



An
Bord
Pleanála

Inspector's Report ABP 310349-21

Development	Change of use from agricultural sheds to agribusiness stores.
Location	Belinstown, Ballyboughal, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0128
Applicant(s)	James Nugent
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	James Nugent
Observer(s)	None
Date of Site Inspection	2 nd November 2021
Inspector	Brendan Coyne

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1.0 Site Location and Description

1.1. The site (0.85 Ha) is located on the eastern side of the R108 regional road, in the rural townland of Belinstown, Ballyboughal c. 6 km north-west of Swords in Co. Dublin. The site is broadly rectangular in shape with a road frontage width of c.38m and length of c. 192 metres. The site contains 3 no. agricultural sheds of uniform form and size, located in the centre of the site. The sheds are accessed via a concrete surfaced access road and a hard surfaced yard is located to the front / west of the sheds. A wastewater treatment system is located on lands to the rear / east of the sheds. The roadside boundary is defined with a c. 2.2m high wall, sliding metal gate and hedgerow. Mature trees define the southern boundary of the site. The northern and eastern boundaries are re defined with a post and wire fence. Adjoining lands to the south are occupied by the logistics and distribution company Aramex Ireland Ltd. Adjoining lands to the north and east are agricultural in nature. A number of residential dwellings are located opposite the site, on the western side of the R108 and a dwelling is located c. 100m to the north of the site. The site is located within a 50km/hr speed limit along the R108 regional road.

2.0 Proposed Development

2.1. Permission sought for the following;

- (i) The change of use of 1 no. existing agricultural shed to an agribusiness store to facilitate the storage, packing and distribution of agricultural fresh produce.
- (ii) The change of use of 2 no. existing agricultural sheds to agribusiness stores to facilitate the storage and packing of agricultural fresh produce.
- (iii) Construction of a new single storey staff/administration building to include an office/toilet/canteen to facilitate staff members on the construction site.
- (iv) The construction of an associated waste water treatment system to serve the new staff/administration building.
- (v) Permission to amend Condition No. 4 under Reg. Ref. F09A/0234 to facilitate commercial access through previously approved outer electric gate at the entrance to the subject site.

- (vi) Permission for the construction of a surface car park. (c. 80 sq.m.) to provide a total of 10 no. car parking spaces on the subject site.
- (vii) Permission for the erection of lightning columns on the subject site in interest of security and all associated site works necessary to facilitate the development.

2.1.1. Documentation submitted with the application includes the following;

- Planning Statement,
- Traffic Impact Assessment,
- Site Characterisation Report.

3.0 Planning Authority Decision

3.1. Decision

Fingal County Council REFUSED permission for the proposed development. The reasons for refusal were as follows;

1. The subject site is within the “RU” Rural Zoning Objective under the Fingal Development Plan, 2017 - 2023, the objective of which is to 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage.' The proposed Agribusiness use of the subject site, which also involves three existing structures the planning status of which are unclear, is listed within the 'Not Permitted' use class category related to the “RU” Zoning Objective. The proposal therefore materially contravenes the “RU” Zoning Objective of the Fingal Development Plan 2017-2023 and as such would be contrary to the proper planning and sustainable development of the area.
2. The proposal involves an intensification of use of the existing entrance fronting onto the R108. In its present format the proposed development would constitute a traffic hazard on the basis that there is insufficient space provided for HGVs to drive in off the road and stop, thereby causing obstruction to traffic on the R108. The proposed development would therefore be contrary to Objective

DMS129 of the Fingal Development Plan 2017-2023 and contrary to the proper planning and sustainable development of the area.

3. The proposed Agribusiness development by virtue of its operations, proximity to dwellings to the south and west and light spill would seriously injure the amenities of and depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for the Planning Authority's decision. Includes:

Re: Zoning / Land Use

- The proposed development involves use of the “RU” zoned site for agribusiness purposes.
- Definition of 'Agribusiness' as defined in Appendix 4 of the Fingal Development Plan 2017-2023 provided.
- 'Agribusiness' is a use class which 'is 'not permitted' under the “RU” zoning objective.
- Each element of the proposed development as described in the public notices would contravene materially the “RU” zoning objective of the site.
- Under P.A. Ref. F18AA/0417, the applicant referred to the shed structures as being exempted development. Having regard to enforcement information on the site, it is unclear how the structures are exempted development under Class 9 of the Planning and Development Regulations 2001 (as amended).
- A Section 5 Declaration of Exempted Development has not been issued in respect of the structures on site.
- The applicant contends that the proposal should be facilitated having regard to Objective Z05 of the Development Plan.
- Non-conforming uses are those which do not conform to the zoning objective of the area. They are uses which were in existence on 1st October 1964, or which

have valid planning permissions, or which are unauthorised but have exceeded the time limit for enforcement proceedings.

- The proposal does not come within the above-mentioned criteria for a non-conforming use.
- Agribusiness use on the site has not been in place prior to October 1964.
- Agribusiness use is not established on the site and there are no permissions authorising such a use on the subject site.
- There are on-going enforcement proceedings pertaining to uses on the site.

Re. Impact on adjoining property

- The Planning Authority has concerns in relation to the impact of the proposal on the amenity of the rural area and residential amenity of nearby property.
- The proposal involves a change of use to agribusiness on this rural site including provision of commercial access to the site, an office building, associated car park and the provision of lightning columns.
- Notwithstanding the EHO report, the Planning Authority is concerned the proposal would significantly impact on the residential amenities of adjoining properties to the south and west, noting the nature of the proposed commercial enterprise and the capacity for intensification of operations on this rural site.
- The applicant's website indicates that they operate on a 24 hour basis.
- The comments from the adjoining landowner relating to negative impacts arising from existing activities on site are noted.
- Having regard to the nature of the proposal, the Planning Authority considers that the subject site is unsuitable to accommodate the proposition and would be injurious to the residential amenities of adjoining property and the surrounding area.

