



An  
Bord  
Pleanála

## Inspector's Report ABP- 313552-22

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<b>Development</b>	Protected Structure: Retention of Change of use to cafe/tea rooms, internal works and all associated site works.
<b>Location</b>	Eureka House, Navan Road, Kells, Co Meath.
<b>Planning Authority</b>	Meath County Council.
<b>Planning Authority Reg. Ref.</b>	22/229.
<b>Applicant</b>	Hubert Morris.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Grant Permission for Retention.
<b>Type of Appeal</b>	Third Party v Grant Permission for Retention.
<b>Appellant</b>	Kells Anglers C/O Ciaran O'Kelly.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	12 <sup>th</sup> October 2022

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## **1.0 Site Location and Description**

- 1.1. The address of the appeal site is Eureka House, Navan Road, Kells, Co. Meath. Eureka House is located c. 300m to the east of Kell's town centre, on the southern side of the R147. The site is accessed via a roadway which also provides access to a number of community buildings and their attendant grounds including St. Ciaran's Community School, St. Colmcille's National school and Kell's Swimming Pool.
  
- 1.2. Eureka house is a double storey period building which is designated as a Protected Structure. A number of more recently constructed structures are located to the rear of Eureka House, including a single storey, pitched roof structure which comprises the appeal site. This portion of the building is currently in use as a café and includes a covered canopy and outdoor seating on its south-eastern and north-western sides. Surface car parking is provided on the north-eastern side of Eureka House, proximate to the existing café.

## **2.0 Proposed Development**

- 2.1. The proposed development seeks retention permission for the following stated works.
  - A change of use of a section of building previously in use as a canteen for a primary school to public café/tea rooms.
  - Minor internal works.
  - Minor changes to external elevations.
  - The provision of a canopy above the external seating area.
  - All associated site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Meath County Council granted retention permission for the development proposal subject to compliance with 8 no. standard conditions.

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

#### **3.2.1. Planning Report**

The Meath County Council Planning Report forms the basis for the decision. The report provides a description of the appeal site and overview of the policy at regional and local level that is relevant to the development proposal. The report outlines the site's planning history and provides a summary of the 2 no. observations on file.

The Planning Authority highlight that the site is located on lands zoned G1 of the Meath County Development Plan (CDP), 2021-2027, where the existing use is identified as being open for consideration. It is stated that the development to be retained is generally consistent with the recommendations contained within the County Development Plan and there are no adverse impacts on the surrounding amenity or the residential amenity of properties within the vicinity. In this regard, a grant of retention permission is recommended.

#### 3.2.2. Other Technical Reports

Conservation: Report received stating no objection.

#### 3.2.3. Prescribed Bodies

None.

#### 3.2.4. Third Party Observations

2 no. observations had been received on file. A summary of the issues raised are included as follows:

- The proposal is in conflict with the applicable zoning objective.
- The existing use fails to pay rates and has an unfair advantage over competing businesses.
- Traffic related concerns associated with the proposal's operation.
- The proposal is taking business from the town centre.
- Concerns with respect to the location and adequacy of the site notice and the proposal should therefore be invalidated.
- The development description is inaccurate as the existing building operated as a school art room and not a canteen.
- The Applicant has failed to engage in pre-planning consultation.

- Question arise over ownership details.
- There are additional unauthorised uses being carried out on the wider site.
- The Applicant has failed to identify that the proposal includes works that are located within an architectural conservation area.
- An EIA is required due to the location of the Newrath Stream on the site.
- The site is considered one of Kell's key strategic sites and the Applicant has failed to recognise it as a strategic development zone.
- Concerns with respect to wastewater treatment.
- The application is incomplete and does not provide the necessary information required for a fair and full public review.

## **4.0 Planning History**

### **4.1. Appeal Site**

- **KT130008:** Retention permission granted by the Planning Authority to retain and complete the following works: the construction of a temporary class room block and all ancillary site works on this site at the Eureka Secondary School Complex.

### **4.2. Enforcement History**

- **UD21/191:** The Planning Report notes that an enforcement notice was issued on 8<sup>th</sup> December 2021 for unauthorised development consisting of:
  - o The operation of short-term accommodation.
  - o The operation of a café.
  - o The extension of the former school canteen building.

