



An
Bord
Pleanála

Inspector's Report

ABP-315822-23

Development	RETENTION: A depot used for the storage of empty containers including associated security hut, security fencing, 7 lighting columns and flood lighting and all associated site works
Location	Compass Distribution Park, Santry, Dublin 9
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0664
Applicant(s)	Stateline Transport Ltd.
Type of Application	Permission (s. 34)
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party (s. 37)
Appellant(s)	Stateline Transport Limited
Observer(s)	Dublin Airport Authority (DAA) Tesco Ireland Transport Infrastructure Ireland (TII)
Date of Site Inspection	27 th November 2023
Inspector	Philip Maguire

1.0 Site Location and Description

- 1.1. The appeal site is located in the Compass Distribution Park, in Santry, Dublin 9. It is accessed off the R108 via Northwood Avenue, the Old Ballymun Road and a private estate road which leads to Tesco Ireland's Ballymun Distribution Centre, which is located to the east of the site and includes a large warehouse building. To the south lies Stateline Transport and a large surface car park associated with Tesco, separated by an access road to the site. The M50 motorway is to the north. A detached dwelling with large, landscaped garden lies to the west. Other houses are located sporadically along the Old Ballymun Road towards the signalised junction with Northwood Avenue. A linear park running east-west along Santry River and towards Santry Demesne separates the Distribution Park with Gulliver's Retail Park and the Cedarview estate.
- 1.2. The appeal site is flat and has a stated area of 2.7ha. It is noticeably elevated above the private estate road, adjoining car park and the carriageway of the adjacent M50 motorway. The site is currently used as a container storage depot ('Stateline Containers') and operated by Stateline Transport from the adjacent premises to the south, which is separated by a wall and earth bank. The remainder of the southern boundary, to the east of the access road, is defined by 1.80m high chain-link fencing at the toe of a steep embankment. The northern boundary is similarly defined by a steep earth bank with palisade fencing to the motorway side. The eastern and western boundaries also include embankments of varying size with 3m high palisade fencing.
- 1.3. The containers were stacked in rows throughout the appeal site on the day of inspection, no more than 6 no. containers high. A number of HGV's were loaded and unloaded using a mobile forklift truck during this time. The empty containers were stacked. The HGV's, both full and empty, departed the site via the Old Ballymun Road where I observed a significant build-up of traffic on to the Northwood Avenue junction. The HGV's then proceeded towards the M50 via Junction 4, west of the appeal site.

2.0 Proposed Development

- 2.1. Permission is sought to retain the use of the above lands as a shipping container storage depot with associated security hut, fencing and 7 no. floodlighting columns.

- 2.2. The security hut is a flat roofed structure with a stated area of 9.50sq.m and maximum height of 2.80m above ground level. The lighting columns are approximately 20m high and are located around the southern and eastern boundaries. The drawings indicate that the site has a maximum capacity to accommodate 2,569 no. storage containers, stacked 7 no. high. This consists of 504 no. 20ft, 1,939 no. 40ft and 126 no. 45ft containers or 4,666 twenty-foot equivalent unit (TEU). Each container is 2.90m high.
- 2.3. Additional drawings were submitted with the appeal. They include revisions to the maximum capacity, now stated as 2,148 no. containers or 3,887 TEU (432 no. 20ft, 1,626 no. 40ft and 90 no. 45ft containers). Containers along the western boundary are stacked 5 no. high and 6 no. high elsewhere on site. The palisade fencing along the western, northern and eastern boundaries is illustrated as 3m high and the chain-link fencing is shown as 1.80m high. HGV movements on the site are also shown.
- 2.4. The appeal documentation also includes:
- Appropriate Assessment Screening Report (ESC Environmental, February 2023)
 - Drainage Construction Summary (Dartmouth Building Contractors, February 2023)
 - Engineering Report (Waterman Moylan, February 2023)
 - Health and Safety Visit Report (Peninsula, December 2022)

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Permission was refused on 20th January 2023 for the following reasons:

1. *The subject site is located within the 'ME' Metro Economic Corridor zoning objective under the Fingal Development Plan 2017 - 2023, the objective of which is to 'Facilitate opportunities for high-density mixed-use employment generating activity and commercial development and support the provision of an appropriate quantum of residential development within the Metro Economic Corridor'. Road Transport Depot' and 'Cargo Yard' are listed as 'Not Permitted' under zoning objective 'ME' Metro Economic Corridor. As such the development would materially contravene the provisions of the Fingal Development Plan 2017-2023 and would*

contravene the Metro Economic Corridor zoning objective for the area and, as such would be contrary to the proper planning and sustainable development of the area.

