



An
Bord
Pleanála

Inspector's Report

ABP-310321-21

Development

Retention an existing concrete hardstand, the development is comprising of the construction of a 210.5m² concrete hardstand for storage purposes and the construction of a soak pit together with all associated site works & services.

Location

Conveyorbelt House, Castlewarden, Straffan, Co. Kildare.

Planning Authority

Kildare County Council.

Planning Authority Reg. Ref.

2121.

Applicant

Mark Fitzpatrick.

Type of Application

Retention Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party.

Appellant(s)

Anne McGill & Patrick O'Connor.

Observer(s)

None.

Date of Site Inspection

14th day of May, 2022.

Inspector

Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The irregular shaped appeal site has a stated site area of 0.5918ha. It is located in the rural Townland of 'Castlewarden North' with road frontage onto the southern side of the L6010 restricted in width local road c600m to the west of this road's intersection with Junction 5 of the N7 which provides connection to suburban outskirts of Dublin to the east and to the west the settlement of 'Kill', in County Kildare. In addition, the northern boundary of the site lies c320m to the north of the N7 corridor.
- 1.2. The site contains two entrances onto the L6010 that serves a dwelling house structure that contains commercial offices; two adjoining shed structures; a number of storage containers including two stacked metal containers; various hardstand areas in use for outdoor external storage setback from the L6010. The most eastern entrance contains signage for 'C & K Fitzpatricks'. To the rear of the dwelling house structure is an area of kept lawn.
- 1.3. The eastern, southern and western boundaries of the site adjoin lands that appear to be associated with the commercial business 'Pat O'Connor Conveyor Belts'. The neighbouring lands to the east, south and west of this adjoining property is in agricultural use. Directly opposite the site there are two one-off rural dwellings.
- 1.4. The surrounding landscape is predominantly agricultural in its function and character.

2.0 Proposed Development

- 2.1. Retention permission is sought for a development consisting of an existing concrete hardstand, the development is comprising of the construction of a 210.5m² concrete hardstand for storage purposes and the construction of a soak pit together with all associated site works & services.
- 2.2. On the 7th day of April, 2021, the Planning Authority received the applicant's further information response. It included the following:
 - Sets out that the estimated deliveries for the month of February, 2021, is provided.
 - Sets out that the opening hours of the business to which this application relates to.
 - A sightline drawing is provided.

- It sets out that any rainwater that is generated in the subject area will be drained away from the site by means of a designed soak pit to the south of the hardstand which is to be retained under this application.
- A written response to the Third-Party submissions is provided.
- Sets out that the site boundary as provided with the initial application are correct.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By order dated the 4th day of May, 2021, the Planning Authority decided to **grant retention permission** subject to 7 no. conditions including:

- | | |
|----------------------|---|
| Condition No. 1: | Seeks that the development be retained in accordance with the documentation received with the application on the 13 th day of January, 2021, and as amended by the applicant's further information received on the 7 th day of April, 2021. |
| Condition No. 2: | Requires sightlines to accord with Transport Infrastructure Ireland Document (DN-GEO-03060), June, 2017. |
| Condition No. 3: | Requires the erection of warning signage in the vicinity of the entrance. |
| Condition No. 4: | Restricts any surface water runoff onto the public road. |
| Condition No. 5 & 6: | Sets out surface water drainage requirements. |
| Condition No. 7: | Requires the payment of a financial contribution . |

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final Planning Officers report**, dated the 29th day of April, 2022, is the basis of the Planning Authority's decision. It includes the following comments:

- It notes that the Area Engineer's report concluded with a request for further clarification of further information but having spoken to the Transportation Department they are now satisfied that the development subject to conditions including the retention of the existing sightlines and the erection of appropriate warning signs is satisfactory.
- All items in the further information request have been addressed.
- No Appropriate Assessment issues arise.
- Concludes with a recommendation to grant retention permission subject to conditions.

The **initial Planning Officers report**, dated 1st day of March, 2021, concludes with a request for further information on the following:

Item No. 1: Clarification on traffic types and volumes for the development is sought.