## **5.0 Policy and Context**

### **5.1. The Architectural Heritage Protection Guidelines for Planning Authorities (2004, 2011).**

## 5.2. Meath County Development Plan (CDP), 2021-2027.

Under Map 18(a) of the Meath County Development Plan (CDP), 2021-2027, the site is attributed a G1 (Community Infrastructure) zoning, the objective of which is 'To provide for necessary community, social, and educational facilities'. Given the applicable zoning objective, Section 7.7 (Social Infrastructure) of the current CDP is relevant to the consideration of the application.

Eureka House is designated as a Protected Structure and regard is therefore given to Section 8.7 (Architectural Heritage) of the current CDP. Policy Objectives relevant to the development proposal include:

- **HER POL 14:** To protect and conserve the architectural heritage of the County and seek to prevent the demolition or inappropriate alteration of Protected Structures.
- **HER POL 15:** To encourage the conservation of Protected Structures, and where appropriate, the adaptive re-use of existing buildings and sites in a manner compatible with their character and significance. In certain cases, land use zoning restrictions may be relaxed in order to secure the conservation of the protected structure.
- **HER POL 16:** To protect the setting of Protected Structures and to refuse permission for development within the curtilage or adjacent to a protected structure which would adversely impact on the character and special interest of the structure, where appropriate.
- **HER POL 17:** To require that all planning applications relating to Protected Structures contain the appropriate accompanying documentation in accordance with the Architectural Heritage Protection Guidelines for Planning Authorities (2011) or any variation thereof, to enable the proper assessment of the proposed works.
- **HER POL 18:** To require that in the event of permission being granted for development within the curtilage of a protected structure, any works necessary for the survival of the structure and its re-use should be prioritised in the first phase of development.

Section 8.9.1 (Protecting Biodiversity in Meath – Sites Designated for Nature Conservation) of the current CDP identifies that there are a number of international and nationally important sites designated for nature conservation in the County.

In terms of wastewater treatment, Policy Objective INF POL 12 seeks “To require that in the case of all developments where the public foul sewer network is available or likely to be available and has sufficient capacity, that development shall be connected to it”.

### **5.3. Natural Heritage Designations**

There are no European designated sites within the immediate vicinity of the site. The nearest designated site is the River Boyne and River Blackwater Special Area of Conservation (Site Code: 002299), c. 800m to the north of the site. The River Boyne and River Blackwater Special Protection Area (SPA) (Site Code: 004232) is also located c. 850m to the north of the site.

### **5.4. EIA Screening**

Having regard to the nature and scale the development which consists of retention permission for a change of use to a café/tea room and associated works, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The main points made can be summarised as follows:

- The Appellant has had a reduced time to appeal the decision due to inconsistencies in the Planning Authority’s decision times.
- Concerns with respect to the location and adequacy of the site notice. The Planning Authority overlooked the Applicant’s intentional decision not to display the planning notice at the most conspicuous position of the site.

- The Planning Authority and the Applicant has failed to have regard to the Newrath Stream which flows along the borders of the site and connects into the River Boyne and River Blackwater Special Area SAC and SPA.
- Significant concerns are highlighted with respect to the impact of the proposed development on the Natura 2000 sites.
- The application is incomplete and does not provide the necessary information required for a fair and full public review.
- Concerns are highlighted over the misinformation being presented by Meath County Council and Irish Water with respect to the Kell's Waste Water Treatment Plant (WWTP) which has no capacity for the business activities being carried out by the Applicant.
- A full independent investigation is required given the ongoing damage to a European Site from a WWTP blatantly polluting a protected water system.
- Concerns with respect to wastewater treatment on site which will be exacerbated by the proposed development.
- The Applicant is currently in breach of the planning conditions that apply to the permission.
- The development description is inaccurate as the existing building operated as a school art room and not a canteen.
- The Applicant had been running a number of unauthorised uses on the site prior to the application for retention.
- The Applicant is intent of wholly ignoring all planning and environmental regulations into the future, as is clearly evidenced in the submitted appendices.
- The Applicant has a history on other sites of non-compliance with planning permissions.
- The manner in which the Applicant has behaved, before, during and after the planning applications completion, and the informal support afforded to the Applicant, as highlighted in this appeal submission and also the original submission to the Meath County Council, it is considered that both parties, the Applicant and the Meath County Council, have no intention of adhering to the planning process in this case.



