



An
Bord
Pleanála

Inspector's Report ABP310379-21

Development	Retain use for shot blasting, painting facility and ancillary works.
Location	Baltreacy, Donadea, County Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18/12114.
Applicant(s)	Michael O'Shea.
Type of Application	Permission
Planning Authority Decision	Grant permission with conditions.
Type of Appeal	Third Party-V-Grant
Appellant(s)	Seamus Cullen
Observer(s)	None
Date of Site Inspection	5 th April 2022
Inspector	Hugh Mannion

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1.0 Site Location and Description

1.1. The application site has a stated area of 0.47ha and is accessed off the R407 regional route on a stretch where the 80kph speed limit applies and there is a solid white median line in Baltreacy, Donadea, County Kildare. Clane village is about 8kms to the south while Kilcock is about 5kms to the north of the site. Immediately to the south of site access is another access/short driveway serving the applicant's family home. The appeal site is bounded to the north, east and west by agricultural grazing land. The appellant's lands are located to the north and east of the appeal site and are in pasture. Within the site to the left of the site entrance (going clockwise) is single storey office/staff accommodation, then an open area of yard used for vehicle parking but intended to accommodate the proposed shed, then there is a 4-bay workshop, another open/parking area and finally, the boundary with the front of the applicant's family home. To the rear/east end of the site is an open area of ground where a new wastewater treatment system is proposed. The shot-blasting/repainting of commercial vehicles is carried out in the workshop on site. Shot blasting is the removal by the spraying of an abrasive grit at high velocity of rust/dirt/old paint from the metal parts of vehicles. There are mature trees on the northern boundary, a hedgerow about halfway along the southern boundary with the second half and the eastern boundary undefined. The western/roadside boundary is defined a low wall and a wide (circa 15m gateway). and the east boundary (rear) is not defined. The site has a stated area of 0.47ha and forms part of a larger landholding with outlined in blue with a stated area of 0.69ha

2.0 Proposed Development

2.1. Retention Permission is sought for the following.

- 4 no. existing booths (used for drying, shotblasting and spray painting) and ancillary storage rooms (476.9 sqm combined),
- Standalone office (21 sqm) along with the change of use of the cottage to office/storage unit (136 sqm).

Planning Permission is sought for the following:

- Demolish domestic garage (25 sqm) located next to the residential dwelling to the south.
- Construct an extension, with a stated area of 37 sqm, located to the north side of the existing shot blasting booth. The purpose of which is to contain all dust associated with shotblasting.
- Construct a shed structure, with a stated area of 414 sqm to the front of the existing workshop. The purpose of which is to protect trailers from the weather during the shotblast/repainting process and to prevent dust emissions. The shed will have a ridge height of 6.38m, and will be enclosed on 3 sides, with the south elevation open to allow trailers to enter. It also includes a new doorway connection to the existing cottage building.
- Alter the existing vehicular access arrangements, to provide a single access to the facility and family dwelling, in order to improve sightlines and safety.
- Create a new trailer parking area to the rear of the workshop including a dedicated turning area.
- Provide a new lined car parking area for staff and visitors accommodating (12 no. spaces) and a separate dedicated HGV parking area accommodating (12 spaces)
- Decommission the existing on-site treatment system and percolation area and provide new on-site foul treatment system to the rear of the site.
- Provide new surface water drainage infrastructure.
- Provide new landscaping with screening planting along the front boundary with the family dwelling.
- Carry out all associated site works at Baltreacy, Donadea, County Kildare.

3.0 Planning Authority Decision

3.1. Decision

Grant with conditions.

The planning authority decided to grant retention permission subject to 21 conditions.

- No. 2: Landscaping
- No. 3: Existing portacabin/office to be removed within 3 months
- No. 4&7 Mitigation measures in relation to noise and dust
- No. 5: Noise requirements
- No. 6: Oil and chemical storage tank requirements
- No. 8: Working hours of the business
- No. 9: Details of combined entrance to be agreed
- No. 10: Sight visibility requirements
- No. 11&12: Warning signage during construction and Construction Management Plan to be agreed.
- No. 13: Public lighting to be agreed
- No. 14 & 18: Surface water and foul waste requirements
- No. 15: Surface finish on the proposed yard requirements
- No. 16: Road Safety Audits Stage 2 and 3 requirements
- No. 17: Signage
- No.19 & 20: Waste Management
- No. 21: Section 48 Development Contribution €57,780.41

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial planner's report recommended seeking further information in relation to.

1. The applicant should submit evidence that the existing operations were in place prior to 1964 thereby being considered a non-conforming use within the meaning of section 17.1.3 of the County Development Plan.
2. An existing portacabin should be removed from the site.
3. Details including location of the new waste water treatment system should be submitted.