Item No. 2: A revised Site Layout Plan indicating the location of the junction of the proposed access and the public road is sought. In addition, it is required that the sight visibility splay at this location to accord with required standards for such access.

Item No. 3: Requires a response to the concerns raised by Third Parties to the proposed development.

3.2.2. **Other Technical Reports**

Transportation Department: Final report, dated the 26th day of April, 2021, raised no objection subject to the inclusion of four recommended conditions. These deal with sightlines, warning signs on the public road in the vicinity of the entrance and surface water drainage.

Municipal District: Report dated the 25th day of February, 2021, requests further information on the matter of sight line visibility onto the public road.

Water Services: Report dated the 27th day of January, 2021, raised no objection, subject to safeguards.

3.3. Prescribed Bodies

3.3.1. **Irish Water:** No objection, subject to safeguards (28/01/21).

3.4. Third Party Observations

3.4.1. Two letters of objection were received from Third Parties during the course of the Planning Authority's determination of this application. I consider that the substantive planning issues raised correlate with those raised by the 3rd Party in their appeal submission to the Board which is summarised under Section 6.1 of this report below.

4.0 Planning History

4.1. Site

P.A. Ref. No. 81/0212: Planning permission was **refused** for the retention of an existing farm building.

P.A. Ref. No. 82/1397: Permission was **granted** for the retention of an agricultural shed for storage of general personnel goods and conveyor belting used in agriculture and allied industries.

P.A. Ref. No. 83/1110: Planning permission was **granted** for alterations and extension to existing dwellings and construction of a garage.

P.A. Ref. No. 85/0151: Planning permission was **granted** for the erection of a single storey extension, garage, and conversion of part of dwelling to a granny flat.

P.A. Ref. No. 86/0981: Permission was **granted** for the retention of alterations to previously approved extension and granny flat to an existing dwelling under P.A. Ref. No. 85/0151. Retention permission was **granted** for existing works inside of loft conversion on first floor level of existing dwelling.

ABP. Ref. PL75974 (P.A. Ref. No. 88/0090): On appeal to the Board permission was **granted** for the retention of an agricultural type haybarn for storage of general personal goods and conveyor belting used in agriculture and allied industries and car parking area.

P.A. Ref. No. 95/0369: Planning permission was **granted** for relocation and construction of new entrance to house and stables.

4.2. In the vicinity:

- 4.2.1. No recent and/or relevant Board cases pertaining to this site and its setting.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The Kildare County Development Plan, 2017-2023, is operative plan.
- 5.1.2. Section 5.3.2 of the Development Plan deals with 'Economic Development Strategy' for the County. It indicates that this strategy is derived from the Regional Planning Guidelines and the Development Plans Core Strategy.
- 5.1.3. In relation to rural areas, it states that: *"in the rural areas there are rural settlements and rural nodes which provide opportunities for employment-generating uses"*.
- 5.1.4. Land-Use and Economic Development policies set out under Chapter 5 of the Development Plan include:
 - ECD 9: *"Encourage and facilitate small indigenous industries at appropriate locations, in recognition of their increasing importance in providing local employment and helping to stimulate economic activity within small communities"*.
- 5.1.5. Section 5.8 of the Development Plan deals with the matter of 'Rural Development'.
- 5.1.6. Section 5.12 of the Development Plan deals with the matter of 'Rural Enterprises' and it includes the following policies:
 - ECD 26: *"Support the development of indigenous industry and business start-ups in rural employment centres (villages and settlements in Kildare, subject to compliance with siting, design and environmental considerations"*.
 - ECD 27: *"Support and facilitate sustainable agriculture, agri-food, horticulture, forestry, renewable energy and other rural enterprises at suitable locations in the county"*.
- 5.1.7. Section 7.5.5 of the Development Plan deals with Surface Water and Flooding and it sets out that it is the policy of the Council under policy SW1 to: *"manage, protect and*

enhance surface water quality to meet the requirements of the EU Water Framework Directive".

