



An  
Bord  
Pleanála

## Inspector's Report ABP-311085-21

<b>Development</b>	Retention of agricultural workshop comprising; office, storage, w/c and service area, entrance & all ancillary works. Permission for new septic tank and percolation area.
<b>Location</b>	Drummallaght, New Inns, Ballyjamesduff, Co. Cavan.
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	21310
<b>Applicant(s)</b>	Kepjoc Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To refuse permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Kepjoc Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	1 <sup>st</sup> November 2021.
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

1.1. The c.0.6ha appeal site is situated c.3.5km to the north east of Ballyjamesduff, the townland of Drummallaght, County Cavan. It lies in a rural area immediately north of and abutting the N3. The site comprises an agricultural workshop and associated service and parking areas. The agricultural shed is constructed in block and metal cladding. The structure has two roller shutter doors in its western elevation and windows in its western and northern elevations, at ground floor to serve the internal office space. Access to the site is from the minor public road to the north of the site (L7020-0). This minor road joins the N3 by simple priority junction just west of the site, with an incline from the minor road to the national road. Two residential properties lie to the north west of the site. A field drain runs along the eastern and northern boundary of the site.

## 2.0 Proposed Development

2.1. The proposed development comprises:

- Retention of a fully serviced agricultural workshop containing office storage, WC facility (321.9sqm), service area, entrance, and
- Permission for construction of septic tank and percolation area.

2.2. Water supply is proposed by private well and wastewater treatment via a new septic tank system. Surface water disposal is into a watercourse.

2.3. An environmental services report is submitted with the application. It stated in the report that the development services tractors and agri-machinery/implements associated with the applicant's agri-contracting business, with the workshop designed to accommodate several vehicles at one time. An external washdown area is provided for cleaning vehicles prior to repair/maintenance work. The report states that the site is served by an approved septic tank with percolation trenches under the portacabin office (not on site at time of inspection). The report recommends that (a) a distribution manhole be installed to provide access to the percolation trenches, and (b) a hydrocarbon interceptor is installed to the rear of the building to intercept all surface waters collected from the surface water exclusion zone highlighted in the site layout plan, (c) activation of a waste management plan for all solid and liquid wastes,

and (d) creation of a designated and bunded fuel storage area. All maintenance and repair works' to agricultural vehicles will be carried out in the workshop. Water from roofs etc. will be directed to a surface water drain via a dedicated pipework (not shown).

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. On the 15<sup>th</sup> July 2021, the planning authority decided to refuse permission for the development for four reasons:

1. Development conflicts with policy EDP5 of the CDP which directs employment and industrial development to settlements or has location requirements necessitating a rural context.
2. Development would be at variance with policy in relation to control of development on or affecting national roads, set out in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012) as it would adversely affect the operation and safety of the national road network by increasing turning movements and crossover movements at a location where the maximum 100km/h speed limit applies.
3. The development, due to its proximity to neighbouring dwellings, would have an adverse impact on residential amenity and character of the area (noise, disturbance), contrary to Objective EDO11 of the CDP.
4. The risk of contamination of groundwater in the vicinity of the site, given the nature of activities occurring.

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

3.2.1. Planning Reports

- 15<sup>th</sup> July 2021 – The report refers to the planning history of the site and two dwellings opposite the site ( all served by the L7020-0), submissions made and internal reports (below) and relevant policies of the County development Plan. The planning assessment identifies anomalies and omissions from the

planning application and considers that the development is operating during day and night hours, extends beyond the stated description as an agricultural workshop for vehicle repairs and sales, with little intrinsic link to the rural economy. Having regard to technical reports and guidance set out in Spatial Planning and National Road Guidelines, it considers that the development is inconsistent with policies of the CDP in respect of protecting road safety. The report recommends refusing permission for four reasons.

### 3.2.2. Other Technical Reports

- Engineer (7<sup>th</sup> July 2021) – Recommends refusing permission on the grounds that the development would generate increased traffic and cross over movements on the national road, where a 100km/h speed limit applies and an overtaking stretch is provided, seriously prejudicing the safety, capacity and efficient operation of the national road.
- Road Design (8<sup>th</sup> July 2021) – Recommends refusing permission on the grounds that the development is at odds with official policy set out in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012) in terms of control of frontage development, increased turning movements and crossover movements at a location where the 100km/h speed limit applies and intensification of the existing access to the N3 with adverse effects on the efficient operation of the national route and safe overtaking capacity at this location.
- Environment (1<sup>st</sup> July 2021) – Seeks further information in respect of wastewater treatment facility to serve the development, provision of a site assessment and site characterisation form, decommissioning of existing septic tank system, location of existing well, vehicle wash facility, surface water drainage system, point of discharge for surface water and interceptor/silt trap etc., activities on site and associated discharges, storage and management of fuels.