- 2. The development by virtue of its height, scale and proximity to site boundaries is considered to be visually dominant and intrusive in the street scene and landscape and give rise to a negative impact on the visual and residential amenity of the area generally and of neighbouring dwelling by way of overbearance, overshadowing and loss of light and would therefore be contrary to, Design Guidelines for Business Parks and Industrial Areas set out in table 12.7 and objective DMS103 of the Fingal Development Plan 2017-2023 and therefore contrary to the proper planning and sustainable development of the area.*
- 3. No Appropriate Assessment Screening Report or drainage information has been submitted with the planning application therefore it has not been adequately demonstrated to the satisfaction of the Planning Authority that the development on site would not have a significant effect on any European sites or be prejudicial to public health having regard to the lack of information submitted [...].*
- 4. Inadequate information has been provided to enable the Planning Authority to fully assess the transportation aspects of the proposal. In the absence of such information the proposal would be contrary to the proper planning and sustainable development of the area and could lead to the creation of traffic hazard.*
- 5. The development if permitted by way of retention permission would set an undesirable precedent for other similar developments, which would in themselves and cumulatively seriously injure the visual and residential amenities of the area and would be contrary to the proper planning and sustainable development [...].*

3.2. Planning Authority Reports

3.2.1. Planning Report dated 20th January 2023.

- It states that the main issues for consideration are the zoning and principle of development, impacts on the visual and residential amenity of the area, transportation, services and drainage, landscaping, AA and EIA.
- In terms of zoning and principle, it notes that road transport depots or cargo yards are not permissible under the Metro Economic Corridor zoning objective. It states

that open storage would not give rise to significant employment and would materially contravene the zoning objective.

- In terms of amenity impacts, it notes the maximum height of the stacked containers at 20m and considers the proposal fails to comply with the zoning objective in terms of 'exemplary urban design' and the Design Guidelines for Business Parks etc. Having regard to the scale, massing and height, coupled with the elevated nature of the site and compared to the M50 motorway and its proximity to same, it considers the development visually dominant and intrusive from public vantage points including the motorway, Gulliver's Retail Park and Cedarpark estate. Having regard to the separation distance and length of the stacked containers along the western boundary, it considers that the development has an overbearing and intrusive impact on the visual amenities of the adjacent house and would result in significant overshadowing of the private garden area. It considers the prefab design of the security hut is insufficient to meet the zoning objective or objective DMS103. Finally, it considers that the lighting columns are not out of character with the surrounding context nor visually discordant or intrusive from public vantage points, however it states that it is unclear whether significant light spill occurs.
- In terms of landscaping and boundary treatment, it notes that the applicant has failed to submit a landscaping plan and details of the proposed boundary treatments. It further states that the trees and hedgerows along the northern and western boundaries are located outside the site and notes the requirements of Development Plan Table 12.7 in respect of same. It considers that the importance of landscaping and boundary treatment is accentuated by the site's proximity to the M50 motorway, house to the west and Santry Demesne and river to the south.
- In terms of traffic and transport, it notes that the applicant has not provided any car parking details. It considers that insufficient information was provided in respect of vehicular and pedestrian circulation within the site and the existing layout could be hazardous to pedestrians and staff. It recommends further information in this regard. It also recommends a TTA, including an assessment of the vehicle movements generated by the proposal (including distribution), traffic surveys of relevant junctions (including Old Ballymun Road/Northwood Avenue, Northwood Avenue/R108 and R108/M50), and traffic impact assessment of these junctions. It

also highlights the TII comments, and states that the Roads Section and TII would not support the proposal in its current format. It therefore considers the proposal contrary to Plan Objectives DMS117, DMS118, DMS125, DMS128 and the design guidance contained in Table 12.7 and standards set out in Tables 12.8 and 12.9.