5.1.8. Chapter 10 of the Development Plan deals with 'Rural Development' and under Section 10.4 states that: "*it is important to recognise that there is a role for rural employment in contributing to the general economic development of the county*" and that: "*in rural areas of the county there is a need to balance social and economic activity with the protection of the environment and character of the rural landscape*". It also sets out that: "*it is the intention of the Council to restrict development in rural areas to appropriate forms of development that have a social or economic connection to the local area*".

5.1.9. Section 10.4.10 of the Development Plan recognises that the development of rural enterprise and employment opportunities will be vital to sustaining the rural economy. It sets out that: "*in accordance with the economic strategy for the overall county, employment, servicing the rural areas should, in general, be directed to local employment centres, small towns and villages*" ... "*catering for local investment and small scale industry.*" It also sets out a number of key considerations including but not limited to:

- "*where established authorised rural based enterprises seek to expand beyond their existing capacity and, in the opinion of the planning authority, the expansion proposed would seriously affect the rural nature or amenity of the rural areas and surrounding countryside, it will generally be encouraged to locate in serviced zoned lands*".
- "*Commerical / industrial developments in rural areas may be acceptable subject to proper planning considerations, where the Council is satisfied that the proposed developmetn requires to be located in the rural area due to its dependence on an existing local resource or source material that is required for the carryinhg out of the industrial process / commerical activity / service. The local resource or source of material shall be in close proximity to the location of the proposed development*".
- "*Where an area is not within an identifiable settlement, and is not otherwise zoned as part of this Plan, or any of the Local Area Plans, the use of such land shall be deemed to be primarily agricultural*".

5.1.10. Rural Economy policies set out under Chapter 10 of the Development Plan include:

RE 4: *“Support the provision of a high quality rural environment, encourage diversification and improved competitiveness of the rural economy, sustain the livelihood of rural communities and promote the development of the wider rural economy, all within the context of the sustainable management of land and resources”.*

RE 9: *“Protect agriculture and traditional rural enterprises from unplanned and/or incompatible urban development.”*

5.1.11. Rural Enterprise policies set out under Chapter 10 of the Development Plan include:

RLE 3: *“Require new buildings and structures:*

- To be sited as unobtrusively as possible;*
- To be clustered to form a distinct and unified feature in the landscape;*
- To utilise suitable materials and colours;*
- To utilise native species in screen planting in order to integrate development into the landscape”.*

RLE 4: *“Encourage the development of alternative rural based small-scale enterprises. The Council will consider the use, nature and scale of developments when assessing such applications. In addition, the Council will also consider the requirement to locate such developments in rural areas.”*

RLE 10: *“Ensure that applicants comply with all other normal siting and design considerations”.* (Note: including:

* The ability of a site in an unserved area to accommodate an appropriate on-site surface water management system in accordance with the policies of the Greater Dublin Strategic Drainage Study (2005), in particular those of Sustainable urban Drainage Systems (SuDS).

* The need to comply with the requirements of The Planning System and Flood Risk Management Guidelines for Planning

Authorities, Department of Environment, Heritage and Local Government (2009)/

5.1.12. Rural Enterprise objectives set out under Chapter 10 of the Development Plan include:

REO 1: *“Continue to support the rural development within the county as a contributory means of sustaining the rural economy”.*

REO 4: *“Ensure that all new developments and practices do not undermine rural ecosystems, landscapes and conservation areas and are conducted in a manner consistent with the protection of the local environment and in line with national legislation and relevant guidelines”.*

5.1.13. Under Map 14.1 of the Development Plan the site forms part of the ‘Northern Lowlands’ Character Area which is identified under Table 14.1 of the said Plan as being of ‘Low Sensitivity’.

5.1.14. Chapter 17 of the Development Plan sets out the Development Management Standards.

5.2. Natural Heritage Designations

5.2.1. The Red Bog SAC (Site Code 000397) is located c.7.9km to the south. The Poulaphouca Reservoir SPA (Site Code 004063) is located 9.9km to the south. The Glenasmole Valley SAC (Site Code 001209) is located 10.4km to the south-east of the site. Given the conservation objectives of the nearest Natura 2000 site’s it is considered that there are none within the zone of influence of the project.