- The Board is requested to refuse this permission and order Meath County Council to ensure that any future planning applications are fully compliant with the planning process and all decisions are fully transparent in their methodology.
- The Board is requested to impress upon Meath County Council the legal requirement for the completion of a comprehensive management plan for the Newrath Stream and River Boyne and River Blackwater Special Area SAC and SPA, which is now 12 years overdue.
- The appeal submission includes a number of appendices and includes the original observation to the planning application.

## **6.2. Planning Authority Response**

A response has been received from the Planning Authority dated 7<sup>th</sup> June 2022 which noted that they are satisfied that all matters outlined in the Third Party appeal submission were considered in the course of its assessment of the planning application as detailed in the planning officer's report. It is requested that the decision to grant retention permission be upheld.

## **6.3. Observations**

None.

## **6.4. Further Responses**

None sought.

## **7.0 Assessment**

**7.1.** The main issues are those raised in the grounds of appeal and the Planning Report, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed.

- Principle of Development & Use
- Waste Water Treatment
- Built Heritage
- Other Matters
- Appropriate Assessment

### **7.2. Principle of Development & Use**

**7.2.1.** The proposed development seeks retention permission for a change of use of a section of the former school building (i.e. canteen) to a public café/tea rooms. I note that the Third Party Appellant has highlighted that the development description is inaccurate insofar as this portion of the building did not previously function as a canteen. Notwithstanding this, the proposal will be considered on its own merits having regard to zoning objective of the appeal site and the nature of the development to be retained.

**7.2.2.** As per Map 18(a) of the Meath County Development Plan (CDP), 2021-2027, the site is attributed a G1 (Community Infrastructure) zoning, the objective of which is 'To provide for necessary community, social, and educational facilities'. Under the G1 zoning objective, the existing café use is identified as being 'open for consideration'. Section 11.14.4 (Open for Consideration Uses) of the current CDP notes that an "open for consideration use" is one which may be permitted where the Council is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on any permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.

**7.2.3.** I note that the appeal site forms part of a cluster of buildings to the north-west of Eureka House. It is understood the site was previously in education use and the

proposal now seeks to regularise the planning status of this portion of the building. The café has an internal floor area of 158sq.m. and includes an ancillary store, kitchen area and customer toilets. The café is also served by a covered external seating area measuring c. 58sq.m. Having regard to the nature of the use and the modest floor area of the café relative to the additional buildings that remain on site, I am satisfied that the use in this instance is compatible with the applicable zoning objective, particularly given the former education use on site appears to have ceased. I note that a café use can often be complementary to community uses. Therefore, I do not consider the regularisation of the current use to be detrimental to the viability of the remaining buildings on the site to serve as either community or social facilities in the future, should the need arise.

- 7.2.4. I note that the existing café is located on a generous sized site within the grounds of Eureka House and there are no immediate sensitive residential interfaces. I also note that the Planning Authority has included a condition limiting the café's hours of operation. Overall, I am satisfied that the proposal is acceptable having regard to the residential amenity of the surrounding area and is in accordance with the applicable zoning objective for the site. I therefore consider the principle of the development to be acceptable in this instance.

### **7.3. Wastewater Treatment**

- 7.3.1. The Third Party Appellant has raised significant concerns with respect to the impact of the proposal on wastewater treatment and highlighted deficiencies with the Kells WWTP. In addition, concerns are highlighted with respect to the potential impact of the proposal on protected Natura 2000 sites given an existing stream in close proximity of the appeal site which connects to a number of Protected Sites. I note the issue of potential impacts on Natura 2000 sites associated with the development to be retained will be discussed in further detail in Section 7.5 of this report.
- 7.3.2. In terms of wastewater treatment, the Applicant's planning application form indicates that the proposal utilises its existing connection to the public sewer. I note the Planning Authority in their assessment of the planning application have raised no objection to

this aspect of the proposal. Volume 2 of the current CDP provides the Written Statements for settlements within County Meath. The written statement provides an overview of the development strategy for Kells. Section 5.4 (Water Services Infrastructure) of the Written Statement for Kells provides information with respect to wastewater. It notes that wastewater is discharged to a Treatment Plant on the Headfort Road. It acknowledges that spare capacity at this Treatment Plant is currently limited. However, it is indicated that Irish Water plans to upgrade this treatment plant from its present capacity of 8,000 p.e. to 13,500 p.e. and it is anticipated that this upgrade will be completed during the lifetime of this Plan.