Re. Transportation Issues

- The submitted Traffic Impact Assessment indicates the proposal can be supported by the surrounding road network.
- Proposed car parking spaces accord with Development Plan standards.

- The Transportation Planning Section report confirms that bicycle spaces and associated welfare facilities should be provided.
- Insufficient information has been submitted demonstrating how HGVs can enter the site with a distance of only 6 metres from the existing gate to the road edge.
- There is inadequate space provided for HGVs to drive in off the road, stop and prevent any blocking of traffic on the R108.
- It has not been demonstrated that HGVs can safely enter and exit the proposed development for loading and unloading purposes.
- The Transportation Planning Section advise that a separate pedestrian entrance should be provided with a footpath, while the entrance to the staff car park should be constructed as a raised ramped crossover of the footpath where pedestrians and cyclists retain priority.
- There should be a clear pedestrian crossing to the entrance of the proposed development/place of work in order to safe guard pedestrians from HGV traffic.

Re. Water & Drainage Issues

- While the Water Services report indicates no objection to the proposed wastewater treatment system, the Water Services Engineer has recommended that additional information is sought from the applicant in relation to surface water drainage.
- The proposal incorporates an increase in the amount of impermeable area on the site and the drainage layout submitted indicates that run-off will be directed to an existing outfall which discharges to a drainage ditch at the southern site boundary and does not incorporate sustainable drainage features to attenuate and treat the surface water prior to its discharge to the ditch.
- Report from Inland Fisheries Ireland noted – see Section 3.2.3 below.

Re. Impact on Natura 2000 Sites

- The applicant has not submitted an Appropriate Assessment Screening for the proposed development.
- On account of the inadequacy of information submitted in relation to water services, the Planning Authority is unable to determine whether the proposed development would result in any negative impact on Natura 2000 site(s).

EIA screening

- The proposed development is not listed in Schedule 5 (Part 1 or Part 2) of the Planning and Development Regulations 2001 (as amended) nor does the proposal meet the requirements for sub-threshold EIA, as outlined in Section 103 of the Planning and Development Regulations 2001 as amended.
- No Environmental Impact Assessment (EIA) is therefore required.

3.2.2. **Other Technical Reports**

Transportation Section:

- The proposed development is located in a 50km/hr speed limit on a Regional Road (R108).
- Under P.A. Ref. F18A/0417 permission was refused permission for the retention of gates at this site.
- The applicant has stated the existing development is currently un-used.
- This vehicular access has an established use.
- The Sightlines from the existing vehicular access are acceptable.
- The sightlines required are 70m in each direction from a 2.4m setback.
- The proposed car parking would have to be in accordance with the Warehouse & Distribution standard which is considered a reasonable comparative use for this proposed change of use development.
- The maximum parking requirement for the proposed development in accordance with Table 12.8 of the Development Plan Standards for Warehouse & Distribution is 1 space per 100 sqm. This equates to 9 car parking spaces needed with 10 being proposed.
- The applicant has not proposed bicycle parking spaces. The applicant should provide a minimum of 4 no. bicycle parking spaces.
- Welfare facilities for staff including showers and lockers should be provided.

- The applicant should submit a swept path analysis to demonstrate that a HGV vehicle can safely enter and exit the proposed development for loading and unloading.
- A full swept path analysis should be provided showing how a HGV vehicle enters the site from the proposed entrance with only 6m from the gate to the road edge.
- There should be more room for a HGV to drive in off the road, stop and prevent any blocking of traffic on the R108.
- A separate pedestrian entrance should be provided from the road entrance and a pedestrian footpath to the staff car park.
- No details of a gate have been provided for the proposed development for pedestrians/staff.
- The entrance to the staff parking area should be constructed as a raised ramped crossover of the footpath where pedestrians and cyclists retain priority.
- There should be a clear pedestrian crossing to the entrance of the proposed development/place of work. This would be needed to safeguard pedestrians from HGV/Trucks.
- The report concludes that further information should be requested requiring the following:
 - a) A minimum of 4 sheltered bicycle parking spaces.
 - b) A swept path analysis demonstrating how a potential HGV route is to be delivered within the confines of the proposed carpark layout. Also the parking of a HGV should be shown to prevent any blocking of traffic on the R108.
 - c) Details of a pedestrian gate at the entrance of the proposed development.
 - d) Further details of a pedestrian crossing from the car parking area to the entrance of the proposed warehouses developments.
 - e) Welfare facilities for staff including showers and lockers.

Water Services Department:

- The proposed development incorporates an increase in the amount of impermeable area on site.
- The drainage layout submitted indicates that run-off will be directed to an existing outfall, discharging to a ditch along the southern boundary.
- The surface water proposal should incorporate sustainable drainage features to attenuate and treat surface water before leaving the site.
- Further Information requested requiring, inter alia, the following:
 1. The drainage proposal should endeavour to incorporate a series of SUDS measures, as opposed to a pipe network, underground attenuation and light liquid interceptor device. The applicant should do a thorough SUDS evaluation, and consider the range of additional alternative measures, such as swales, integrated tree pits, bio-retention areas and the provision of above ground storage of surface water where possible.
 2. Surface water / rainwater should not discharge into the foul water system under any circumstances.

Environmental Health Officer: 10 No. Conditions recommended in the event of a grant of permission regarding hours of operation, noise and dust.