4. The applicant should provide a revised landscaping plan.
5. The applicant should provide details of the sightlines available on the public road fronting the site.
6. The applicant should provide a 7-day traffic count on the R407 fronting the site.
7. The applicant should provide an estimate of the HGV and car movements into/out of the site.
8. The applicant should provide a swept path analysis for HGVs entering/exiting the site.
9. The applicant should provide a drawing illustrating implementation of the road safety audit's recommendations.
10. The applicant should submit a drawing of the open drain either side of the piped drain crossing the site.
11. The applicant should submit a dust control plan.

3.3. Subsequent to the submission for further information the planner's report recommended a grant of permission subject to conditions.

3.3.1. Other Technical Reports

3.3.2. The Environment Section initially sought further information in relation to the drains outside the site and a plan for dust suppression within the site. Subsequent to the provision of additional information the section reported no objection subject to conditions.

3.3.3. Transportation Department requested further information in relation to sightlines available on the public road fronting the site, a 7-day traffic count on the R407 fronting the site, an estimate of the HGV and car movements into/out of the site, a swept path analysis for HGVs entering/exiting the site, a drawing illustrating implementation of the road safety audit's recommendations.

3.3.4. Roads/Transport Section recommended refusal in an initial report but recommended a grant of permission on foot of the submission of further information.

3.3.5. Chief Fire Officer reported that the applicant should get a Fire Safety Cert.

4.0 Planning History

4.1. P.A.Reg.Ref.09/875 ABP PL09.237117: Permission granted by Kildare County Council following a material contravention procedure. Following an appeal by the current third-party appellant permission was refused 15/11/2010 to Seán O'Shea for retention and completion of parking area for trailers to the rear of existing premises and all ancillary site works at Baltracey, Donadea, County Kildare.

1. It is an objective of the planning authority as set out in the Kildare County Development Plan 2005-2011, to guide development to appropriate locations in rural areas (section 6.3, objective 2) and it is the policy of the planning authority to protect the environment and landscape of the county (policies RG1). The site is located within a rural area outside and at a distance from any identified settlement or zoned land and it is the policy of the planning authority (policy OD 1) that the use of such land is primarily agriculture.

These policies and objectives are considered to be reasonable. The proposed development would facilitate the intensification of an existing industrial use, conflicts with the agricultural use of the surrounding lands and which would be appropriately directed to lands zoned to accommodate industrial type uses. The proposed development would seriously injure the amenities of the area including agricultural amenities, would be contrary to the provisions of the development plan for the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development, involving an intensification of use, would access onto the R407 national road where a speed limit of 80km/h applies. The Board is not satisfied that it has been demonstrated that the applicant can provide and maintain the line of sight at the amended site entrance which is infringed by mature field boundary hedging outside of the applicant's landholding. Notwithstanding that the substandard nature of access and turning facilities on the site, the Board considers that the proposed development, which would facilitate the intensification of an existing industrial use, which would have a

very high proportion of heavy goods vehicle traffic, would endanger public safety by reason of a traffic hazard.

3. The proposed development, which would facilitate the intensification of an industrial use, does not make adequate provision for sanitary facilities and wastewater effluent treatment to accommodate and treat the effluent that would arise from such a development. The proposed development would be prejudicial to public health.
4. Having regard to the nature of the existing industrial use, to the nature of the existing wastewater treatment systems within the landholding, to the proposal to discharge effluent from an existing septic tank on the site into the surface water system, to the evidently polluted condition of the watercourse/ditches adjacent the north of the site and the water from which are piped (flowing south) through the site and based on the reasonable assumption that the said watercourse connects into the Baltracey River approximately 110 metres and which is of 'poor status' (Q3) water quality status, the Board is not satisfied that the proposed development will be sufficient to protect the adjoining stream from pollution and would, therefore, be contrary to public health.

4.2. **P.A.Reg.Ref.08/2094:** Permission refused 18/02/09 to Seán O'Shea for the retention of parking area to rear of premises for the purposes of parking trailers on part of the site subject of the current application under appeal. The 7no. reasons for refusal related to contravention of policies RG1 and RG6 of the development plan, material contravention of objective OD1 for use of the land primarily for agriculture, serious injury to local amenities, impact on an historic monument, material contravention of policy RR1 of the development plan relating to regional roads, endangering of public safety by reason of a traffic hazard due to sightlines at entrance, and prejudice to public health relating to 2no. wastewater treatment systems serving 2no. dwellings / structures within the landholding.

4.3. **P.A.Reg.Ref.06/514:** Permission refused 29/05/07 to Seán O'Shea for the development of a parking area for the repair of trucks and trailers on part of the site subject to the current application under appeal. The 3 no. reasons for refusal related to material contravention of land use zoning objective for agricultural use, undesirable precedent and serious injury to local amenities.

5.0 Policy and Context

5.1. Development Plan

5.2. Kildare County Development Plan 2017-2023 is the relevant County Development Plan for the area.

5.3. Policy 10.4.10 refers to Rural Enterprises

'The Council acknowledges that the development of rural enterprise and employment opportunities will be vital to sustaining the rural economy. 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 (see Chapter 5 Table 5.2 Economic Development Hierarchy, County Kildare), catering for local investment and small scale industry. Within the rural settlements / nodes and the rural countryside, agriculture, horticulture, forestry, tourism, energy production and rural resources-based enterprise should be facilitated.