- 7.3.3. In terms of policy within the current CDP, Section 6.9 (Wastewater) notes that the provision of well-maintained quality wastewater treatment infrastructure is essential to facilitate sustainable development in the County, while also protecting the environment and public health. It acknowledges that Irish Water is now responsible for the treatment and disposal of wastewater where public wastewater facilities exist within settlements. Policy Objective INF POL 12 seeks to “To require that in the case of all developments where the public foul sewer network is available or likely to be available and has sufficient capacity, that development shall be connected to it.” Although it is acknowledged that spare capacity at the Kell’s WWTP is currently limited, I am conscious of the proposals to upgrade this facility within the CDP period. Having regard to the overall scale of the existing operations, the nature of the existing use (i.e. café) and by the fact that it is utilising an existing connection, I am satisfied that the proposal is in compliance with the policy of the current CDP and therefore, will not be prejudicial to public health. In this regard, I consider the proposal to be acceptable subject to compliance with appropriate conditions.

#### **7.4. Built Heritage**

- 7.4.1. As noted earlier in this report, the appeal site forms part of a cluster of buildings located to the north-west of Eureka House. The existing single storey building has a pitched roof form and it is evident that the building is a later addition and is of limited architectural value. The proposal seeks retention permission for internal works to this portion of the building and the erection of a covered canopy and outdoor seating on

its south-eastern and north-western sides. As Eureka House is designated as a Protected Structure under the current CDP, regard must be given to Section 8.7 (Architectural Heritage) and the various policy objectives. Of particular relevance in this instance is Policy Objective HER POL 16 which seeks “To protect the setting of Protected Structures and to refuse permission for development within the curtilage or adjacent to a protected structure which would adversely impact on the character and special interest of the structure, where appropriate.”

7.4.2. The canopy structure has a total length of c. 12.2m on its south-eastern side and c. 14.5m on its north-western side. The structure extends by c. 2.5m beyond the face of the existing building and has a height of c. 3.2m which matches the eaves height of the existing roof. Having regard to overall scale, height and form of the existing canopy and the separation distances provided from Eureka House, I am satisfied that the proposal does not detract from or adversely impact upon the character of the existing Protected Structure. I am therefore satisfied that the proposal is in compliance with Policy Objective HER POL 16 of the current CDP and the proposal is acceptable having regard to the architectural character of the Eureka House and its attendant grounds.

## **7.5. Other Matters**

7.5.1. Concerns have been highlighted by the Third Party appellant with respect to the adequacy of the site notice. It is argued that the Planning Authority overlooked the Applicant’s intentional decision not to display the planning notice at the most conspicuous position of the site, which they note should have been adjacent to the junction with the Navan Road (R147), where signage for the café is currently erected. I note that the adequacy of the site notice is a matter for the Planning Authority to consider at the initial validation stage. In addition, Article 26(4) of the Planning and Development Regulations, 2001 (as amended) notes that “Where, on inspection of the land to which the application relates, the planning authority considers that the requirements of articles 17(1)(b), 19 or 20 have not been met, or the information submitted in the planning application is substantially incorrect or substantial information has been omitted, the planning application shall, notwithstanding the fact

that an acknowledgement has been sent to an applicant in accordance with sub-article (2), be invalid.” I note from the Planning Authority’s Planning Report that concerns with respect to the adequacy of the site notice had not been raised as an issue. From a review of the site and surrounds and the location of the site notice, I am satisfied that its location is in compliance with the Planning and Development Regulations, 2001 (as amended) and I note that the location of the site notice did not prevent the concerned party from making representations. Notwithstanding this, I note that this planning assessment represents my *de novo* consideration of all planning issues material to the proposed development.

7.5.2. In terms of allegations by the Third Party Appellant of unauthorised uses on the larger landholding and current non-compliance with the Planning Authority’s recommended conditions, I note that Planning Enforcement is the role of the respective Planning Authority, and An Bord Pleanála has no role in this matter.

