



An
Bord
Pleanála

Inspector's Report ABP-312057-21

Development	Change of use from “office ancillary to motor sales facilities” to “office use”, and all associated works.
Location	Unit 17, Kilmore Business Park, Dublin Road, Cavan.
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	21/557
Applicant(s)	Donal Watters
Type of Application	Permission
Planning Authority Decision	Grant, subject to 5 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Cathal Brady
Observer(s)	None
Date of Site Inspection	27 th January 2022
Inspector	Hugh D. Morrison

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
4.0 Planning History.....	4
5.0 Policy and Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	5
5.3. EIA Screening	5
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Applicant Response	7
6.3. Planning Authority Response	9
6.4. Observations	9
6.5. Further Responses.....	9
7.0 Assessment.....	9
8.0 Recommendation.....	16
9.0 Reasons and Considerations.....	16
10.0 Conditions	17

1.0 Site Location and Description

- 1.1. The site is located in the Kilmore Business Park, which lies on the northern side of the N3 and between two roundabouts on this national primary road, which feature on its eastern approach to Cavan Town. Kilmore Business Park is composed of modern units which are the subject of a variety of retail and commercial uses. To the east of the site lies Cavan Digital Hub and Hotel Kilmore.
- 1.2. The site has a 150m frontage onto the N3 and it is accessed off this national primary road via the road network, which serves the Kilmore Business Park. Access points to the site are sited in the north-eastern boundary towards the northern corner of the site and in the north-western boundary towards its south-western extremity. This site extends over an area of 0.64 hectares. It accommodates a centrally sited complex, which comprises buildings denoted as East and West. These buildings accommodate 3 car showroom facilities orientated towards the N3 which are surrounded by circulation space and car parking spaces. The rectangular portion of the East Building in the northernmost quadrant of the site has an underground car park, ground floor service workshops and upper floor offices at first floor level and partly at second and third floor levels.

2.0 Proposed Development

- 2.1. The proposal is for a change of use of the upper floors in the East Building from their authorised use as ancillary offices to the motor sales and service facility on the site to offices that would be used by the HSE for administration and backroom functions by 49 staff.
- 2.2. The upper floors extend over an area of 1225.8 sqm. The first floor is above service workshops. The second and third floors are over the north-eastern portion of the first floor. These floors are accessed via a ground floor lobby, which is accessed by means of pedestrian doors in the north-eastern elevation of the East Building.
- 2.3. The underground car park beneath the service workshops would be assigned for use by HSE staff. This car park is accessed by a ramp from the south-west and via the existing circulation system and access points to the site.

- 2.4. The proposed change of use would be facilitated by internal and external works. The former works would entail the sub-division and fitting out of the vacant floors, which have not previously been occupied, for office use. Associated minor alterations elsewhere in the East Building would also be carried out. The latter works would involve alterations to several doors and windows.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 5 conditions, one of which requires the submission of a mobility management plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See decision.

3.2.2. Other Technical Reports

Cavan County Council: Environment: No objection.

4.0 Planning History

05/876: Construct new motor sales & service facility, comprising 2 no. separate buildings (1 no. 2-storey to west & 1 no. 5-storey to east) over a single storey basement car storage area - west building with an overall area of 418m², consists of one motor sales with mezzanine floor sales office, toilets & ancillary accommodation with overall height of 7.05m - east building overall floor area of 2,690m² consists of 2 motor sales facilities (one with mezzanine floor sales offices), service workshop, parts department, ancillary office & toilet accommodation on 3 floors with associated external terraces & roof level plant room. Overall height to roof level plant room 18.125m. Basement car storage (including ramp, wash & valeting) shall have floor area of 1,784m². External development consists of staff, customer & display surface parking areas, free-standing & attached illuminated signage, 9 flag poles, landscaping & treatment of site boundaries, access road & associated vehicular

entrances from existing business park, associated drainage & ancillary works, Site 17: Applicant Cathal Brady: Permitted, subject to 39 conditions.