5.3. EIA Screening

5.3.1. The proposal sought under this application consists of retention of the construction of a modest concrete hard standing area for commercial storage use and a soak pit on a brownfield site. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant thresholds, I conclude that, based on its nature, size, location, and separation distance to the nearest Natura 2000 site that there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required in this case.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The 3rd Party Appellants submission can be summarised as follows:

- Though the proposal is for 'commercial storage' it is considered that the nature and extent of the proposed works for which retention is sought is unknown.
- This application relates to a material change of use.
- The lands subject of this application is unzoned and the proposal for commercial use is a change of use.
- The planning application form does not set out the planning history of the site.
- In previous planning application P.A. Ref. No. 212/81, the applicants father states that the lands are waterlogged. These lands have been subject to considerable flooding and there is an issue water runoff onto adjoining lands.
- The soak pit operation and functionality are unknown.
- The previous drainage works are unknown and improvements to surface water management undertaken did not work.
- This area is known for flooding.
- The applicant's management of the site has resulted in waterlogging of land outside of the applicant's legal interest.
- The applicant has not provided adequate details of site servicing.
- The existing operations are unauthorised.
- The concrete hardstand is an intensification of unauthorised use at this site.
- The traffic implications of expanded hardstand are significant.
- The applicants company website shows a list of the applicant's business with their most prominent businesses being quarrying and mining.
- The applicant's business supplies conveyor materials to industrial businesses with the conveyor belt not in agricultural, horticultural or forestry use. It is not accepted

that the applicant's business falls into the category stated by the Planning Authority.

- The Planning Authority's Planning Officer fails to describe how this is a suitable location for this development.
- ECD 26 of the Development Plan supports indigenous industry subject to the siting, design and environmental considerations.
- This is not an indigenous industry.
- This is not a suitable location for the land uses being carried out and is not in a village or settlement. Therefore ECD 26 and 27 are not relevant.
- The very nature of open-air storage is random, scattered and visually intrusive.
- To permit truck and van movements, heavy machine goods handling machines, random personnel together with winter time lighting in the open countryside is at odds with the Council's Development Plan to protect and enhance the landscape.
- There is non-compliance with the original grant of permission to which this development relates.
- The information provided with this application is misleading and inadequate.
- This development results in an intensification of development and an intensification of traffic together with nuisances through to safety and environmental issues arising from the same.
- The road serving this site is unsuitable for the level of traffic and the large vehicles this additional facility results in.
- Concerns are raised that no rates have been paid for the unauthorised buildings and uses on this site. The unauthorised uses are described as consisting of the change of use of a domestic dwelling to offices; the provision of double decker containers and their use for storage; the installation of a second road entrance; the layout out and use of car parking areas; and the provision of the hard stand to which this application relates.
- Development at this site has progressed over the years in a manner that has shown disregard to the planning system.

- The Planning Authority have not assessed this development against the quantum of unauthorised uses and structures on this site.

6.2. Applicant Response

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

- This application relates to an ancillary use for the storage of materials associated with their business.
- This application arose from the provision of hard stand in an area for ancillary storage associated with development permitted originally by the Board in 1982 under ABP Ref. No. PL.63156 for three years and then permitted permanently under ABP Ref. No. PL.75947. The principle of the development as permitted has not changed by way of this development.
- It is rejected that the use as given by them as 'commercial storage' as the existing use is wrong. This is the actual use of the hardstand subject of this retention application.
- There is no change of use.
- It is contended that the use of the yard for storage is not the issue and the unauthorised development only related to the concrete structure which was deemed to be a structure by the Planning Authority.
- There is no other unauthorised use and if there are any minor transgressions these are not subject of this application.
- This application relates to the retention of the hardstand only.
- The design of the soak away was submitted with this application.
- It is misleading of the appellants to contend that the land subject of this application is agriculturally zoned.
- It is irrelevant that the lands are not zoned for commercial use as the lands commercial use has already been deemed to be permissible by previous applications historically determined.