3.2.3. Prescribed Bodies

Inland Fisheries Ireland: There is inadequate information provided to permit an assessment of the likely implications of the proposed development on groundwater and surface water. Detailed information is required on the following:

- The existing process,
- The proposed process,
- Volume of water currently used daily, volume of water that will be used subsequent to the “change of use.”
- The existing treatment technology, representative analysis data to confirm the efficiency of the current treatment process and supporting evidence to show

the capacity within the existing treatment system to cater for any additional effluent.

- Seasonal variations in volumes of water used and volumes of wastewater produced.
- Details on the storage and disposal of waste such as unused vegetables.
- Detailed drawings of the current treatment system and the location of the final treated effluent disposal point.
- Details on the storm water collection, attenuation, treatment and disposal from yards and carparking.
- Characterisation of the spoil heaps shown on the Site Plan PL-02 together with drainage from same.

Irish Water: No objection subject to Conditions.

4.0 Planning History

4.1. Subject Site

P.A. Ref. F18A/0417 and ABP Ref. 302716-18 On appeal, retention permission REFUSED for an inner security gate, fencing and a car parking area and permission REFUSED for surfacing, drainage and all associated site works at Belinstown, Ballyboughal, Co. Dublin. Applicant - James Nugent.

The reason for refusal was as follows;

The car park proposed to be retained is located approximately 100 metres from the location where the staff who it is to serve are employed and would entail employees having to walk between the two sites along a regional road (R108) where there are no footpaths in place. The development proposed to be retained and the proposed development would, therefore, endanger public safety by reason of traffic hazard.

P.A. Ref. F09A/0234 Permission GRANTED in August 2009 for retention of revised layout to agricultural entrance including erection of steel sliding gate. Noted Condition includes:

C.4 The entrance hereby approved shall be used solely as an agricultural entrance and shall not facilitate access to commercial or other development without a prior grant of planning permission.

4.2. **Adjacent Site further to the south within applicant's ownership.**

P.A. Ref. F05A/1399 Permission GRANTED in April 2006 for extension of existing one and a half storey low pitched canopy roof and side wall up to the front of existing warehouse at existing vegetable processing plant. Condition 2 restricts use to that of storage, preparation and consignment of vegetables and ancillary offices. Applicant: Mr J. Nugent.

P.A. Ref. F03A/0680 Permission GRANTED in Sept. 2003 for a 2 storey extension to front, canopy etc at existing vegetable storage depot. Applicant: James Nugent

P.A. Ref. F95A/0927 Permission GRANTED in April 1996 for cold store building and biocycle unit, and open-sided extension to existing vegetable preparation building. Applicant: J. Nugent.

4.2.1. **Adjoining site to the south**

P.A. Ref. F13A/0175 Permission GRANTED in March 2014 for a change of use of a detached residential dwelling to an office ancillary to the permitted logistic complex use operated by Aramex Ireland Ltd. Applicant Joma Ltd.

Noted relevant Condition:

C.3 The structure the subject of this application shall not be occupied for human habitation but shall be used as an office ancillary to the logistic complex on the adjoining lands. The office structure shall not be separated from the adjoining logistic complex by way of site, lease or otherwise.

5.0 Policy and Context

5.1. Development Plan

Fingal County Development Plan 2017-2023 is the statutory plan for the area. The following provisions are considered relevant:

Zoning: The site is zoned “RU” Rural with the objective to ‘protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage’.

Relevant Use Classes related to Zoning Objective

Permitted in Principle: Agricultural Buildings (Including buildings to provide for preparation of produce sourced from the site/farm), Office Ancillary to Permitted Use, Farm Shop (Only where the bulk of the produce is produced on the farm).

Not Permitted: Agribusiness, Office ≤ 100sqm, Agricultural Farm Supplies, Car Hire Holding Area, Carpark - Non-Ancillary, Office >100sqm and <1,000sqm, Agricultural Machinery Sales and/or Maintenance.

Objective Z05 - Non-Conforming Uses: Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria.

5.1.1. The following objective relating to Rural Economy are noted:

Objective RF70 Protect and promote the sustainability of rural living by facilitating rural-related enterprise for rural dwellers.

Objective RF71 Reduce the need for commuting to employment in adjacent urban areas.

Objective RF72 Maintain commerce and vitality within the rural area and particularly within the villages.

5.1.2. The following objectives relating to Horticulture are noted:

Objective RF77 Support and facilitate horticultural development in Fingal encouraging the establishment/ expansion of new enterprises where appropriate.

Objective RF78 Support and facilitate the development of environmentally sustainable horticultural practices.

5.1.3. The following objectives relating to Agribusiness are noted:

Objective RF82 Support and facilitate the growth of agribusiness in Fingal and encourage agribusiness and support services which are directly related to the local horticultural or agricultural sectors in RB zoned areas.

Objective RF83 Require that any proposal to locate an agribusiness within the rural area is supported by a comprehensive traffic impact study of the vehicular, including HGV, traffic generated by such an enterprise.

Objective RF84 Direct and encourage agribusiness which relies primarily on imported food and produce into areas which have adequate road infrastructure and which are appropriately zoned.

5.1.4. The following objectives relating to Farm Diversification are noted:

Objective RF100 Support proposals for farm diversification where the proposal is related directly either to the agricultural operation engaged upon on the farm or the rural nature of the area.

Objective RF101 Ensure that any proposal for diversification takes account of and is compatible with the existing road infrastructure in the area.

Objective RF102 Promote farm diversification where it does not unacceptably impact on the landscape, environment and character of the area.

Objective RF103 Promote farm diversification where the proposal does not necessitate the permanent removal of quality agricultural land from production

Objective RF104 Promote the sensitive re-use and adaptation of existing farm buildings for farm diversification. Where a new building is necessary, it shall be sited, where practical, in or adjacent to the existing group of farm buildings and shall relate to existing buildings and the surrounding countryside in terms of design, siting, and materials.