### 3.3. Prescribed Bodies

- 3.3.1. TII (14<sup>th</sup> July 2021) – No objection, but refer the planning authority to the government's guidelines on Spatial Planning and National Roads.

### 3.4. Third Party Observations

3.4.1. On file are two observations, made by residents in the area of the site. They raise the following concerns:

- Description of the development conflicts with on-site operations. Development is a commercial garage and yard, servicing and selling agricultural and commercial vehicles.
- Unauthorised development commenced in 2016 and has progressed since, despite enforcement action. Risk of future unauthorised development.
- Impact of development includes interruption in domestic power supply, internet and phone lines (HGV pulling down lines), disruption/blocking of entrance, parking in laneway, obstructed visibility from entrance (stationary vehicles), security concerns, disruption and annoyance from night time vehicles, traffic concerns with HGV numbers joining N3 on high speed stretch of road.
- Permission refused (03/725) previously on site for dwelling due to serious traffic hazard (national primary road). Observer (resident to north west of the site) was advised by the planning authority (pre-planning meeting) not to pursue a storage yard for building materials on the grounds of serious road safety concerns and national policy in respect of lands adjacent to a National Road.
- Any retrospective grant would be at odds with section 2.5 of the Guidelines on Spatial Planning and National Roads and set a dangerous precedent.

### 4.0 Planning History

- PA ref. 03725 – Permission refused for the construction of two no. dwellings on the subject site on the grounds that the development would endanger public safety by reason of traffic hazard in that the increased turning movements and cross over movements into and out of the site in an area where the maximum speed limit applies would seriously prejudice safety and free flow of traffic on the National Primary Road.

- ABP-309132 – Permission granted by the Board for single storey extensions to the side and rear of the existing dwelling on land to the south of the site, with access from the subject local road. Permission was granted on the basis that it was considered there would not be an intensification of use of an existing access onto the national road and that the proposed alterations to the driveway would primarily serve to separate traffic within the curtilage of the property, for reasons of safer movements within the site, with no new access provided or increase in traffic arising from the reconfigured driveway.

## 5.0 Policy Context

### 5.1. National Guidelines

- National Planning Framework. Supports the sustainable development competitiveness of rural areas, the agricultural/food sector and diversification of the rural economy, whilst protecting natural resources and built heritage (national objective 15, 21, 23, national outcome 3 and 5).
- DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012). In section 2.5 the guidelines require that the policy of planning authorities be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads where speed limits greater than 60kph apply. Section 2.6 sets out exceptional circumstances. These include a less restrictive approach in the case of development of national or regional importance and lightly trafficked sections of national secondary roads, serving structurally weak and remote communities where a balance needs to be struck between the transport function of the road and supporting social and economic development of these area. Where a planning authority wishes to identify an area where a less restrictive approach applies, this needs to be done in consultation with the National Roads Authority and via the development plan process.
- Regional Spatial Economic Strategy (Northern & Western Region) – Support the growth of the region’s agri food industry and its SMEs and diversification of the indigenous economy (RPO 4.24, section 4.1).



## 5.2. Cavan County Development Plan 2014-2020

### 5.2.1. Policies of the current Cavan County Development Plan include:

- Section 3.6 Rural Enterprises – Recognise the potential of these businesses to contribute to the rural economy and provide employment. Such enterprises are required to have a rural focus and must not have negative impacts on the environment. Rural enterprises considered suitable include Businesses directly related to farming e.g. servicing and repair of farm machinery. In relation to National Roads, it is stated that policy of the planning authority is to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to National roads to which speed limits greater than 60kmh apply. Policy EDP5 encourages the sustainable development of rural enterprises within the county. Policy objectives EDO11 to EDO17 set out more detailed guidelines on requirements for development of rural enterprise. These include to protect the environment, residential amenities and rural character
- Section 4.1.5 National Roads – Policy PIO22 restricts accesses onto National Roads along sections of road where the speed limit exceeds 60kph and to restrict the intensification of any existing accesses at such locations, except in exceptional circumstances, as defined by Section 2.6 of the DECLG Guidelines (above).
- Section 4.1.10 Road Safety – Sets out policies to improve road safety in the County, including policy PIO36, to ensure that road safety is an integral part of all new planning applications.
- Chapter 10 General site development standards – Includes policies in respect of national roads. These require the protection of national primary roads in the county, avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply, as per the DECLG’s Guidelines on spatial planning and national roads (section 10.14.10, policy DMO21, DMO22).