Key considerations for rural enterprise (relevant to the current appeal) include:

- 'In general, existing 'footloose' commercial or industrial activities in towns and villages will not be permitted to re-locate to unserved rural areas.
- 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 served zoned lands.
- One-off enterprises in the rural area may be located in the open countryside only where the Council is satisfied that the enterprise is suitable for that location in the first place and that it will comply with the criteria outlined in Table 10.3.
- Commercial / industrial developments in rural areas may be acceptable subject to proper planning considerations, where the Council is satisfied that the proposed development 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 carrying out of the industrial process / commercial activity / service. The local resource or source of material shall be in close proximity to the location of the proposed development.

• Apart from rural housing, as provided for in Chapter 4, there are other land-uses which may be considered in the rural countryside. 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.’

Table 10.3 lists criteria for assessment of One-Off Enterprises in Rural Areas.

Proposals for the development of one-off new small-scale enterprises in rural areas outside of designated employment centres will be assessed against the following criteria:

As a general guide, development proposals shall be limited to small-scale business development with a floor area at circa 200sq. m. and shall be appropriate in scale to its location.

- The development will enhance the strength of the local rural economy.
- The proposed development shall be located on the site of a redundant farm building /yard or similar agricultural brownfield site.
- There is a social and economic benefit to being located in a rural area.
- The proposal will not adversely affect the character and appearance of the landscape.
- The development will not be detrimental to the amenity of nearby properties, and in particular the amenities of nearby residents.
- The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal.
- The proposal should be accompanied by a mobility plan catering for employees’ home to work transportation.
- Adequate proposals to cater for any waste arising at the facility.
- All advertising should be kept to a minimum and be suitable in design and scale to serve the business; – Proper planning and sustainable development.
- The proposals should conform to other objectives of the County Development Plan.

5.4. **Section 17.1.3 refers to Non-Conforming Uses** and states

Throughout the county there are uses that do not conform to the zoning objectives for that area. These are uses which.

1. Were in existence on 1st October 1964.
2. Have valid permissions; or
3. Have no permission and which may or may not be the subject of enforcement proceedings. Extensions to and improvement of premises referred to in categories 1 and 2 above may be permitted. This would apply 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.'

Section 17.9.1 refers to Employment Uses and states'

Compatibility of existing adjacent land uses with the proposed development and mitigation measures to preserve and protect the amenity of the adjacent uses, should this be necessary'.

Section 17.9.2 refers to Industry and Warehousing Development and states

A landscaped buffer zone (minimum 5-10 meters will be a requirements of planning permissions for any industrial/warehousing development where it adjoins another zoning or where it would impact on the amenities of adjoining land uses.

5.5. **Natural Heritage Designations**

Not relevant

5.6. **EIA Screening**

5.7. See planning assessment below.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- There is an extensive planning history in this case. There is a history of unauthorised development on site.

- The application refers to shot blasting and related works, but the site has been used as a trailer hire/sale since 2017. The proposed development is an intensification of the existing uses.
- The application site is located in a rural area, the uses are industrial and does not comply with the development plan requirement that rural based industry be locally sourced materials.
- The proposed uses contravene objectives in the County Development Plan to support rural economy. Previous developments on site have damaged the appellant's livelihood.
- Water courses have been filled in which have caused flooding of the appellant's property, damaged property boundaries and allowed cattle to wander.
- The proposed development comprises an extension to unauthorised development and is contrary to the rural enterprise objectives set out in the Kildare County Development Plan.
- The proposed development will give rise to traffic hazard as adequate sightlines are not achievable at the site entrance.
- The proposed development contravenes the development plan policy in relation to the setback of new buildings from the roadside edge.
- The proposed development a landscaped buffer zone required by the County Development Plan.
- On-site car parking is inadequate. Outside storage is not specified in the application.
- The proposed development will give rise to water pollution.

6.2. Applicant Response

- The appellant may not be the adjoining landowner.
- The planning history is relevant in so far as the permission refused by the Board under PL09.237117. That application excluded the present site, was for

a much larger development on a larger site employing 18 people and is not comparable to the present case.