5.1.5. The following objectives relating to ground and surface water are noted:

Objective DW03: Protect both ground and surface water resources and work with Irish Water to develop and implement Water Safety Plans to protect sources of public water supply and their contributing catchment.

Objective WT06: Facilitate development in un-serviced areas only where it is demonstrated to the satisfaction of the Planning Authority that the proposed wastewater treatment system is in accordance with the relevant EPA Codes of Practice.

Objective WT07: Require all new developments to provide separate foul and surface water drainage systems and to incorporate sustainable urban drainage systems.

Objective SW04: Require the use of sustainable drainage systems (SuDS) to minimise and limit the extent of hard surfacing and paving and require the use of sustainable drainage techniques where appropriate, for new development or for extensions to existing developments, in order to reduce the potential impact of existing and predicted flooding risks.

Section 12.15 Development Management Standards for Agricultural Development. Relevant Objectives include:

Objective DMS177 In the construction and layout of agricultural buildings, the Council requires that buildings be sited as unobtrusively as possible and that the finishes and colours used, blend the development into its surroundings.

Objective DMS178 Appropriate roof colours are dark grey, dark reddish brown or a very dark green. Where cladding is used on the exterior of farm buildings, dark colours (preferably dark green, red or grey) with matt finishes will normally be required.

Objective DMS179 Consider traffic safety, pollution control, and the satisfactory treatment of effluents, smells and noise in the assessment of agricultural development. Proper provision for disposal of liquid and solid wastes shall be made. In addition, the size and form of buildings and the extent to which they can be integrated into the landscape, will be factors which will govern the acceptability or otherwise of such development

5.1.6. The following objectives relating to transportation are noted:

Objective DMS129 Promote road safety measures in conjunction with the relevant stakeholders and avoid the creation of traffic hazards.

Table 12.8 - Car Parking Standards

Airport Noise Zone The subject site is located within Noise Zone D, which is identified within Variation No. 1 of the Fingal Development Plan 2017-23, which revised the airport noise zones to ensure compatibility with pertinent standards. The objective of zone D is 'To identify noise sensitive developments which could potentially be affected by aircraft noise and to identify any larger residential developments in the vicinity of the flight paths serving the Airport in order to promote appropriate land use and to identify encroachment'.

5.2. **Other Relevant Government Guidelines**

Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities, Department of the Environment, Heritage and Local Government, (2009).

The Environmental Protection Agency, Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), (2021).

5.3. **Natural Heritage Designations**

The site is located c.4.7 km to the north-west of the Rogerstown Estuary SAC (Site Code: 000208) and 5.6km from the Rogerstown Estuary SPA (Site Code: 004015).

The site is also located c. 5.7km to the north-west of the Malahide Estuary SPA (Site Code: 004025) and SAC (Site Code: 000205).

5.4. **EIA Screening**

- 5.4.1. Having regard to the existing development on site, the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A first-party appeal was received from CWPA Planning and Architecture Consultants representing the applicant James Nugent, against the decision made by the Planning Authority to refuse permission for the proposed development. The following is a summary of the grounds of appeal.

6.1.1. Re. Reason for Refusal No. 1 - Zoning / Land Use

- The applicant intends to use the 3 no. agricultural structures on the site for agribusiness use
- The proposal will facilitate the expansion of the applicants existing established agribusiness 'Nugent's Fresh Produce', located c. 100 m to the south of the subject site.
- Agribusiness is a permitted use under lands zoned 'RB' Rural Business.
- The proposed development will comprise the preparation of fresh produce (vegetables) for wholesale and retail markets.
- The preparation of fresh produce (vegetables) can be linked to "RU" Rural zoning when the zoning objective is considered.
- The "RU" Rural zoning objective seeks to protect and promote the development of agriculture and rural-related enterprise. Agri-food, specifically the preparation of vegetable processing is contained within that description.
- The preparation of vegetables aligns with the "RU" Vision, in the category of agricultural and rural economic resources.
- The proposed development is an example of how farming diversification can be achieved.
- The Nugent's have diversified their farming business over the years and have established a viable rural business at their site in Belinstown, Ballyboughal.
- They are a family business and a significant employer in the area.

- The Appellant and his family run a fresh produce preparation business that is a service provided as part of the overall fresh produce growing in north County Dublin.
- Their business falls into the rural related enterprise category which corresponds with the Objective and Vision of the RU land use zoning of the subject lands.
- The subject site is linked to their established day-to-day business. This includes an existing treatment plant which is located on the subject site previously approved by Fingal County Council to serve the existing facility.
- A well is located on the subject site which provides an alternative water supply to the existing facility for the processing of local agricultural produce when the water supplied by the Local Authority is not sufficient in terms of environmental quality and standards.
- Electricity is supplied to the existing facility via a source located on the site.
- The Applicant acknowledges that 'agribusiness' is in the 'not permitted' under "RU" zoned lands and that the Planning Authority correctly identified same.
- Policy objective Z05 (non-conforming uses) of the Fingal Development Plan 2017 - 2023 can be applied to the proposed development.
- Regardless of the zoning, the current packing business, located c.100 m from the subject site at Belinstown Farm, Belinstown, Ballyboughal, is operating under the same RU zoning as the subject site.
- The proposed development is reasonable intensification of what is already established under non-conforming use in the area.
- In the event that the change of use of 3 no. agricultural buildings is not considered reasonable intensification by the Board, the applicant requests that the Board alternatively consider the change of use of either 1 no. or 2 no. buildings on the subject site and issue a decision to Grant Permission accordingly on this basis.
- The Planning Authority has not assessed surrounding land uses other than existing residential use.