### 5.3. Natural Heritage Designations

- 5.3.1. The appeal site is removed from any sites of natural heritage interest. The nearest national site lies c.7.5km to the south east of the appeal site at Virginia and comprises Lough Ramor proposed Natural Heritage Area (pNHA). Lough Ramor outflows into the River Blackwater which, at this location, is designated as a Special Protection Area (SPA) and Special Area of Conservation (SAC).
- 5.3.2. Surface water drainage from the site is into the stream along the north/eastern boundary, which outfalls into Nadreegeel Lough Stream. This stream discharges into Lough Ramor. There is therefore a pathway connecting the appeal site to a site of natural heritage interest and to European sites.

### 5.4. EIA Screening

- 5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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. Impact of the development on sensitive locations, which are substantially removed from the site, are addressed in the Appropriate Assessment section of this report and it is concluded that no significant effects are likely to arise in respect of European sites.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. Grounds of appeal are summarised below. The appellant also refers the Board to section 7.15 of the Development Management guidelines which states that the objectives of a development plan should not be regarded as imposing a blanket prohibition on particular classes of development and does not relieve the PA of their responsibility for considering the merits of a particular application.

#### Reason 1:

- The PA failed to:
  - Have regard to National and Regional Policy which seek to support rural businesses,
  - Assess the proposal in the context of development plan policies which support small scale rural businesses, and in the context of comparative precedents in rural settings.

Reason 2:

- The proposal does not access onto a National Road. Low staff and traffic volumes provide no basis for this reason and the development is not contrary to Spatial Planning and National Road Guidelines for Planning Authorities. TII did not object to the development.

Reason 3:

- There are no emissions from the development which would cause an unacceptable impact on residential amenity. It is unreasonable for the planning authority to refer to a likelihood of excessive noise and general disturbance.

Reason 4:

- The servicing and repair of vehicles takes place within a shed with a concrete/impervious floor. Oils are stored in bunded tanks and industry-accepted best practice. Only parked vehicles are located in the gravel area and there is no basis to assume the proposal will lead to contamination of groundwater.

## 6.2. Planning Authority Response

### 6.2.1. The planning authority make the following responses to the appeal:

- There is a disparity between the nature of the use for which retention is sought and the one which is operating on site, which is not exclusively rural and operating outside the parameters of Policy EDP5 of the CDP.
- TII do not object to the application by rely on the PA to adhere to the guidelines set out in the DoECLG Spatial Planning and National Roads

Guidelines for Planning Authorities (2012). The basis of PA's decision is set out in the Planning and technical reports.

- The impact of the development on adjacent residential amenities is well founded in the PAs assessment. This was also informed by documentary evidence provided in observations.
- The PA is not confident on the basis of the nature of activities occurring on site, and the extent of the particulars provided, that the development is consistent with safeguarding the environment and public health.

### 6.3. Observations

6.3.1. In response to the Board's letter of the 1<sup>st</sup> September 2021, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media provide the following observations on nature conservation issues:

- The potential for the development to impact on and or effect nature conservation interests should be assessed, with consideration of the requirement for a screening for EIA and or AA.
- The site is within 15km, and may have hydrological connection with, the River Boyne and River Blackwater SPA and SAC, via Lough Ramor pNHA. There is a tributary of the River Blackwater close to the site.

## 7.0 Assessment

7.1. Having examined the application details and all the documentation on file, including all the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local and national policies and guidance, I considered the main issues in this appeal are:

- Rural development.
- Precedents.
- National road policy.
- Impact on residential amenity.
- Impact on surface and groundwater.

## 7.2. Rural Development

- 7.2.1. The national, regional and local planning policy context supports the development of agricultural sector and the diversification of the traditional industries, in the interest of economic development and job creation, subject to environmental considerations. Policies of the Cavan County Development Plan refer to small scale rural enterprises and support their sustainable development within the county (Policy EDP5). The servicing and repair of farm machinery is listed as a specific rural enterprise which is deemed to be suitable in rural locations.
- 7.2.2. The proposed development comprises an agricultural workshop, with the applicant stating (page 25 of appeal) that it provides mechanical services for agricultural vehicles in a convenient location for the local farming community. As such, the development would be consistent in principle with the policy framework which supports the agricultural industry and the servicing and repair of farm machinery in particular.
- 7.2.3. Parties to the planning application and appeal refer to other uses taking place on the site e.g. a commercial garage/yard for articulated lorries, for the sale of vehicles. These are not uses which were apparent on site at the time of site inspection or uses which the applicant has applied for. The application must therefore be adjudicated on its own merits. Any uses falling outside of the permitted use, would be a matter for enforcement.