- There is no retail sales element to the existing use on site – the applicant has a separate business (O’Shea Trailer Hire & Sale) but this is operated from another site in Nass, Co Kildare.
- The existing use on site is an established use on site. This application seeks to improve the development in terms of traffic safety, environmental impact, and the installation of improved foul water treatment system.
- The established nature of the entrance was raised in the District Court by the planning authority, the issue was determined in 2009 when the court decided that the entrance was established pre ’63 and the planning authority have not pursued the issue since.
- Section 10.4.10 of the plan refers to instances where the expansion of existing uses would seriously impact on the amenity of rural areas that these businesses would be asked to relocate to serviced lands – this is not the case in this instance since the business will not expand beyond its existing capacity and does not seriously affect the rural environment of the adjoining area.
- The planning authority’s engineering and planning advice is that the proposal will not endanger public safety. The setback distance from regional roads is not relevant in the case of an established use.
- Section 17.9.2 of the County Development Plan referencing a buffer between industrial development and the public realm refers to new industrial uses in urban areas – the present case is an established use which adjoining only agricultural land. One of the primary purposes of the application is to prevent dust emissions.
- The appellant does not own the hedgerow and the proposed development will not interfere with it.
- The existing business or amended business does not/ will not give rise to water pollution. The new WWTP will improve effluent treatment on site.

6.3. Following the High Court Decision in relation to the Board’s original decision in ABP304911-19 the Board invited the parties to make any further submission they

wished. The applicant's submission received on 3rd September 2021 may be summarised as follows.

- The Board's decision to refuse permission in this case relied on three reasons; intensification of an existing industrial use in a rural area which should more properly be located on lands zoned for industrial use, the site is used for unauthorised activity and a grant of permission would facilitate the consolidation and intensification of this use, the proposed development would endanger traffic safety on the heavily trafficked R407.
- The use being carried out on site existed pre-'63 and benefitted from a number of exemptions under section of the P&D Act 2000 and Class 21 of Part 1 of Schedule 2 of the P&D regs. Therefore, no intensification of an unauthorised use has occurred. Because the use being carried out is at the capacity limit of the site no additional traffic movements will be generated as demonstrated by the Traffic Report carried out by TPS Limited and submitted with the application. The application is designed to improve the environmental and traffic safety aspects of an existing development on-going for almost 60 years.
- The planning authority's roads engineers expressed the view that the amendments to the access from the R407 are positive aspects of the proposed development. If the Board still considers that the existing entrance is problematic the applicant is willing to move the entrance southwards to improve sightlines on the regional route and a letter of consent and drawings are enclosed from the adjoining landowner allowing for this amendment.

6.4. A further submission was received from the applicant on the 15th October 2021 that may be summarised as follows.

- There is no unauthorised development on the site. No intensification of uses beyond exempted development has occurred on the site.
- The application provides a new WWTP and a surface water treatment system which will improve water quality. The planning authority and Inland Fisheries were satisfied with these arrangements.

- The application was accompanied by an AA screening statement which did not rely on mitigation measures.
- The site has a pre-'63 industrial use.
- There is no requirement to relocate the hedgerow on the appellant's lands.
- The proposed development will not give rise to additional traffic movements.
- The setbacks required in 17.7.2 of the County Development Plan do not refer to existing development.

6.5. Planning Authority Response received 12 August 2019.

- The proposed development is capable of being accommodated on site having regard to the established use on the site.
- The access arrangements are acceptable.
- The planning authority supports the expansion of rural enterprises that do not seriously injure the amenity of or property in the area.

6.6. Observations

- None

6.7. Further Responses

6.8. The appellant commented on the applicant's response as follows (received by the Board on 12th September 2019).

- Works related to the present facility led to the blocking of field drains which gave rise to flooding on adjoining lands in the appellant's ownership. The shot blasting gave rise to dust and noise emissions into adjoining lands. These factors negatively impact on the agricultural use of the appellant's farm.
- The appellant objected to a application for permission in 2010 because the proposed development would exacerbate flooding of adjoining lands and endanger public safety by reason of traffic hazard on an already dangerous stretch of road.

- The appellant's house is 850m from the application site, but his farmlands adjoin the business along about 240m of common boundary.
- O'Shea Trailer Hire and Sales operate from the subject site. The applicant has not demonstrated that the existing use of the site is an established use.
- The 5m buffer/set back required for industrial uses does not only refer to new industrial developments in urban areas as stated by the applicant. Such a buffer should be provided between the proposed development and the appellant's farmland.
- There is no evidence that the applicant's ecologist considered the impact on the Baltracey river.
- The appellant owns the hedgerow along the northern boundary of the application site. Truck parking spaces 10,11 and 12 immediately about the hedgerow and have the capacity to damage it.

6.9. Following the High Court Decision in relation to the Board's original decision in ABP304911-19 the Board invited the parties to make any further submission they wished. The appellant's submission received on 7th September 2021 may be summarised as follows.

- The appellant owns 9.87ha along the northern boundary of the application site and derives income from a number of environmental protection and animal welfare schemes operated by the Department of Agriculture, Food and the Marine. The industrial use being carried out on the application site will undermine the appellant's livelihood.
- In 2007 lands to the east of the application site were acquired by the applicant and a drain crossing that area was filled in, this action impaired the surface water drainage from the appellant's lands.
- Shot blast dust from the application site escapes into the appellant's lands thereby diminishing the agricultural utility of the appellant's land.
- The application site is remote from any industrially zoned land, will lead to intensification of a non-conforming industrial use contrary to the development plan and the amenity of the area.