- The logistics complex on the adjoining site is located on lands zoned RU and its business has expanded over the years. This operates primarily as an industrial use.
- The Planning Authority previously granted planning permission for an agribusiness use on RU zoned land under P.A. Ref. F16A/0552, at Westpalstown, Oldtown, Co. Dublin.
- Further details provided on the precedent permission P.A. Ref. F16A/0552 including how the permitted structure is located c. 230m from the existing agribusiness facility operated by the applicant.
- This sets a precedent by the Planning Authority and the proposed development should be given the same consideration.
- Under precedent permission P.A. Ref. F16A/ 0552, Condition No. 2 required the following:

The structure the subject of this application shall not be occupied for human habitation but shall be used as an office ancillary to the logistic complex on the adjoining lands. The office structure shall not be separated from the adjoining logistic complex by way of site, lease or otherwise.

- A similar condition should be imposed on the proposed development in the event of a grant of permission.
- The proposed development should be subject to a commercial levy condition, given the proposed development would be ancillary to the applicants existing agribusiness.
- The proposed development is consistent with overarching National and Regional planning policy.
- The proposed development is in keeping with government guidance relating to the agribusiness/agri-food sector, which is seen as vital in maintaining and growing the rural economy and the strategic contribution agri-food producers make to the overall national economy.
- As Fingal County Council have determined the proposed development is contrary to the “RU” zoning of the subject site, this highlight that this element of the “RU”

Land Use Zoning is inconsistent with National and Regional Policy. This affords the opportunity for the Board to contravene the “RU” Zoning of the Fingal Development Plan, which may not be fit for purpose in this instance, and Grant Permission for the proposed development in accordance with Section 37 of the Planning and Development Act (as amended).

6.1.2. **Re. Reason for Refusal No. 2 - Transportation Issues**

- The Traffic Impact Assessment (TIA) Report submitted demonstrates that the impact of traffic generated by the proposed development will be negligible.
- The TIA report establishes the vast majority of traffic in the area is generated by the existing multinational logistics depot operated by Aramex on the adjoining site.
- The documentation submitted with the grounds of appeal addresses the issues raised by the Transport Planning Section.
- The Transportation Planning Section acknowledge that the proposed development can be supported by the surrounding network.
- The Planning Authority disregarded the recommendation of the Transport Planning Section.
- The Transport Planning Section acknowledge the access to the subject site is an established access and that the required sightlines of 70m in each direction from a 2.4m setback at the vehicular entrance are achievable.
- The existing set back from the existing carriageway is 6m, which exceeds the 2.4m requirement.
- A designated bicycle parking area is now provided.
- The swept path analysis demonstrates the movements of HGVs on entry to and within the site.
- It is proposed to circulate the HGV movement around the site so that reversing movements are not required and are fully eliminated.
- The previously approved outer electric gate at the entrance will be removed and the inner gate and security fence will be reinstated. This will ensure adequate

HGV access to the site in accordance with the requirements of the Transportation Planning Section and eliminate road safety concerns along the R108.

- The revised layout provides pedestrian access to the site in accordance with the Transportation Planning Section requirements.
- The revised layout provides pedestrian linkage within the site, eliminating conflict between pedestrians and vehicles / HGVs.

6.1.3. **Re. Reason for Refusal No. 3 – Impact on Residential Amenity**

- The proposed development will have no negative impact on the residential amenity of dwellings near the site.
- The property on to the south is surrounded by commercial development in the form of the logistics complex and was the subject of a change of use in 2013.
- All other nearby dwellings are adequately distanced from the subject site so as not to have any impact on residential amenity.
- The perceived impact on the value of the property in the area is subjective and not based on any evidence from a suitably qualified person where that assertion can be verified.
- The Planning Authority disregarded the recommendations of the Environmental Health Officer, who assessed the proposed development in terms of air pollution and noise control and determined the proposed development would be acceptable both in its construction and operational phase.
- While the Planning Authority refer to the applicants 'Nugent's Fresh Produce' website which indicates that the company operates on a 24-hour basis and thereby negatively impacts the amenity of the area, the Planning Authority neglected to state that the 24-hour operation referred to on the website is made up of a 22-hour phone support service and 2 hours spent cleaning and maintaining the plant. Website narrative details provided.
- The residential amenity that the Planning Authority refers to relates to 2 no. properties, one to the south and one to the west.

- The property to the west is located c. 106m from the nearest shed building while the property to the south is surrounded by an industrial/ commercial development.
- Reference made to ABP Ref. 302716-18 whereby An Bord Pleanála stated the following in respect of the lack of impact resulting from the development on the amenity of residential properties in the vicinity;

Having regard to the pattern of development in the vicinity, including Aramex logistic complex and the vegetable processing plant and the activities that these generate, and to the nature and scale of the proposal, I consider that the proposed development would not be seriously injurious to the amenities of residential property in the vicinity.

- Noting the above, together with the fact that the subject application provides a significant reduction in on-site parking from 31 no. spaces to 10 no. spaces, the applicant requests that the Board maintain consistency with their above assessment regarding the lack of impact on the amenity of this rural area which consists of the same 3 no. structures.
- The applicant's family, who are all employed as key members of Nugent's Fresh Produce, live approx. 119 no. meters from the proposed development in 3 no. properties. As such, the applicant has every reason to ensure the residential amenity of the area is protected.
- Reference made to development permitted on adjoining site to the south under P.A. Ref. F13A/0175 and Condition No. 2 imposed thereunder, which required that the structure of the application not be occupied for human habitation but shall be used as an office ancillary to the logistic complex on the adjoining lands. The Planning Authority did not take this into consideration in its assessment of the subject application.
- The residence to the south referred to by the Planning Authority is located c. 35 from the nearest shed on the subject site and c. 25m from the rear of the property to the logistics complex. This was not taken into consideration by the Planning Authority.