5.0 Policy and Context

5.1. Development Plan

Under the Cavan County Development Plan 2014 – 2020 (CDP), Cavan Town is identified as the County’s principal town (Tier 1).

Under the Cavan Town and Environs Development Plan 2014 – 2020 (TDP), the site is zoned “enterprise and employment, wherein the objective is “To facilitate opportunities for general employment and enterprise and related activities.” Within this zone, offices are permitted in principle.

5.2. Natural Heritage Designations

- Lough Oughter and associated loughs SAC (000007)
- Lough Oughter SPA (004049)

5.3. EIA Screening

The proposal is essentially for a change of use and so it is not a “project” for the purpose of EIA.

6.0 The Appeal

6.1. Grounds of Appeal

The appellant begins by citing Section 37(1)(b) of the Planning and Development Act, 2000 – 2021, i.e. the *de novo* provisions for Board assessments/decisions. He then proceeds to cite the following grounds of appeal:

- Both CDP and the TDP objectives do not permit the proposal at this out-of-town location.

With respect to the CDP,

- Core strategy objectives, CSP 3 & 14 prioritise the town centre for offices and the sequential approach to the town's development, i.e. outwards from the town centre,
- Economic development objective, EDO 10, requires the submission of employment and traffic projections, and
- The key zoning objective is to strengthen the town core.

With respect to the TDP,

- Employment and town centre objectives, E-02 & TC-05, promote offices/ commercial uses in the town centre,
 - The vision for the enterprise and employment zone states that “office based enterprises and retailing will not be encouraged”, and
 - Neither the applicant nor the case planner correctly identify the proposal as an office based enterprise.
- The proposal would lead to an over intensification of use on the site – parking provision for existing car dealerships has not been addressed.

Under the parent permission 05/876, whereas 171 car parking spaces were approved, only 143 spaces were provided, i.e. a shortfall of 28 spaces. Of the 171 spaces, 15 were designated for the “ancillary offices”, whereas under the current proposal 50 spaces would be so designated. Consequently, the spaces available for the car dealerships would contract by 35, from 128 to 93 spaces.

The existing parking on site is insufficient to meet the needs of the current car dealerships. Under the proposal, the pressure on the existing inadequate car parking would increase further with adverse implications for deliveries.

- Intensification and traffic safety

The proposal would generate an increase in traffic in attendance at the site. The means of access thereto is from the N3 and yet the TII was not consulted, and no traffic assessment or Road Safety Audit were undertaken.

The proposal would be contrary to the Spatial Planning and National Roads Guidelines, which state that “the capacity, efficiency and safety of national roads and associated junctions” is to be protected.

- Principle and location

The site is located 2.2 km from the town centre in an out-of-town location. To permit the current proposal would lead to an adverse precedent for offices in such locations rather than in the town centre.

6.2. Applicant Response

The applicant begins by requesting that the Board exercise its discretion, under Section 138(1)(a)(i) of the Planning and Development Act, 2000 – 2021, and dismiss the appeal on the basis that it is vexatious. This request is based on the fact that the appellant was the applicant who was granted permission under application 05/876 to develop the site as it is today. He intended that the upper floors of the East Building would be used for offices and so how can he now credibly object to such usage?

The applicant proceeds to respond to the appellant’s grounds of appeal under the three headings used consecutively below.

(i) Background and overview

The applicant summarises the appellant’s grounds of appeal: See in this respect my own summary set out above.

(ii) Decision of the Planning Authority and policy context

- Regardless of any favouring of town centre locations for offices by the TDP, the upper floors of the East Building are *insitu*, vacant, and suited to the HSE’s immediate and pressing needs for alternative accommodation for administrative staff, who presently work in Cavan General Hospital. The use of these floors would be more sustainable than any new build option in another town.
- Contrary to the appellant’s view, the TDP’s enterprise and employment zoning of the site deems offices to be permitted in principle.