- The Board is precluded from granting permission because there is insufficient information on file to assess the potential effect on water bodies in the area as required by the Water Framework Directive.
- The AA screening report included in the application is out of date, includes mitigation measures and therefore cannot be relied upon to screen out potential effects on European sites.
- The proposed development comprises a sub-threshold development for the purposes of EIA. The emissions of dust and other pollutants can have impacts on adjoining farmland and may impact on the Rye Water Valley Carton River SAC.
- Permission may not be granted where an application should have been subject to EIA, screening for EIA or appropriate assessment.
- There is an extensive planning history for the site.
- The proposed development is contrary to policy at 10.4.1 of the County Development Plan to support agricultural uses that have regard to conservation, landscape protection, protection of wildlife habitats, endangered species, flora and fauna and water quality. The proposed development will contribute to water pollution.
- The proposed development is contrary to the Development Plan Policy in relation to the intensification of unauthorised uses.
- The proposed development will endanger public safety by reason of traffic hazard on a stretch of road where there have already been a number of fatalities.

6.10. The appellant made a final submission on 18th October 2021. This submission may be summarised as follows.

- There is a long planning history on the site. Unauthorised works have been carried out these works are the subject of this application for retention.
- The planning authority's roads department recommended refusal. The applicant submitted a revised drawing for the site entrance in response to the appeal. There is a proposal to amend the speed limits on the road at the site

frontage. A hedge in the appellant's ownership limits visibility and the removal of the hedge would damage the farming potential of the appellants lands.

- The use of the site by HGVs will requiring additional traffic movements across the median line thereby endangering public safety by reason of traffic hazard,
- Drainage ditches have been filled in affecting the appellant's property.
- The amended drawings submitted by the applicant make significant changes to the application including the area of the application site.

7.0 **Assessment**

7.1. I would identify the planning issues in this case as follows –

- compliance with County Development Plan standards,
- issues of unauthorised development,
- traffic hazard,
- surface water,
- foul water,
- Dust emissions
- EIA
- Appropriate Assessment

7.2. **Development Plan**

7.3. The appeal makes the points that the proposed development contravenes the County Development Plan policy in relation to location of industrial uses in rural areas and the set back of industrial uses from site boundaries.

7.4. The County Development Plan (section 10.4.10) requires that in general enterprises not directly linked to rural areas should be located in serviced settlements. Where 'established authorised' developments seek to expand, and they seriously affect the rural amenity of an area they will be encouraged to locate on serviced lands in towns

and villages. Table 10.3 sets out criteria for considering one-off enterprises outside serviced centres and these criteria include the possibility of adverse effects on the character and appearance of the landscape, injury to the amenity of nearby properties, and in particular the amenities of nearby residents, impacts on the local road network and adequacy of waste treatment.

7.5. The test in this case is material contravention of an objective set out in the County Development Plan in relation to location of industrial uses in rural areas. In the present case the use is an existing use, and the Plan allows a certain latitude when considering such applications having to the criteria set out in the plan and particularly those set out in Table 10.3. Having regard to these considerations and subject to the issues assessed below in this report I conclude that the proposed development does not materially contravene an objective in the County Development Plan in relation to the location of industrial uses in rural areas.

7.6. The appeal references the absence of an appropriate buffer between the site and adjoining lands in the appellant's ownership and in use for farming which incorporates environmental improvement/protection schemes. The Development Plan (section 17.9.2) makes the point that industrial and warehouse uses should have a good quality appearance including landscaping – a landscaped buffer zone (5-10m) deep must be provided when a development site adjoins another landuse zoning or where it will impact on the amenities of the adjoining land. The applicant makes the point that this requirement refers to new developments in urban areas. The requirement is included in the 'development management standards' in chapter 17 of the County Development Plan. I conclude that it would be unreasonable to impose this requirement on an existing use where, I am satisfied, the application for permission seeks to improve the environmental quality of an existing use and I do not recommend refusal on this point.

7.7. **Unauthorised development**

7.8. The matter of the planning history of the application site and other lands in the applicant's ownership and unauthorised development within the site is raised in the submissions made in relation to this appeal. Part VIII of the Act provides that the carrying out of unauthorised development is an offence. The Act confers powers on a planning authority to act (including warning letters, enforcement notices and

prosecutions) when it decides that unauthorised development has been carried out. No power to decide if unauthorised development has been carried is conferred by the Act on the Board and the Development Management Advice and Guidelines (Section 28 Guidance issued by the Dept. of Environment Heritage and Local Government 2007), confirms this in stating that 'enforcement of planning control is the responsibility of the planning authority and this is the case, of course, whether the planning decision, including conditions, was made by the planning authority or the Board'.

7.9. I consider that certain works and uses (for example filling of land drains and the use of the site for retail sale of motor vehicles) are matters of possible unauthorised development within the sole remit of the planning authority. I conclude that the Board is unaffected by the provisions of Part VIII of the Act, in this case, and may restrict its consideration of this application to the works notified to the public in the application notices and detailed in the submitted plans and particulars.