- Traffic related issues have already been dealt with during the course of this application determination by the Planning Authority.
- The nature and extent of this development is commercial storage.
- The appellants arguments are spurious and vexatious.
- The decision made by the Planning Authority should be upheld.

6.3. **Planning Authority Response**

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

- After reviewing the appeal submission, they have no comments to make.
- The Board is requested to uphold its decision.

6.4. **Observations**

6.4.1. None.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. Having inspected the site and its setting, had regard to all documentation on file as well as all relevant planning policy provisions, I consider that the main issues that arise in this appeal case are those raised by the Third Party in their appeal submission to the Board. I am satisfied that no other substantive issues arise; however, the issue of appropriate assessment also needs to be addressed as part of the *de novo* assessment of development sought under this planning application. I therefore propose to deal with the issues raised under the following broad headings:

- Planning History and the Principle of the Development Sought
- Traffic and Road Safety
- Drainage
- Appropriate Assessment

- 7.1.2. Before I commence my assessment below, I note that the development sought under this application seeks retention permission for what is described as an existing hardstand with a given 210.5m² area and the retention of its use for commercial storage purposes. In addition, retention permission is also sought for the construction of a soak pit.
- 7.1.3. Whilst I am cognisant that the information on file appears that the works in relation to the concrete hardstand and soak pit appears to have taken place in recent years, for the purposes of clarity, it should be noted that the period for which a development has been in place is immaterial to the consideration of a planning application for permission for retention. Although in saying this I acknowledge that there are implications regarding enforcement with the matter of enforcement falling under the remit of the Planning Authority to deal with as they see fit.
- 7.1.4. I also note for clarity that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered “*as with any other application*”. This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place.

7.2. Planning History and the Principle of the Development Sought

- 7.2.1. The site which has a stated 0.5918ha area appears to have evolved around a dwelling house and its curtilage that appears to date to c1970s. The planning history for this dwelling house is unclear from available planning records but it would appear from an examination of the site’s available planning history that under P.A. Ref. No. 83/1110 permission was granted subject to conditions for its alterations and extension as well as the construction of a garage serving it.
- 7.2.2. In 1985 permission was also granted for the erection of a development described as consisting of extension, garage, and conversion of part of the dwelling to a granny flat under P.A. Ref. No. 85/0151. In addition, under P.A. Ref. No. 86/0981 permission was granted for alterations to the previously approved development permitted under P.A. Ref. No. 85/0151 alongside retention permission for a loft conversion on first floor level of existing dwelling.

- 7.2.3. It would appear from examination of the planning history of this site over the last four decades that the principal land use of the site subject of this application having regard to its past and up to present time planning history as permitted is residential.
- 7.2.4. In saying this the planning history also indicates that ancillary to the residential use of this one off rural dwelling house in the rural countryside of Kildare was permitted by way of the grant of retention permission on appeal to the Board (Note: ABP Ref. No. 9/5/63156 / P.A. Ref. No. 82/1397) for a development described as '*storage of general personnel goods and conveyor belting goods and conveyor belting used in agriculture and allied industries*' and by way of condition for a period of three years only.
- 7.2.5. On appeal to the Board (Note: ABP Ref. No. 9/5/75974 / P.A. Ref. No. 88/0090) retention of an agricultural type haybarn for storage of '*general personal goods and conveyor belting used in agriculture and allied industries together with the retention of parking*' was permitted by the Board.
- 7.2.6. Having examined the documentation publicly available on these files in relation to what is presented now as being a development, I note that it clearly sets out that the purpose of the shed's construction was to enclose stock as well as other personal items stored outdoors up to that date within the curtilage. Further the documentation provided by the applicant with these past applications also indicate that the shed structure was also to provide a covered area for the protection against the weather for own grown vegetables alongside ancillary clothes drying area during the winter months by occupants of the dwelling house on this site.
- 7.2.7. In relation to the conveyor belt type of storage. This was described as emergency belting storage as a backup supply for agricultural users only. Whereas it sets out that any large orders and of commercial nature would not be brought to this site but would be consigned directly to the customer/user's location.
- 7.2.8. In this regard, the documentation also sets out that once per year a large consignment of stock would be delivered with this unloaded in the yard and immediately stored away in the shed with the operation in its entirety taking place totally out of view of any residences with this meeting the applicant's yearly demand.
- 7.2.9. In terms of traffic generation, it is set out that the deliveries are made by the applicant approximately twice a week and that their business accommodated approximately 4 callers per week between the hours of 08:30 and 18:00 during the week.