- The property to the west of the site is located c.104m from the nearest agricultural shed. This is adequate distance from the proposed development

6.1.4. **Re. Planning History**

- Reference made to P.A. Ref. F18A/0417 and ABP Ref. 302716-18 whereby permission was refused on appeal for the retention of an inner security gate, fencing and a car parking area and permission was refused for surfacing, drainage and all associated site works.
- The intended purpose of this application and appeal is to address the reason for refusal given by An Bord Pleanála.
- Reference to P.A. Ref. F09A/0234 whereby permission was granted for the retention of a revised layout to agricultural entrance including the erection of a steel sliding gate, subject to Condition No. 4 which requires that 'the entrance hereby approved shall be used solely as an agricultural entrance and shall not facilitate access to commercial or other development without a prior grant of planning permission'.
- The appellant has attempted to resolve the issue of having an inner gate erected in the interest of road safety, whereby an inner gate would facilitate vehicles pulling into the subject site whilst awaiting access.
- The Transport Planning Section of Fingal seems to agree that there is a need for such a treatment regarding this matter and requested Additional Information in respect of this accordingly.

6.1.5. **Re. Water & Drainage Issues**

- The Council's Water Services Department outlined no objections to the proposed wastewater treatment system.
- Inland Fisheries Ireland did not recommend that the proposed development be refused permission.
- The filter bed treatment plant services the existing facility at the site, as previously approved by the Council.

- The 4-week statutory period in which an appeal of a planning decision must be lodged with An Bord Pleanála was not sufficient time in which to have the consulting engineers adequately address the further information requested by Inland Fisheries Ireland.
- The 4-week statutory period in which an appeal of a planning decision must be lodged with An Bord Pleanála was not sufficient time in which to have the consulting engineers adequately address the Conditions imposed by the Council's Water Service Section.
- The applicant sees no impediments to complying with Irish Water's requirements.

6.1.6. **Re. Exempted development status of sheds**

- Fingal County Council took enforcement action against the appellant which has been now resolved following undertakings from the appellant not to use the sheds for any other use than agriculture and that the entrance to be restricted to agricultural use.
- Reference made to ongoing enforcement proceeding at an adjacent site to the south.

6.1.7. **Re. Impact on Natura 2000 sites**

- No Appropriate Assessment Screening was submitted with the planning application.
- The Applicant was not offered the opportunity to submit a Stage 1 AA Screening report by way of Further Information.
- The 4 week period in which to lodge an appeal with An Bord Pleanála was not enough time to prepare a Stage 1 AA Screening report.
- If required, the applicant is willing to submit such a report.

6.1.8. **Statement of consistency with the National Planning Framework, Regional Spatial & Economic Strategy and Fingal County Development Plan 2017-2023**

- Relevant policy regarding the agri-food sector and the role agriculture and agribusiness to the rural economy referenced.
- Elements of Food Wise's Strategic Plan detailed including, inter alia, growth projections and cross-cutting themes.

6.1.9. Supporting drawings / documentation lodged with the appeal include the following;

- Autotrack Swept Path Analysis.

6.2. **Planning Authority Response**

The Planning Authority's response is as follows;

- Having assessed the appeal submission, it remains the opinion of the Planning Authority that the proposed development should be refused permission, having regard to the reasons set out in the Planner's report.
- The proposed development involves use of the "RU" rural zoned site for Agribusiness purposes.
- 'Agribusiness' is a use class which is 'not permitted' under the "RU" zoning objective. Accordingly, the proposed development would materially contravene the "RU" zoning objective.
- An Bord Pleanála is requested to uphold the decision of the Planning Authority.
- In the event that the appeal is successful, provision should be made into determination for applying a financial contribution in accordance with the Council's Section 48 development contribution scheme.

6.3. **Observations**

None

7.0 Assessment

7.1.1. Having examined the application details and all other documentation on file and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are the reasons for refusal as cited by the Planning Authority. These can be addressed under the following headings;

- Zoning / Land Use,
- Transportation Issues,
- Impact on Residential Amenity.

I am satisfied that all other issues were fully addressed by the Planning Authority and that no other substantive issues arise. The issues for consideration are addressed below.

7.2. Zoning / Land Use

7.2.1. The proposed development provides for the change of use of 1 no. existing agricultural shed to an agribusiness store to facilitate the storage, packing and distribution of agricultural fresh produce and the change of use of 2 no. existing agricultural sheds to agribusiness stores to facilitate the storage and packing of agricultural fresh produce. The appellant states that the proposed development would be ancillary to the appellant's existing agribusiness 'Nugent's Fresh Produce', located c. 100 m to the south of the site. The sheds would be used for the preparation of fresh produce (vegetables) for wholesale and retail markets. The appeal site is not directly linked to the appellant's existing agribusiness. The planning history of the appellant's existing agribusiness is detailed in Section 4.1 above.

7.2.2. The appellant acknowledges that the use class 'agribusiness' is 'not permitted' under "RU" Rural' zoned lands. However, the appellant puts forward a case how the proposal is consistent with the "RU" Rural zoning objective which seeks to 'protect and promote in a balanced way, the development of agriculture and rural related enterprise'. The appellant contends that the proposed development and their existing agribusiness is an example of farming diversification, which comprises a rural related enterprise. The appellant also puts forward that the Planning Authority previously granted planning permission for a similar agribusiness use on "RU" Rural zoned land under P.A. Ref.