7.10. **Traffic Hazard**

7.11. The application site fronts onto the R407 at a point where the 80kph speed limit applies. The appeal makes the related points that the proposed development will give rise to additional vehicular movements on the public road thereby causing traffic hazard, that sightlines are inadequate and that measures proposed to improve sightlines will interfere with the appellant's property rights.

7.12. The Transport Department had questions in relation to the application as follows.

- 1) The applicant should provide details of the sightlines available on the public road fronting the site.
- 2) The applicant should provide a 7-day traffic count on the R407 fronting the site.
- 3) The applicant should provide an estimate of the HGV and car movements into/out of the site.
- 4) The applicant should provide a swept path analysis for HGVs entering/exiting the site.
- 5) The applicant should provide a drawing illustrating implementation of the road safety audit's recommendations.

- 7.13. In response to the request for further information the applicant referred to the drawings submitted with the application. The applicant explained that at present there are two entrances to the lands in the applicant's ownership. One entrance serves the commercial use on site, and another serves a house on the southern boundary occupied by a member of the applicant's family. The point is made that by amalgamating the two entrances into a shared entrance and moving it 15m further south the sightlines will be improved and that adequate sightlines are shown on drawing 117-A40-PL01 submitted with the application¹. Contrarywise if permission is not granted for this arrangement the existing situation whereby vehicles must reverse into the site from the public road will continue.
- 7.14. The Transport Department reviewed the material submitted by the applicant and recommended refusal because the proposed development would endanger public safety by reason of traffic hazard. Nonetheless having been informed that permission would be granted the Transport Department recommended conditions.
- 7.15. I note the swept path analysis submitted on the 3rd September 2021 (drawing RD-001) and consider that this arrangement is reasonable and implementable and would be an improvement on traffic safety. The provision of a "stop" sign on the exit lane is a further improvement. In relation to the general point of increased traffic volumes arising from the proposed development it is noteworthy that the R407 fronting the site is a regional route whose purpose it is to meet the transport/commuting needs of the area and further afield. The application is, generally, a reconfiguration of an existing commercial use and I consider the proposed development does not have the traffic generation capacity to materially alter the traffic loading on the public road network in the area in a manner as to endanger traffic safety.
- 7.16. On the 3rd September 2021 the applicant submitted to the Board revised plans including a drawing number RD-002 - Sightline Layout. This drawing illustrates that a 150m sightline is achievable in both directions from the revised single entrance shared by the commercial use and the family home. Two points arise from this submission; (a) is it a material alteration to the application which the Board would be precluded from considering in this case and (b) does it adequately address the issue of traffic hazard. In relation to (a) I consider that the revisions submitted are not

¹ See drawings included in the Traffic Report submitted to the PA on 4th October 2018 in rear pouch of this file.

material amendments to the application and an opportunity has been afforded to the appellants and the planning authority to comment on them. I conclude therefore that the Board may consider these amendments in this application. In relation (b) to meeting the requirements of traffic safety I note that the County Development Plan (objective RR2) seeks generally to restrict new entrances onto regional routes where the 80kph speed limit applies and that an exception may be made for local economic benefit. In the present case it is noteworthy that two existing entrances are being amalgamated into one and the internal site layout is being amended to allow vehicular manoeuvring within the site rather than on the public road. Where provision of the southern sightline impacts on the adjoining landowner a letter of consent is included with the applicant's submission. I consider that the submitted material is reasonably accurate in relation to the existing two entrances off the regional route into the residential use and into the commercial use and that the improvements illustrated on drawing number RD-002 - Sightline Layout are achievable. Having regard to these factors I conclude that the proposed development would not endanger public safety by reason of traffic hazard.

7.17. The appeal makes a further point that the provision of adequate sightlines requires interference with the roadside hedgerow north of the site within the appellant's ownership and that permission for this interference will not be forthcoming. The applicant commented that roadside hedgerows can be cut back by the Roads Authority. As part of my site inspection, I walked along this part of the roadside verge and can confirm that the roadside verge is relatively narrow. Nonetheless I conclude that the arrangements set out on drawing number RD-002 -Sightline Layout are achievable.

7.18. **Surface Water Pollution**

7.19. The appeal makes the point that in the past the current applicant carried out works that included infilling of a drain along the shared site boundary which subsequently contributed to flooding of the appellant's adjoining agricultural field. A walk-over site inspection of the application site did not reveal any surface water ponding and a visual inspection of the adjoining lands likewise did not indicate flooding of those lands. It may be noted in this regard that the current application does not seek to regularise any infilling of drains.