- 7.2.10. The type of vehicles associated with these callers are described as light vans, private cars through to land rovers.
- 7.2.11. The applicant in this case describes the shed relating to this appeal case as one that: *“is only used as a dry store for my own goods and property, without any electrical supply, lighting, heating, insulation or telephone”*.
- 7.2.12. I also note that the planning application form provided that the use is described as ‘agriculture’ and there is no indication or commercial use stated for the nature of the development sought.
- 7.2.13. The applicant seeks to suggest that the nature, extent and other land uses on site have not changed from that which was permitted.
- 7.2.14. The appellant contends that over the years that the nature, scale and extent of commercial uses now is the predominant use of the site and that the dwelling house is now the office of the applicant’s business.
- 7.2.15. It would appear from publicly available information from the website for ‘C&K & Co. Fitzpatrick’, that it was established in 1969 and they have been providing conveyor products and services to the Irish market since. It sets out that the company moved from a warehouse in Blackrock to the subject site due to them having outgrown this premises. Since its movement to the current site, it indicates that the company expanded further to operate as a distributor for Flexco belt fasteners and Gurtec conveyor belt rollers. Alongside as it has grown it has grown from being a simple conveyor belt supplier to a one full on-stop-shop for customers conveyor needs. They indicate that with changes in the world conveyor belt market that they now represent the Dunlop Conveyor Belting group in Ireland. Which they described as the world’s largest conveyor belt manufacturer and that this has given them an unparalleled range of products to draw from.
- 7.2.16. From their existing location they indicate that they directly employ six persons and that their services on site includes on-site fitting and repairs of conveyor belts. In addition, it indicates that the services on site include a vulcanizing service.
- 7.2.17. It is further indicated that the industries they cater for are agricultural, quarrying and mining, recycling, and processing/chemical.

- 7.2.18. Alongside the sale, servicing through to vulcanizing of conveyor belts it is also further indicated that at this location they sell other items including animal matting, yard scrapers, fasteners through to belt cleaners and scrapers.
- 7.2.19. I also observed that the dwelling house now accommodates offices and there was no sign of residential use at the time of inspection. If there is any residential use remaining it is evident that it does not relate to the entirety of the residential building permitted on site and it does not appear that the ancillary garage permitted for ancillary use is so used. It too forms part of the now primary use of the buildings and spaces on this site which is a commercial building that includes retail sales, offices, repairs and services of various apparatus relating to the applicant's business.
- 7.2.20. In addition, the main areas of the site are used for storage associated with the applicants' commercial activities that are based at this location.
- 7.2.21. There is no evidence of growing vegetables by the applicant for storage within the structures on site. There is no evidence that the level of storage is personal and ancillary to the permitted primary use of this site which is as stated residential.
- 7.2.22. It is not reasonable in my view to consider that residential land use is the principal land use at this site. This land use in my view appears to have been long ceased as a principal land use and would appear that the applicant moved their commercial operations to this site from the previous base of their business as it expanded. The applicant's commercial business and operations at this site has continued to expand.
- 7.2.23. It is therefore of concern that the planning history associated with this site does not correspond or correlate in any coherent manner with the permitted nature scale and extent of development.
- 7.2.24. In saying this it is quite evident in my view from examining the planning history of this site and having regard to the existing land uses as well as structures present there is no parallel or corresponding planning history that supports or regularises it.
- 7.2.25. It is also quite evident in terms of the applicant's further information response which sets out that the official opening hours of their operations is Monday to Friday 08:30 to 17:00 and 09:00 hours to 12:00 on Saturday; the submitted table showing approximate traffic movements during the month of February, 2021, which was during the period of level 5 pandemic restrictions and therefore of negligible value in providing

any accurate reflection of normal traffic movements; through to extensive nature of buildings and spaces on site which form part of the commercial operations of the applicants operations are significantly intensified from what was permitted in terms of conveyor belt storage and the use permitted ancillary to the permitted principal residential use of this site.