## 7.3. Precedents

- 7.3.1. The appellant refers the Board to a number of other applications in the area of the site for agricultural workshops which have been granted by the planning authority under the terms of the Cavan County Development Plan 2014 (section 6 of appeal). It is argued that the decision by the planning authority is inconsistent with the approach taken elsewhere.
- 7.3.2. Having regard to the appellant's submissions, I would accept that development referred to are similar to the subject development and that each has been considered under the same planning policy framework. However, each case would have been determined on its own merits having regard to its specific context and the sensitivity of the receiving environment at the particular location.

#### 7.4. National Road Policy

- 7.4.1. The appellant argues that the proposed development does not involve an access onto a national road but instead, involves an access onto a local road, the L7020-0 which once functioned as the N3. It is stated that development on the L7010-0 has been deemed acceptable by the planning authority (adjacent dwellings), as has development off other local roads which join the N3 e.g., Billis National School and other development cited on page 13 of appeal.
- 7.4.2. The appeal site lies on the L7020-0, a short local road, that runs parallel to the N3 for a short distance. The applicant's map of the road on page 13 of the appeal is incorrect in that the road does not extend to Billis National School but terminates midway between the subject site and the school, at the N3.
- 7.4.3. Government policy, as expressed in the DoECLG's Spatial Planning and National Roads Guidelines for Planning Authorities (2012) in relation to development affecting national roads is clear. It requires that the policy of planning authorities is to avoid the creation of any additional access point from new development **or the generation of increased traffic from existing accesses to national roads to which the speed limits greater 60kph apply** (section 2.5).
- 7.4.4. The proposed development involves the repair of agricultural machinery. The appellant states that it will give rise to a small number of vehicle movements, with 4 no. parking spaces provided staff and the workshop. In contrast, the site layout plan shows 5 spaces for tractors and 14 for cars. Further, at the time of site inspection there were approximately 8 tractors on site, 5 cars and two vans. There is therefore an inconsistency in information on file regarding the scale of activity on the site and a lack of clarity on the number of vehicle movements that are likely to arise from the facility.
- 7.4.5. Notwithstanding this, the use of the subject site would give rise to an increase in traffic using the site, including movements by large, slower moving vehicles. Whilst these vehicles will enter and exit the appeal site via a local road, this road joins the N3 via a minor junction, to the west of the site, where there is an incline on approach to the N3, where the 100kph speed limit applies and in an area which permits overtaking. The proposed development would inevitably generate an increase in traffic from the existing access onto the N3 and result in slow moving vehicles

crossing the carriageway at this location. Such an arrangement would be in conflict with the government's guidelines.

- 7.4.6. The planning authority's report states that TII's submission states that the development is at variance with national policy. However, I would accept the appellant's view that TII did not object to the proposed development, but the statutory body does require the planning authority to abide by national policy in relation to Spatial Planning and National Roads.
- 7.4.7. The appellant refers to other development which has been permitted by the planning authority on local roads in the area, which ultimately join the N3, and which have been deemed to be acceptable by the planning authority. I note that the permissions referred to are for residential development and Billis NS. They do not therefore entail movements by slow moving vehicles and/or they make use of the more substantial junction on the national road south of the subject site (Billis NS), in locations where overtaking is not permitted.
- 7.4.8. Having regard to the foregoing, I would be concerned that the proposed development would be contrary to government guidelines set out in the DoECLG's Spatial Planning and National Roads Guidelines for Planning Authorities (2012) and would give rise to additional turning movements by slow moving vehicles at a location on the national road where the 100kph speed limit applies. The development would therefore give rise to traffic hazard and adversely affect the safety of the national road network.

## **7.5. Impact on Residential Amenity**

- 7.5.1. There are two residential properties lying immediately north west of the appeal site. These are both set back from the minor road on which they and the proposed development are situated. At this distance, and having regard to the proposed use on the site as a development servicing tractors and agri-machinery and hours of operation, 8am to 6pm, no adverse effects on the residential amenity of the properties are likely to arise by way of noise, light pollution or other environmental emissions. For the reasons stated above, it is accepted that additional traffic movements generated by the site would give rise to traffic hazard on the junction with the N3. Any parking on the minor road, use of the site by commercial vehicles

or for the sale of vehicles, would lie outside of the scope of the permission sought and be matters for the planning authority under enforcement.