- 7.20. The planning authority's Environment Section reported and asked by way of a request for further information that the applicant mark the open drain on either end of the pipe which crosses the site north to south. The applicant submitted a drawing (see Proposed site layout received by the planning authority on the 23rd May 2019) illustrating the location of a drain along the northern site boundary, its passing as a piped drain south through the site and emerging outside the southern boundary. The applicant's engineering report (See Conor Furey & Associates written report and associated drawing) states that the surface water drainage system is designed to achieve the objectives of sustainable drainage systems and the relevant sections of the County Development (sections 7.3.4 and 7.3.5) in relation to surface and ground water protection. The surface water drain will drain to an on-site attenuation tank from impermeable surface areas of the site and decant in a controlled manner through a silt/oil interceptor into the existing drain running through the site and will enter the Baltracey River south of the site. Rain fall on permeable surface will be allowed to infiltrate to subsoils naturally.
- 7.21. The appellant makes the further point that the application fails to properly address the EU Water Framework Directive 2000/60/EC). The WFD is implemented in Ireland, *inter alia*, through the EU Environmental Objectives (Surface Waters) Regulations 2009, as amended, the EU Environmental Objectives (Groundwater) Regulations 2010, as amended, and the EPA codes of practice in relation to domestic effluent disposal. Having regard to the details set out in the application and assessed elsewhere in this report I am satisfied that the proposed development will not give rise to surface or groundwater pollution thereby meeting the requirements of the WFD.
- 7.22. Having regard to the conditions on site and the material submitted with the application I conclude that this arrangement is reasonable and achievable. The arrangement will prevent the escape of silt or hydrocarbons into the wider water environment, and I conclude that the proposed development would not give rise to surface or ground water pollution from this source.
- 7.23. **Foul Water Treatment.**
- 7.24. There is a public water supply available to the application site so public health in relation to potable water within the site is not an issue. The application makes the

point that there is an existing poorly functioning wastewater treatment system (WWTS) that serves staff on site. The applicant states that the WWTS is too close to the northern boundary and without an obvious percolation area. It is proposed to replace this system with a new secondary treatment system with pe of 5.

- 7.25. The appropriate assessment criteria are set out in the EPA Code of Practice for DWWTS (2009)². The layout of the new system is illustrated on drawing entitled Proposed site layout showing WWTS and Polishing Filter. The system meets the recommended separation distances of DWWTS from roads, site boundaries, water courses required by table 6.1 of the EPA Code of Practice.
- 7.26. Having regard to the material submitted and the reports of the planning authority I conclude that the proposed WWTS is acceptable and will not give rise to ground water pollution.
- 7.27. **Shot Blast Dust**
- 7.28. The appeal makes the point that the proposed development gives rise to fugitive dust from escaping the site into the appellant's lands. The Environmental Report submitted with the application makes the point that at present shot blasting occurs only in booth 3 on site. It is proposed to construct an extension to this booth which will further contain dust emissions. A dust deposition survey was carried out which established that dust deposition rates were within the recommended limit value of 350mmg/m²/day. The Environmental Health Officer reported no objections and the planning authority's Environment Section was satisfied with the application following submission of further information.
- 7.29. I consider the net point here is the capacity of the activity to impact on sensitive uses. The site is bounded by agricultural land on the north and east, a public road to the west and the home of a member of the applicant's family to the south. I do not consider that the public road or agricultural land to be sensitive receptors in this context. Having regard to the reports on file, to the land uses to the west, north and east of the application site, and to the measures included in the application to limit fugitive dust emissions I am satisfied that the proposed development will not

² The new COP applies to applications lodged after June 2022.

seriously injure the amenity or depreciate the value of property in the vicinity or be prejudicial to public health.

7.30. **Environmental Impact Assessment**

7.31. The appeal makes the point that permission may not be granted in the case of development which would require screening for EIA or submission of an EIAR and carrying out of EIA. I am satisfied that the proposed development is not of a class of development for the purposes of EIA set out in Part 1 or 2 of Schedule 5 to the Planning and Development Regulations 2001, as amended, and that therefore submission of an EIAR and carrying out of an EIA are not required in this case.

7.32. **Appropriate Assessment.**

7.33. The application includes an AA screening report which identified the Rye Water Valley/Cartron SAC (001398) as the sole European site within 15kms of the application site. The conservation objectives for the site are the maintenance of habitats and species within the site at favourable conservation condition which will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. The qualifying interests for the site are

- 1014 Narrow-mouthed Whorl Snail *Vertigo angustior*
- 1016 Desmoulin's Whorl Snail *Vertigo moulinsiana*
- 7220 Petrifying springs with tufa formation (Cratoneurion) which is a priority habitat.

7.34. The Baltracery River is a tributary of the Rye Water River. There is potential hydrological connection with the SAC via a stream which flows along the boundary between the application site and the appellant's lands to the north, is piped through the site and decants into the Baltracey River south of the application site. The applicant's AA screening report finds that the surface water arising on-site will be treated on-site, discharged post treatment and that no direct impact will arise for the European site from the proposed development. The AA screening report similarly concludes there are no indirect or cumulative impacts on any European site arising from the proposed development.