7.2.26. I also consider that the information provided with this application is insufficient in terms of supporting that the residential land use is still the principal land use of this site through to that other land uses, buildings and structures are such that they did not result in change of use or that all spaces and structures on site that fall outside of what has been permitted by way of grants of permission are such that they did not require planning permission by way of being exempted development.

7.2.27. In relation to local planning provisions the current use of the site is one that could be considered as a non-conforming use within this rural setting. In relation to such land uses Section 17.1.3 of the Development Plan sets out that those that have valid permissions and including extensions to and/or improvements to the same that the Planning Authority will consider such developments “*where proposed development would not be seriously injurious to the amenities of the area and would not prejudice the proper planning and sustainable development of the area*”. I do not consider as said previously that the nature, scale, and extent of development on this site is one that meets this *caveat* given the level of unauthorised development on site.

7.2.28. Having regard to the above, it is my view that the development sought under this application seeks to intensify and expand the operation of an unauthorised development and it does not include any reference to the change of use of an area which its planning history suggests was amenity space relating to the dwelling on site. Therefore, in my considered opinion the Board is in no position to grant permission for the development sought based on the understanding of the unauthorised nature of the structures, spaces and land uses present on this site. A refusal of permission can be the only rational conclusion to the proposed development sought under this application as any other conclusion with result in undesirable precedent as well as development that fails to accord to the proper planning and sustainable development of this rural area which is sensitive to change that arises from non-conforming land uses and at a location where the site as well as the structures thereon are highly visible in their rural landscape setting, including as appreciated from the N7 corridor.

7.3. Traffic and Road Safety

- 7.3.1. Having inspected the site, having observed the substandard nature of the sightlines serving both accesses points onto what is a significantly restricted in width local road which during my inspection accommodated a steady stream of traffic in both directions. Together with this width being insufficient to accommodate along most of its length two average sized cars. With this including the stretch to the east that provides connection to the N7 Junction 5 which lies c1km away and given the nature of land uses within the immediate vicinity of the site I am not satisfied that the applicants response to the Planning Authority's further information addresses the substandard nature of the entrance upon which access to this site is dependent upon or the nature of the land uses on-going at this site.
- 7.3.2. In this regard I note that Item No. 2 of the Planning Authority's further information sought the applicant to submit a revised Site Layout Plan indicating the location of the junction of the proposed development access and the public road. With the sightline visibility at this junction to be in accordance with TII Document DN-GEO-03060, June, 2017.
- 7.3.3. The drawings submitted with the further information do not in my view clearly show the level of augmentation required to achieve the required sightlines given the substantive visual obstruction that is present on either side of both entrances which both appear to be used but the entrance towards the eastern end of the roadside boundary appearing to function as the principal entrance serving the applicants commercial operations with this including a sign showing their company's name.
- 7.3.4. Given the substandard nature of this road, the nature of land use to which this concrete hard stand would effectively support further intensification of through to the pattern and types of land uses dependent on this substandard road for access to the wider public road network I am of the view that this matter should have been resolved by way of the applicant's further information response and not by way of condition.
- 7.3.5. Alongside this I consider that so too should have the type and positioning of warning signage in the vicinity of the entrances and the manner in which surface water drainage including how contaminants and pollutants are dealt with on site so that these do not run off onto adjoining land, the public road and/or give rise to a situation prejudicial to

public health in an area where it would appear there is no mains drainage or water supply.

7.3.6. Having regard to the above considerations I am not satisfied based on the information provided that the intensification of commercial storage at this location would not give rise to any additional road safety and traffic hazard risk for users of this public road. I am also not satisfied that the additional manoeuvres of vehicles from the entrances serving would not conflict with the safe flow of traffic using the L6010 in either direction or that this road has the capacity to absorb additional traffic and types of traffic this road accommodates despite the fact that the posted speed limit being 60kmph. Moreover, I am not convinced that the level of traffic arising from the quantum of commercial operations at this site that any intensification of hard stand would not give rise to further conflict and hinderance with entrances opposite and adjoining this site.