- New cars from different manufacturers are sold on the site by the Blackstone Motors Group. On-site outdoor parking is adequate for the needs of this Group. The applicant's assessment of this parking, in the light of TDP standards, was accepted by the Planning Authority. By contrast, the appellant's assessment is excessive.
- Table 4 of the TDP sets out car parking standards:
 - If these are applied to the upper floors (999.5 sqm), i.e. 1 space per 20 sqm, then 50 spaces would be required. Under the proposal, the 50 of the 59 spaces in the underground car park would be assigned to HSE staff.
 - If these are applied to the ground and mezzanine floors (1993.4 sqm), i.e. 1 space per 100 sqm, then 20 spaces would be required. These spaces exist amongst the 84 surface car parking spaces and the 9 residual underground car parking spaces, i.e. the remaining 73 spaces are available for the display of cars for sale.
- The appellant's position that a traffic assessment and RSA of the proposal is set aside as "ill informed", as the site is within the development boundary around Cavan Town.
- The appellant cites the policy of the Spatial Planning and National Roads Guidelines, which states that the capacity, efficiency and safety of national roads and associated junctions is to be protected. However, he overlooks that these Guidelines apply to the national road network outside its 50 – 60 kmph speed limit zones. The site in question is accessed off a section of the N3 that is subject to a 50 kmph speed limit zone. Furthermore, the access point from the N3 is the subject of proposed and permitted improvements.

(iii) Summary and conclusions

The applicant highlights again the appellant's previous ownership of the site, the need to interpret CDP/TDP policies, objectives, and standards correctly, and the importance of supporting the current proposal in order to free up space in Cavan General Hospital for patients.

6.3. **Planning Authority Response**

The Planning Authority reiterates portions of the case planner's report. It emphasises the following points:

- The proposed office use would be similar to the permitted ancillary office use of the upper floors, except for the fact that it would be operated separately from the existing car dealerships on the site.
- Forty-nine staff would be employed in the short term.
- Offices are permitted in principle under the zoning of the site.
- Similar office use occurs nearby in the Cavan Digital Hub.
- The upper floors in question have been vacant for a long period of time.
- Under the TDP, the use of 999.5 sqm of floorspace for offices should be accompanied by 50 car parking spaces. These spaces would be provided in the basement car park for the proposed offices. Consequently, the remaining 9 therein and the 84 surface car parking spaces would be available for the car dealerships.
- Condition No. 5 attached to the Planning Authority's permission requires the submission of a mobility management plan.

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

- 7.1. I have reviewed the proposal in the light of the Cavan County Development Plan 2014 – 2020 (CDP), the Cavan Town and Environs Development Plan 2014 – 2020 (TDP), relevant planning history, the submissions of the parties, and my own site

visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) The need for planning permission and the validity of the appeal,
- (ii) Location, land use, and amenity,
- (iii) Traffic, access, and parking,
- (iv) Water, and
- (v) Appropriate Assessment.

(i) The need for planning permission and the validity of the appeal

- 7.2. The need for planning permission for the proposed change of use from “ancillary offices” to “office use” is addressed under the applicant’s referral (PA ref. 281 and ABP-312025-21). I have assessed this need separately in my report to the Board on ABP-312025-21, wherein I conclude that the proposed change of use would be a material change of use and thus development for which no exempted development provisions are available.
- 7.3. The applicant draws attention to the appellant’s previous involvement with the site. He considers that this appeal is “vexatious” and so he requests that the Board exercises its discretion to dismiss it, under Section 138(1)(a)(i) of the Planning and Development Act, 2000 – 2021.
- 7.4. I have reviewed the applicant’s grounds of appeal and I consider that he has raised material planning considerations therein. I, therefore, take the view that this appeal should be allowed.
- 7.5. I conclude that the proposal does need planning permission and that the current appeal should be assessed/determined in the normal manner by the Board.

(ii) Location, land use, and amenity

- 7.6. The site is located within the Kilmore Business Park, which forms part of an area of modern retail, commercial, and industrial development off the N3 on its eastern approach to Cavan Town, i.e. Century/Kilmore/Pullamore Business Parks.
- 7.7. Under the CDP, Cavan Town is identified as the County’s principal town (Tier 1), and, under the TDP, the above cited area on its eastern approach is the subject of several zonings. The site is zoned “enterprise and employment”, wherein the

objective is “To facilitate opportunities for general employment and enterprise and related activities.” Within this zone, offices are deemed to be permitted in principle.