**7.6. Appropriate Assessment**

The nearest designated site is the River Boyne and River Blackwater Special Area of Conservation (Site Code: 002299), c. 800m to the north of the site. The River Boyne and River Blackwater Special Protection Area (SPA) (Site Code: 004232) is also located c. 850m to the north of the site. The Third Party Appellant has indicated that a body of water, referred to as the Newrath Stream runs along the boundary of the appeal site and then continues underground and connects into the above referenced Natura 2000 sites. As part of the development management process, it is necessary to determine whether the proposed development would be likely to have significant effects on those Natura 2000 sites, and therefore, whether an appropriate assessment is required.

7.6.1. The conservation objectives of the relevant sites are as follows:

European Site	Qualifying Interest	Conservation Objectives
River Boyne and River Blackwater SAC (002299)	Alkaline fens [7230] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus</i>	[7230] To maintain the favourable conservation condition of Alkaline fens in River Boyne and River Blackwater SAC.

	<p>excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p>	<p>[91E0] To restore the favourable conservation condition of Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* in River Boyne and River Blackwater SAC.</p> <p>[1099] To restore the favourable conservation condition of River Lamprey (Lampetra fluviatilis) in River Boyne and River Blackwater SAC.</p> <p>[1106] To restore the favourable conservation condition of Atlantic Salmon (Salmo salar) in River Boyne and River Blackwater SAC.</p> <p>[1355] To maintain the favourable conservation condition of Otter (Lutra lutra) in River Boyne and River Blackwater SAC.</p>
River Boyne and River Blackwater SPA (004232)	A229 Kingfisher Alcedo atthis	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

7.6.2. The Third Party Appellant has referred to what they describe as the “Newrath Stream SAC/SPA” within their appeal submission and have highlighted concerns with respect to the impact of the proposed development on the River Boyne and River Blackwater SAC and SPA. Upon inspecting the site, I observed the above referenced body of water (i.e. Newrath Stream) which runs along the south-western boundary of the larger landholding. The stream is located within a ditch and appears to then continue underground further to the north. It was not apparent where or if this watercourse resurfaces. I note that a separation distance of c. 80m is provided between the appeal site and the existing watercourse. As noted earlier in this report, the existing café utilises an existing connection to the public sewer. Therefore, having regard to the nature and scale of the development to be retained, the separation distances provided from the existing watercourse and the appeal site, insofar as there is no direct hydrological or ecological pathway to any European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to

have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. Grant of permission is recommended.

## 9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Meath County Development Plan, 2021-2027, the nature of the development to be retained and the pattern of development in the surrounds, it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously injure the residential or visual amenities of the area or of property in the vicinity, is acceptable having regard to the architectural character of the site and surrounds and would constitute an acceptable form of development at this location. The development to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The proposed development shall comply with the plans and particulars lodged with the application submitted, 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. <b>Reason:</b> In the interest of clarity.
2.	The development hereby permitted shall be used solely as a café/coffee shop and for no other class of use within Part 4 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended). For the avoidance of doubt, this permission does not include a use for the sale of hot food for consumption off the premises i.e. as a takeaway.



	<p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
3.	<p>The development hereby permitted shall not be open to customers outside the house of 8am to 10pm, Monday to Saturdays and 10am to 10pm Sundays, Bank or Public Holidays, unless authorised by a sperate grant of permission.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
4.	<p>The operation of this development shall not give rise to any emissions of malodours, fumes, gas, dust or other deleterious materials, industrial effluent and noise, vibration or electrical interference generated on site such as would give rise to reasonable cause for annoyance to any person in residence or public place in the vicinity.</p> <p><b>Reason:</b> In the interest of public health and residential amenity.</p>
5.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>The Applicant shall enter into water and waste water connection agreement(s) with Irish Water, if required. The Applicant shall be required to adhere to the standards and conditions set out in that agreement.</p> <p><b>Reason:</b> In the interest of public health.</p>
7.	<p>During the construction and or demolition phase of the development, Best Practicable Means shall be employed to minimise air blown dust being emitted from the site.</p> <p><b>Reason:</b> In the interest of public health.</p>
8.	<p>Site development and building works shall be carried out only between the hours of 8am to 6pm Mondays to Fridays inclusive, between 9am to 2pm hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p>

	<p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. 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><b>Reason:</b> 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>

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Enda Duignan  
 Planning Inspector

07/11/2022