastructure Department in Louth County Council recommends a request for further information in relation to this element of the proposal including consent from the OPW together with compliance with Inland Fisheries Guidance. This information is not addressed within the first party appeal. The submitted NIS does not include a description of the works to the river, which is a direct pathway to Dundalk Bay and the mitigation measures are not tailored to negate against downstream impacts on Dundalk Bay.
- 7.6.20. Water quality within Dundalk Bay is a fundamental component of the area's conservation importance. Having regard to the information deficiencies in relation to the works to the River, I have concerns about potential associated downstream effects that have not been considered in the NIS.

#### Conclusion

- 7.6.21. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site(s) No. 000455 and 004026, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.'

7.6.22. This is a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal set out above, it may not be considered necessary to pursue the matter’.

## **8.0 Recommendation**

8.1. I recommend that permission is refused for the development in accordance with the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. Policy (EDE 14) of the Louth County Development Plan 2015-2021 seeks to comply with the development management guidelines for industrial and commercial development set down in Section 6.3 of the Development Plan. These set out the requirement for a masterplan in the event that an industrial/commercial development forms part of a larger area, including land in multiple ownership to ensure integrated and coherent development of the lands is carried out. The proposal seeks permission for an access road to serve existing “Employment Mixed Use” zoned lands in the absence of development proposals for the lands. The proposal for an access road in the absence of a proposed development which it is intended to service is unjustified and represents a piecemeal and haphazard development. The proposed development would therefore set an undesirable precedent for similar ad hoc development and would be contrary to the proper planning and sustainable development of the area.
2. Policy TC 6 of the Louth County Development Plan seeks to adhere to the principles contained within the guidance document, Design Manual for Urban Roads and Streets (2013) Department of Transport, Tourism and Sport (DTTS)/ Department of the Environment, Community and Local Government (DECLG). On the basis of the proposed layout, the Board is not satisfied that the proposal complies with the requirements of DMURS. In particular, the application documentation fails to demonstrate that adequate sightlines in accordance with the requirements of DMURS would be available at the



junction between the proposed access road and the Old Newry Road within lands under the applicant's ownership. Accordingly, to permit the proposed development would be contrary to Policies TC6 and TC12 of the Louth County Development Plan 2015-2021 and would endanger public safety by reason of traffic hazard.

3. The Board is not satisfied, on the basis of the information provided with the application, including the Screening for Appropriate Assessment Report /Natura Impact Statement, that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site(s) including Dundalk Bay SAC 000455 and Dundalk Bay SPA 004026 in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

*Note: 'This is a new issue in the appeal and the Board may wish to seek the views of the parties.'*

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Stephanie Farrington  
Senior Planning Inspector

22<sup>nd</sup> of April 2021