- 7.8. The appellant draws attention to objectives in the CDP and TDP, which promote the location of offices in Cavan town centre, e.g. as part of mixed use developments where they would be provided over ground floor shops. Presumably, the rationale for such promotion stems from the synergies that can arise from having different publicly accessible uses in close proximity to one another. One of the objectives, CSP14, refers to such offices as commercial offices. The appellant also draws attention to the vision for the “enterprise and employment” zone, which states, amongst other things, that “The development of inappropriate mixes of uses, such as office-based enterprises and retailing, will not be encouraged.” He contends that the proposal would run contrary to this vision and the above cited objectives.
- 7.9. The applicant and the Planning Authority have responded to the appellant by emphasising that “offices” are permitted in principle under the zoning of the site and that the floorspace in question already exists albeit with an authorised use as “ancillary offices”. Accordingly, there is in principle no land use objection to the proposal and the proposed use would be similar to the permitted use of this floorspace.
- 7.10. The proposed offices would be used by the HSE for purposes that would not entail the need for the public to be in attendance, i.e. they would be Class 3 offices, under Part 4 of Schedule 2 to Article 10 of the Planning and Development Regulations, 2001 – 2021. As noted above, the CDP and TDP objectives promote the town centre location of offices that would be publicly accessible, typically within mixed-use developments, thereby facilitating synergies favourable to the vitality and viability of Cavan town centre. The proposed offices would not be publicly accessible and so they would not contribute to such synergies. Furthermore, their intended use would not be either a commercial or enterprise-based one. Accordingly, under the CDP and TDP, they do not need to be located in the town centre.
- 7.11. In the light of the foregoing paragraph and the applicant and Planning Authority’s response, with which I concur, the proposed office use would be appropriate from location and land use perspectives.

- 7.12. The floorspace in question is on the upper floors of the East Building above service workshops on the ground floor. These workshops are used for the servicing of vehicles. Some environmental impacts result, e.g. noise. I am concerned that the noise insulation properties of the East Building may not have been designed to ensure an office environment suited to a separate office use as distinct from an ancillary office use. The submitted plans show that the applicant has addressed likely fire safety requirements. They do not however refer to noise insulation. In these circumstances, I consider that a precautionary condition should be attached to any permission, which would require that this matter be investigated, and any remedial measures implemented, prior to the commencement of the proposed use.
- 7.13. I conclude that, as the proposal is for Class 3 offices, it would be appropriate from location and land use perspectives. I also conclude that, provided the issue of noise is addressed by means of a precautionary condition, the use would be capable of being conducted satisfactorily.

(iii) Traffic, access, and parking

- 7.14. The applicant states that 49 staff would work in the upper storeys of the East Building, which are the subject of this application, and that 50 spaces in the underground car park to this building would be allocated to these staff.
- 7.15. The appellant expresses concern that the proposal would lead to an over intensification in the use of the site, which would be evident in traffic generation and the need for parking.
- With respect to the former, an increase in traffic attending the site is envisaged, such traffic would access the site via the N3, and yet the TII was not consulted. This increase would be contrary to the Spatial Planning and National Roads Guidelines, which state that “the capacity, efficiency and safety of national roads and associated junctions” is to be protected.
 - With respect to the latter, existing parking provision on the site is inadequate, this provision falls short of that which was approved under the parent permission, and, under the proposal, it would come under greater pressure again.