F16A/0552, whereby the permitted structure is located c. 230m from the existing agribusiness facility operated by the owner. The appellant submits that this sets a precedent by the Planning Authority and that the proposed development should be given the same consideration. Further to this, the appellant refers to the Amarex Ireland Ltd. logistics complex located on adjoining lands to the south, whereby the use class 'logistics' is not permitted under "RU" zoned lands and of which the Planning Authority has permitted its expansion.

7.2.3. The Planning Authority refused permission for the proposed development on the grounds that it comprises an 'agribusiness' which is 'not permitted' under the "RU" - rural zoning which applies to the site. On this basis, the Planning Authority consider the proposed development would materially contravene the "RU" zoning objective of the Fingal Development Plan 2017-2023 and would be contrary to the proper planning and sustainable development of the area. As detailed above, the site is zoned "RU" Rural with the objective to 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage'. The use class 'Agribusiness' is not permitted under lands zoned "RU" Rural, as set out in Chapter 11 of the Fingal County Development Plan 2017 - 2023. 'Agribusiness' is defined in Chapter 5 of the Development Plan as 'a business which is directly related to the agricultural or horticultural sectors, involving the processing of produce of which a significant portion is sourced locally. The creation of value-added products is an important aspect of agribusiness which can complement locally sourced produce and increase competitiveness and innovation. The designation can also cover support services for agriculture and horticulture'. The Development Plan further states that 'the Council will support and facilitate existing and new agribusinesses within Fingal and will engage and collaborate with key stakeholders, relevant agencies, sectoral representatives and local communities to develop agribusiness in Fingal'.

7.2.4. Specific Objectives relating Agribusiness include the following:

Objective RF82 Support and facilitate the growth of agribusiness in Fingal and encourage agribusiness and support services which are directly related to the local horticultural or agricultural sectors in RB zoned areas. (underline emphasis added)

Objective RF83 Require that any proposal to locate an agribusiness within the rural area is supported by a comprehensive traffic impact study of the vehicular, including HGV, traffic generated by such an enterprise.

Objective RF84 Direct and encourage agribusiness which relies primarily on imported food and produce into areas which have adequate road infrastructure and which are appropriately zoned.

7.2.5. Having regard to the above, it is clear that the use class 'agribusiness' is not permitted on lands zoned "RU" Rural. Notwithstanding this, have regard to (i) the nature of the proposed development ancillary to the appellant's nearby permitted agribusiness and (ii) the pattern of development to the south of the site which comprises a large logistics and distribution complex, it is my view that that the principal of the proposed development is consistent with the pattern of development in the immediate vicinity. With this regard, I refer the Board to Section 37 Subsection 2 (a) & (b) of the Planning and Development Act 2000 (as amended) which states that;

"(a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

(i) the proposed development is of strategic or national importance,
(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,
or

(iii) permission for the proposed development should be granted having regard to F290[regional spatial and economic strategy] for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy

of the Government, the Minister or any Minister of the Government, or (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan”.

7.2.6. Having regard to the provisions above, it is my view that permission for proposed development should be granted in accordance with sub-section (iv), by reason that the proposal would be consistent with the pattern of development in the vicinity and having regard to permission granted. The Planning Authority granted permission to the appellant James Nugent for the existing agribusiness development located on lands c. 100 m to the south under P.A. Ref. F95A/0927, and subsequent permissions thereafter. I note that under the then Fingal Development Plan 2005-2011, ‘agribusiness’ was not permitted under “RU” zoned lands which applied to the appeal site at the time. Furthermore, the Planning Authority has granted permission for a large logistics and distribution complex on adjoining lands to the south, where such use is not permitted under lands zoned “RU” Rural. It is my view that the proposal would not be out of character with the pattern of development in the area. On this basis, I recommend that the appeal should succeed in relation to the Planning Authority’s first reason for refusal.

7.3. Transportation Issues

7.3.1. The Planning Authority refused permission for the proposed development on the grounds that it would comprise an intensification of use of the existing entrance fronting onto the R108 and in its present format would constitute a traffic hazard on the basis that there is insufficient space provided for HGVs to drive in off the road and stop, thereby causing obstruction to traffic on the R108. The Planning Authority therefore considered the proposed development would be contrary to Objective DMS129 of the Fingal Development Plan 2017-2023 and refused permission on this basis.

7.3.2. Objective DMS129 seeks to ‘promote road safety measures in conjunction with the relevant stakeholders and avoid the creation of traffic hazards’. I note that the Council’s Transportation Planning Section report did not recommend that the

proposed development be refused permission but rather sought further information requesting, inter alia, a swept path analysis showing how HGV vehicles can safely enter and exit the site without blocking traffic along the R108, and the route of HGVs and parking within the site. Further information was also requested requiring the minimum provision of 4 no. sheltered bicycle parking spaces, a pedestrian gate at the entrance to the site, the provision of a pedestrian crossing from the car parking area to the office and warehouse buildings and the provision of welfare facilities for staff including showers and lockers.

7.3.3. The appellant has submitted with the appeal an autotrack swept path analysis and states in the grounds of appeal report that the existing outer electric gate at the site entrance will be removed and re-instated further inwards along the access road. The re-located inner gate will maintain a setback of c.30m from the edge of the carriageway, enabling a 15.4m long large articulated vehicle to pull in off the R108 regional road. The autotrack swept path analysis shows the movement of HGVs circulating in a clockwise route around the buildings within the site. The appellant states that the circulation of HGV movement is designed so that reversing movements are not required and are fully eliminated. The proposal provides a 4 bay bicycle shelter adjacent the proposed office building.