- 7.35. The appellant's submission (see especially the submission received by the Board on 12th September 2019) makes the points (a) that the information set out in the AA screening report is out of date and (b) that the report incorrectly relies on mitigation measures to screen out effects on a European site.
- 7.36. Earlier in this assessment the treatment of surface water and foul water are examined. The application makes provision for the separation of clean and soiled surface water. Clean surface water will be allowed to infiltrate the subsoil naturally while water from impermeable surfaces (with the potential to carry suspended solids or hydrocarbons) will be attenuated and then passed through an interceptor prior to discharge to a surface water drain passing through the site which subsequently discharges to the Baltracey River which is a tributary of the Rye Water River. Foul water will be treated in a new WWTS with an appropriate capacity and discharge to ground water after initial mechanical treatment in a proprietary system and followed by a polishing filter. I consider that no material change has taken place since the original submission in relation to the disposal of water on site which would undermine the findings of the AA screening report on this point.
- 7.37. The appellant makes a second point in relation to the AA screening report and states that mitigation measures were included which should not be relied upon in a screening determination. This claim appears to rely on recent European case law which established that measures intended wholly or partially to avoid impacts on European sites may not be considered in screening out effects on European sites. In the present case the application has provided a site characterisation form and a site assessment which identifies surface water and ground water as targets for pollution. Details of WWTS in compliance with the EPA code of practice have been submitted. Surface water disposal is detailed in the application and drawings in a manner as to prevent water pollution inside or outside the site. These arrangements meet the requirements of the EU Environmental Objectives (Surface Waters) Regulations 2009, as amended, which require that all surface waters, and not just water within European sites, are protected from contamination.
- 7.38. I conclude on this basis that the measures adopted in the application to prevent water pollution are not designed to mitigate against impacts on a European site but to meet standards established by other codes.

- 7.39. The appellant makes the case that the application should not be considered because of the provisions of Section 34(12). This section provides that where an application for permission is made to retain unauthorised development that the planning authority shall not consider such an application where the application would require an EIA, screening for EIA or AA. In the present case the application is not of a class of development provided for in Schedule 5 of the EIA regulations and an appropriate assessment can be screened out. I conclude therefore that section 34(12) does not apply in this instance.
- 7.40. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Rye Water Valley/Carton SAC (001398) or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1. I recommend a grant of planning permission.

9.0 Reasons and Considerations

- 9.1. Having regard to the existing commercial use on site, the separation distance of the site from significant housing development and subject to the conditions set out below it is considered that the proposed development would not endanger public safety by reason of traffic hazard, seriously injure the residential amenity of property in the vicinity, give rise to water pollution or unacceptably negatively impact on the rural amenity of the area. The proposed development would, therefore, accord 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 submitted on the 23rd day of May 2019 and by the further plans and particulars received by An Bord Pleanála on the 3rd day of September 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.	<ol style="list-style-type: none"> 1) The landscaping scheme as submitted to the planning authority on the 23rd day of May 2019 shall be carried out within the first planting season following substantial completion of external construction works. 2) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority. <p>Reason: In the interests of visual amenity.</p>
3.	<p>The noise level shall not exceed 55 dB(A) rated sound level, as measured at the nearest dwelling. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To protect the residential amenities of property in the vicinity of the site.</p>

4.	<p>All plant and machinery shall be enclosed and soundproofed in accordance with a scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To protect the residential amenities of property in the vicinity of the site.</p>
5.	<p>The working hours for the permitted development shall be between 0700 hours and 1800 hours Monday to Friday, 0700 hours to 1400 hours on Saturday 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>Receptacles for waste shall be provided and available for use at all times on the premises in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To ensure adequate management of waste in the interest of rural amenity and environmental protection.</p>
7.	<p>a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority and in accordance with the requirements of the document “Wastewater Treatment Manual: Treatment Systems for Single Houses”, Environmental Protection Agency (2009). Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>b) Within three months of the commencement of use of the proposed effluent treatment and disposal system, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system</p>

	<p>has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
8.	<p>The disposal of surface water shall comply with the requirements of the planning authority for such works and services. In this regard-</p> <p>(a) uncontaminated surface water run-off shall be disposed of within the site and not released to adjoining lands or the public road.</p> <p>(b) all soiled waters (water runoff from hard surfaces) shall be directed to a storage tank and released to the drain on site through an appropriate oil/silt interceptor. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.</p> <p>Reason: In the interest of environmental protection and public health.</p>
9.	<p>Prior to commencement of development details (including a time scale for implementation) of appropriate signage and traffic management measures at the revised site entrance shall be submitted to and agreed in writing with the planning authority.</p> <p>Reason: In the interest of traffic safety.</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 intended construction practice for the development, including hours of working, noise management measures, construction related traffic movements and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
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</p>

<p>Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development 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 the Board 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 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>

Hugh Mannion
Senior Planning Inspector

22nd August 2022.