- 7.16. The applicant responds by drawing attention to the ambit of the Guidelines cited, which does not extend to 50 – 60 kmph speed limit zones on the national road network. As the access point to Kilmore Business Park off the N3 is off a portion of this national road that is subject to a 50 kmph speed limit zone, these Guidelines are not relevant in this instance. He also draws attention to proposed and permitted improvements to this access point
- 7.17. The applicant and the Planning Authority express the view that on-site parking provision would be adequate. Specifically, under TDP standards, 1 space should accompany each 20 sqm of office floorspace. The proposal relates to 999.5 sqm of floorspace and so it should be accompanied by 50 car parking spaces. This level of provision would be made available in the underground car park. The view is also expressed that surface car parking spaces are sufficient for staff and customer parking and for the display of cars for sale.
- 7.18. I recognise that the subject floorspace is authorised for use as “ancillary offices” and that the proposed use is for “stand-alone” offices. Insofar as this floorspace had been provided but not occupied, it has not given rise to any traffic generation to date. Notional traffic generation under its authorised use could have been anticipated to be similar to traffic generated under the use now proposed.
- 7.19. During my site visit, I observed the access point from the N3 to the Kilmore Business Park. The N3 comprises two through lanes and two cycle lanes as it passes this access point. It also comprises a right-hand turning lane and, to the east of the access road to Kilmore Business Park, a public footpath. The access road is of two lane width with public footpaths on either side. Overall, the junction between the N3 and the access road appears to have been provided to a generous specification and so I do not anticipate any capacity issues with its increased usage under the proposal.
- 7.20. During my site visit, I also observed the access points to the site itself: Only one was in use, i.e. the access point towards the northern corner of the site. The submitted plans show that this access access point would be used exclusively for access and the other one, towards the south-western extremity of the site, would be used exclusively for egress. On-site a one-way circulation system would operate. As the access point towards the northern corner of the site is adjacent to a “T” junction in

the access road network to the Kilmore Business Park, its use for access only would be welcome. Egress vehicular movements from the site would thus utilise this “T” junction. These access and egress arrangements should be conditioned.

7.21. Turning to parking, during my site visit (around 10 am on a Thursday morning in late January), the underground car park was closed and most of the surface car parking spaces were occupied with vehicles for sale. *Prima facie* the use of this car park to provide staff parking for the proposed use would not impact upon the use of the surface car parking spaces.

7.22. The appellant draws attention to a shortfall in the provision of spaces on the site, i.e. under the parent permission 171 spaces were authorised, while “on the ground” 143 exist. I note in this respect that, while a condition was attached to this permission requiring that display vehicles be parked solely on the site, i.e. not on adjoining roads or their margins, no condition was attached concerning the provision and retention of the full number of spaces.

7.23. The parties contest the adequacy or otherwise of parking provision. Under Table 4 of the TDP’s current car parking standards, the following requirements are of relevance:

- For the ground floor and mezzanine floors in use as car showrooms (1993.4 sqm): 1 space per 100 sqm: 20 spaces,
- For the upper floors in use as offices (999.5 sqm): 1 space per 20 sqm: 50 spaces, and
- Additionally, 1 cycle stand per 100 sqm is required for the offices: 10 stands.

7.24. The submitted plans show the existing provision of car parking spaces on the site to be as follows:

- In the underground car park: 59 spaces,
- In the open forecourt to the front and sides of the East and West Buildings: 59 spaces (9 of which would serve those whose mobility is impaired),
- In the enclosed forecourt to the rear of the East and West Buildings: 22 spaces, and

- They also show open display areas in the eastern corner of the site (equivalent of 10 spaces) and enclosed display areas within the three car showrooms.

- 7.25. In the light of these plans, the total number of spaces available for customer and staff car parking in the underground and open surface car parks would be 118. Under TDP standards, 70 spaces would be needed and so 48 would be available for the external display of vehicles for sale. Additionally, I note that these standards would require the provision of 10 cycle stands. I also note that none of the underground car parking spaces appear to be laid out as ones capable of serving those whose mobility is impaired. Given the need to provide cycle stands and say 5% of the spaces for those whose mobility is impaired, i.e. 3 spaces, some retrofitting of the underground car park would be needed and so this should be conditioned.
- 7.26. The Planning Authority's permission includes a condition requiring the submission of a mobility management plan, in the interest of traffic safety and sustainable transport. I consider that such a condition should be attached to any permission that the Board may grant, in order to promote the sustainable options of car sharing and cycling. Depending on the take up of these options the use of 50 car parking spaces by the staff of the proposed offices may not materialise fully in practise.
- 7.27. The appellant also expresses concern that the pressure on car parking spaces would have adverse implications for deliveries. However, in the light of my assessment of parking, I do not envisage such pressure and so deliveries would be able to continue in the manner that they do at present to the three car sales showrooms.
- 7.28. I conclude that traffic generated by the proposal would be capable of being accommodated on the public road network, access and egress arrangements to the site would be satisfactory, and parking arrangements would comply with relevant TDP standards.