7.3.7. **Drainage**

7.3.8. In addition to the concerns already mentioned that the documentation submitted with this file do not provide inadequate details in relation to drainage measures to prevent run-off onto the public road network similarly the drawings do not terms of run-off onto adjoining land it would appear that the applicants existing measures are insufficient to ensure no run-off onto adjoining land.

7.3.9. Further given the quantum of development on site the documentation on file it is my view that the documentation provided with this application fails to clarify that there is adequate and appropriate surface as well as foul drainage requirements to serve it. This information is also not evident in the available planning history files relating to this site.

7.3.10. It would therefore be appropriate that any grant of permission would first seek to clarify how the concrete hardstand surface water drainage measures integrates in a sustainable and appropriate manner with the required level of such infrastructure on site for the quantum and type of land uses on-going therein. In addition, that the concrete hardstand and the soak pit sought for retention does not adversely interfere with foul water drainage on site which I note should also be provided to meet the quantum of development on this site which appears to be beyond that of a basic domestic dwelling.

7.3.11. The Planning Authority sought to deal with these matters by way of condition. The Board may wish to seek further clarity on these matters prior to making any determination or they may decide in the event that they are minded to grant retention permission to deal with these concerns by imposing similar conditions with these ensuring that the development accords with best practice requirements.

7.4. Appropriate Assessment

7.4.1. The closest Natura 2000 site relative to the site are the Red Bog SAC (Site Code 000397) which is located c.7.9km to the south at its closest point to the appeal site boundary. This is a significant lateral separation distance and there is no hydrological pathway from this Natura 2000 site to the appeal site.

7.4.2. Having regard to the modest nature, scale and extent of the development sought under this application. Alongside having regard to the nature of the receiving environment, the nature of the intervening landscape and environment in between, with no hydrological pathway to any European sites, it is considered that in this case no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.5. Other Matters Arising

7.5.1. Procedural:

The appellant in this case requests that the Board make arrangements with them to view documentation they have compiled in relation to the appeal site. This is not procedural provided for and is therefore not acceptable. Therefore, for clarity I note that my assessment has had regard to all the documentation provided by them in their appeal submission to the Board. I have also had regard to the First Party's response and the relevant planning history pertaining to this site as well as its setting.

7.5.2. Residential Amenity:

While I question that the residential use present at this site, if it is to be accepted that there is some quantum of residential use remaining the documentation provided with this application fails to provide any information on how qualitative residential amenities would not be adversely impacted by this development and how minimum standards for access, private amenity, parking and the like is to be provided alongside the

intensification of commercial operations at this site that are sought for regularisation. Based on the information provided I am not convinced that the residential amenities remaining on foot of this application and when taken together with the continued commercial expansion of the applicant's business enterprise at this location meets minimum qualitative amenity standards.

7.5.3. **Public Notices:**

I have concerns that the public notice descriptions by failing to include the retention of the change of use of land on site facilitating access to this commercial storage hardstand and at the location of the hard stand subject of this application provides an accurate description of the development sought.

8.0 **Recommendation**

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

9.0 **Reasons and Considerations**

1. On the basis of the information on file, the planning history of the site and submissions made in connection with the planning application as well as on appeal, it appears to the Board that the proposed development relates to a site where the quantum of commercial uses and buildings are substantially unauthorised and it is considered that the development sought under this application would facilitate the consolidation and intensification of this unauthorised use and structures related to this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.
2. The development sought under this application is located along a local road which is inadequate in width and structural conditions. The entrances serving this site onto this local road are both substandard in their design and layout providing inadequate sightlines in both directions onto this public road. It is therefore considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the

development and the intensification of traffic volumes would generate on a substandard local road at a point where sightlines are restricted in both directions.

Patricia-Marie Young
Planning Inspector

30th day of May, 2022.