**7.6. Impact on surface water and groundwater.**

7.7. An environmental services report is submitted with the application. It states that an approved septic tank with percolation area has been installed on the site to serve the two toilets on the site a maximum number of employees of 4 person. The Site Layout Plan indicates the location of the installed septic tank and percolation areas and the location of an existing septic tank to be removed. The appeal (page 17) states that it is 'proposed to install a new septic tank and percolation area'. There is therefore a contradiction in the application, regarding what is or is not in place. There is limited information on/specification for the wastewater facilities which are installed/proposed or a site characterisation form demonstrating the capacity of the site to accommodate such a system.

7.8. Surface water from the site will largely percolate to ground. The wash down area to the south of the building to be retained, drains to the side and north of this building to an interceptor with outfall to surface water body. It is not clear from the plans submitted where discharge water will outfall or details on any licence required under the Water Pollution Acts (see Environment Report). It is also stated in the environmental services report that all roof waters are '*directed to surface water drain via a dedicated pipe network. Roof waters do not mix with surface water flows*'. No details are given on the dedicated pipework or where these flows will be directed to.

7.9. Having regard to the foregoing and in the absence of more detailed information, there is a risk that the proposed development could give rise to deterioration in water quality in the adjoining stream and of groundwater. Notwithstanding this, this matter is one which could be addressed by way of further information and need not form part of reasons for refusal.

**8.0 Appropriate Assessment**

8.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.



- 8.2. Background. There is no screening report for Appropriate Assessment submitted with the planning application and this screening exercise has been carried out *de novo*. The project is not directly connected with or necessary to the management of any European site and therefore it needs to be determined if the development is likely to have a significant effect on a European site(s).
- 8.3. Description of the development. The proposed development is described in the applicant's planning application form and environmental services report. It comprises an agricultural workshop with discharge of wastewater and surface water to ground and to the adjoining stream to the north east of the site.
- 8.4. Submissions. In response to the appeal, the Development Applications Unit recommend screening for AA given the location of the site in proximity to the River Boyne and Blackwater Special Protection Area (SPA 004232) and Special Conservation Area (site code 002299), via Lough Ramor and the tributary of the River Blackwater close to the site.
- 8.5. European sites. The appeal site is physically removed from European sites. However, as referred to by the DAU, it is likely to be hydrologically connected to River Boyne and Blackwater Special Protection Area (site code 004232) and Special Conservation Area (site code 002299), via Lough Ramor, as the stream which runs along the north/east of the site outfalls into Nadreegeel Lough Stream and this stream discharges into Lough Ramor.
- 8.6. Qualifying interest and conservation objectives.
- River Boyne and Blackwater Special Conservation Area:
    - Qualifying interest: Alkaline fens, Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*), *Lampetra fluviatilis* (River Lamprey), *Salmo salar* (Salmon), *Lutra* (Otter)
    - Conservation objectives: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
  - River Boyne and Blackwater Special Protection Area :
    - Qualifying interest: Kingfisher (*Alcedo atthis*).

- Conservation objectives: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

8.7. Identification of likely effects. Discharge of contaminated water from the appeal site to ground or surface water bodies could give rise to a decline in water quality downstream of the site, to the detriment of water quality related habitats and species. However, in the absence of existing/proposed measures to address potential pollutants, with the modest nature of the proposed development, the likely attenuating effects of soils on the site (for discharges to ground), the significant distance of the subject site from downstream European sites and the diluting effect of substantial intervening surface waters (for discharges to surface water), significant adverse effects on water quality in the River Boyne and River Blackwater SAC/SPA are highly unlikely as a consequence of the development alone, or therefore in conjunction with other plans or projects.

8.8. Mitigation measures . No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise

8.9. Screening determination. the proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site Nos. 004232 and 002299, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required. This determination is based on the distance of the proposed development from the European Site and modest nature of the development.

## 9.0 Recommendation

9.1. I recommend that retention permission for the development be refused.

## 10.0 Reasons and Considerations

It is considered that the proposed development, which would result in the intensification of use of an access onto the National Primary Road N3, at a point where a speed limit of 100km/hr applies, would endanger public safety by reason of traffic hazard and the additional and conflicting traffic movements generated by the development would interfere with the safety and free flow of traffic on the public road.

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Deirdre MacGabhann

Planning Inspector

15<sup>th</sup> November 2021