(iv) Water

- 7.29. The developed site is fully serviced by means of the public water mains and the public foul and stormwater sewerage systems. Under the proposal, there would be no changes in these arrangements.

7.30. Under the OPW's flood maps, the site is not shown as being the subject of any identified flood risk.

7.31. I conclude that the proposal raises no water issues.

(v) Appropriate Assessment

7.32. The proposal is for a change of use only. The site is fully serviced. No Appropriate Assessment issues would arise.

7.33. Having regard to the nature, scale, and location of the proposal and the nature of the receiving environment, it is concluded that no Appropriate Assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

That permission be granted.

9.0 Reasons and Considerations

Having regard to the Cavan County Development Plan 2014 – 2020, the Cavan Town and Environs Development Plan 2014 – 2020, and the planning history of the site, it is considered that, subject to conditions, the proposed change of use of the upper floors of the East Building on the site from their authorised use as “ancillary offices” to “office use” would be permitted in principle under the enterprise and employment zoning of the site and it would fulfil the accompanying zoning objective to facilitate opportunities for general employment. The use would be capable of being undertaken in a manner compatible with the existing use of the site as a car sales and service facility. Traffic generated by the use would be capable of being accommodated on the public road network, access and egress arrangements to the site would be satisfactory, and parking arrangements would comply with relevant Town Development Plan standards. No water or Appropriate Assessment issues would arise. The proposal 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, 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 amended as follows:</p> <p>(a) Three car parking spaces shall be provided in the underground car park to serve those whose mobility is impaired.</p> <p>(b) Ten cycle stands shall be provided in the underground car park.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of universal accessibility and in order to promote sustainable modes of transport.</p>
3.	<p>Prior to the commencement of the proposed use, a Mobility Management Plan shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and car-pooling by staff employed in the proposed use and to reduce and regulate the extent of staff parking. Details to be agreed with the planning authority shall include the provision of bicycle parking and shower and changing facilities associated with the policies set out in the plan.</p> <p>Reason: In the interest of encouraging the use of sustainable modes of transport.</p>

4.	<p>Prior to the commencement of the proposed use, a scheme shall be submitted to and agreed in writing with the Planning Authority. This scheme shall comprise a methodology for a noise survey of the first floor of the East Building, the noise survey itself, and any noise mitigation measures that may be needed. It shall also include a timetable for the implementation of any noise mitigation measures.</p> <p>Reason: To ensure that the use is compatible with the ground floor service workshops in the East Building on the site.</p>
5.	<p>The site access, egress, and circulation system shown in the site layout plan (drawing no. PL20-027-001) shall be adhered to at all times, unless otherwise agreed in writing with the Planning Authority.</p> <p>Reason: In the interests of good traffic management and road safety.</p>
6.	<p>The office use hereby permitted is for an office use as defined by Class 3 of Part 4 of Schedule 2 to Article 10 of the Planning and Development Regulations, 2001, as amended.</p> <p>Reason: In the interest of clarity.</p>
7.	<p>Prior to the installation of any external signage for the proposed use, a scheme shall be submitted to and agreed in writing with the Planning Authority providing details of the siting, design, and dimensions of such signage. Thereafter, only the signage shown in the agreed scheme shall be installed.</p> <p>Reason: In order to afford the Planning Authority the opportunity to control signage, in the interest of visual amenity.</p>

Hugh D. Morrison
Planning Inspector

3rd March 2022