7.3.4. Having reviewed the autotrack swept path analysis submitted, I am satisfied that the revised proposal adequately addresses the issues raised by the Council's Transport Planning Section in its further information request. The autotrack swept path analysis shows that a HGV vehicle can safely enter and exit the site without causing an obstruction to traffic along the R108 regional road and thereby would not be contrary to Objective DMS129 of the Fingal Development Plan. HGV's would circulate around the warehouse structures, providing adequate access for loading and unloading and the need for reversing movements would be eliminated. Pedestrian access is provided to the site and pedestrian footpaths and marked pedestrian crossings are provided within the site, safeguarding pedestrians from HGVs and vehicles. 10 no. car parking spaces are provided in compliance with Development Plan car parking standards. The Transport Planning Section confirms that adequate sightlines of 2.4mx 70m within a 50km/hr speed zone are provided at the site entrance. The proposal provides 4 no. sheltered bicycle parking spaces in accordance with the Development Plan standards. While shower facilities have not been provided, I note that a W.C., locker / storage

space and a tea station are provided within the proposed office structure. This is acceptable. On this basis, I am satisfied that the proposed development would be acceptable in terms of traffic and pedestrian safety and recommend that the appeal should succeed in relation to the Planning Authority's second reason for refusal.

7.4. Impact on Residential Amenity

- 7.4.1. The Planning Authority refused permission for the proposed development on the grounds that the proposed agribusiness development by virtue of its operations, proximity to dwellings to the south and west and light spill would seriously injure the amenities of and depreciate the value of property in the vicinity. The appellant contests this reason for refusal, as detailed in Section 6.1.4 above.
- 7.4.2. The nearest residential dwelling is located opposite the site, on the western side of the R108 with neighbouring dwellings on either side. A separation distance of c. 101 metres would be maintained between the closest dwelling and the warehouse building No. 1 serving the proposed development. A dwelling is also located c. 100m to the north of the site. I note that the Council's Environmental Health Air & Noise Unit raised no concerns regarding the proposed development and recommended standard conditions with regards hours of construction, noise, vibration and dust. Having regard to (i) the nature and extent of the proposed development which comprises primarily the storage, packing and distribution of agricultural fresh produce ancillary to the appellant's existing adjacent agribusiness (ii) its distance from the closest residential dwelling to the west and (iii) the existing permitted logistic complex on the adjoining site to the south, it is my view that the proposed development would not adversely impact the residential amenity of the surrounding area. In the event of a grant of permission, appropriate conditions regarding hours of construction and operation, and control of proposed external floodlighting would minimise impact on the residential amenity of dwellings in the surrounding area.
- 7.4.3. Having regard to the planning history of the adjoining site to the south, I note that the house structure thereon was granted planning permission under P.A. Ref. F13A/0175 for a change of use from residential use to office use, ancillary to the permitted logistic complex use operated by Aramex Ireland Ltd. Condition No. 3 of this permission requires that the structure not be occupied for human habitation. In consideration of this, impact on residential amenity is not an issue.

7.4.4. Having regard to the above, I recommend that the appeal should succeed in relation to the Planning Authority's third reason for refusal.

7.5. Screening for Appropriate Assessment

7.5.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that permission be granted subject to conditions, for the reasons and considerations below.

9.0 Reasons and Considerations

9.1. Having regard to the 'RU – Rural' zoning objective of the area, the provisions of the Fingal County Development Plan 2017-2023, the pattern of existing and permitted development in the area and the layout and design of the proposed development, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not seriously injure the residential amenity of the area or of property in the vicinity, would be acceptable in terms of traffic and pedestrian safety and convenience and would constitute an appropriate form of development at this location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 27th May 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed development shall be used strictly for the purposes of storage, packing and distribution of agricultural fresh produce. Any change in this use shall not take place until full planning permission has been received from Fingal County Council or An Bord Pleanála following an appeal. The use/operation of the office building shall be ancillary to the agri-business development and shall not be sold or leased separately.</p> <p>Reason: To prevent unauthorised development and in the interest of the proper planning and sustainable development of the area.</p>
3.	<p>Prior to commencement of use, the following details shall be submitted to and agreed in writing with the planning authority.</p> <p>(a) Details of measures to control potential light spillage during the operational phase of the development;</p> <p>(b) Details of receptacles for waste to be provided and available for use at all times on the premises.</p> <p>Reason: In the interests of clarity and to protect rural and residential amenity.</p>
4.	<p>Prior to commencement of development, the developer shall submit for the written agreement of the Planning Authority details of the proposed security fence and re-located gated at the entrance to the proposed development.</p>

	Reason: In the interest of public safety.
5.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
6.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
7.	<p>(a) The wastewater treatment system and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the EPA Code of Practice “Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. < 10)” (2021) and Department of Environment and Local Government/EPA/GSI “Groundwater Protection Responses for On-Site Wastewater Systems for Single Houses”. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p> <p>(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the commencement of the use of the building and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p>

	<p>(d) Surface water soakways shall be located such that the drainage from the building and surfaced areas of the site shall be diverted away from the location of the polishing filter.</p> <p>(e) Within three months of commencement of use of the building, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the wastewater treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the Environmental Protection Agency document.</p> <p>Reason: In the interest of public health.</p>
8.	<p>All public services to the proposed development, including electrical, telephone cables and associated equipment shall be located underground throughout the entire site.</p> <p>Reason: In the interest of visual amenity.</p>
9.	<p>Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs, advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the visual amenities of the area.</p>
10.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of traffic management during the construction phase, details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste, as well as means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water drains.</p>

	Reason: In the interests of public safety and amenity.
11.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within three months of the date of this Order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Brendan Coyne
 Planning Inspector

02nd November 2021