- In terms of services and drainage, it notes that Irish Water and the Water Services Section have no objections to the proposed development subject to condition.
- In terms screening for appropriate assessment, it notes the proximity of the site to the Santry River which discharges to the Dublin Bay and therefore its connectivity to a number of European sites. It notes that the applicant offers a spray painting and steam cleaning service for older containers and therefore having regard to the area of hardstanding and in the absence of drainage information, it considers that an AA screening report should have been submitted in order to determine that there is no likelihood of significant effects on any European sites etc.
- In terms of screening for EIA, it states that no EIA is required.
- It concludes that the development would materially contravene the ME zoning objective and given its scale, height and location in close proximity of the M50 motorway and adjoining residential property, appears visually dominant and intrusive to the detriment of the visual and residential amenities of the locality. It further concludes that insufficient information was submitted with regards to landscaping, traffic and potential impacts on European sites.

3.2.2. Other Technical Reports

- Environmental Health (30/12/22): No objection subject to condition.
- Environment (09/12/22): No objection.
- Parks (09/01/23): No objection subject to condition.
- Roads (16/01/23): Further information requested.
- Water (10/01/23): No objection subject to condition.

3.3. Prescribed Bodies

- DAA (19/12/22): No objection subject to condition.

- HSA (15/12/22): No observations.
- IAA (16/12/22): No observations.
- Uisce Éireann (10/01/23): No objection subject to condition.
- TII (16/12/22): Recommend refusal.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Relevant to appeal site:

- 4.1.1. PA ref. ENF20/289B – in August 2021 the planning authority issued an enforcement notice requiring the removal of all containers etc. from the site within a 4-month period. I also note separate proceedings pursuant to S. 160 of the Planning Act in respect of same in the matter of *Tesco Ireland Ltd. v Stateline Transport Ltd. [2023] IEHC 587*.
- 4.1.2. PA ref. F08A/0948 – in August 2009 the planning authority granted permission for an 8,602sq.m distribution services building etc. An application to extend the duration of this permission was refused by the planning authority in June 2014 (PA ref. F08A/0948/E1) having regard to the rezoning of the site but subsequently granted in September 2014 (PA ref. F08A/0948/E2). This permission lapsed in August 2019.
- 4.1.3. PA ref. F97A/0413 – in December 1997 the planning authority granted permission for site development works relating to a future warehousing / light industrial / ancillary offices development on a 36.69 acre site. Condition 2 restricted the permission to the layout and site works with separate applications required for the light industrial units proposed. Condition 7 limited the first phase of development to 50% of the site at a maximum of 30% coverage. Condition 11 limited the height of any future individual unit adjoining the motorway to 10.5m above ground level. Condition 15 prohibited the loading / unloading of any future unit and the external storage of material including the parking of commercial vehicles to the rear and adjoining the northern boundary.
- 4.1.4. PA ref. F94A/0274 – in August 1997 the planning authority granted permission for the extraction of 400,000cu.m of fill material from a 39.2 acre site.

4.2. Adjacent sites:

Stateline Transport – Immediately South

- 4.2.1. PA ref. F06A/0512 – in October 2006 the planning authority granted permission for an overnight heavy vehicle park and refuelling facility including three-storey workshop building with offices and staff facilities, bunded fuel storage tank, truck wash etc. Condition 2 requires disposal of surface water to accord with the requirements of the local authority. Condition 6 prohibits the discharge of surface water to the foul water network and sets out a number of design requirements for the proposed soakaways.
- 4.2.2. PA ref. F05A/1892 – in February 2006 the planning authority refused permission for a heavy vehicle park and refuelling facility including three-storey workshop with offices and staff facilities, bunded fuel storage tank, truck wash facility etc. The planning authority considered that it would have a significant impact on the road junctions in the vicinity of the site and was therefore premature pending the completion of road network upgrades in the area including the existing junction onto Ballymun Road (at Santry Demesne), the Santry Demesne/Old Ballymun Road junction and section of Old Ballymun Road and accordingly would endanger public safety by reason of traffic hazard and obstruction of road users. They also considered that the drainage proposals were unacceptable and would, if permitted, be prejudicial to public health and materially contravene the zoning objective for the adjoining land to the south.
- 4.2.3. PA ref. F99A/0634 – in November 1999 the planning authority granted permission for 2,917.44sq.m of warehouse / industrial / ancillary office development at “No. 1 Compass Distribution Park”. Condition 13 prohibited any external storage on site.
- 4.2.4. PA ref. F98A/1245 – in November 1999 the Board overturned the decision of the planning authority and granted permission for warehouse / industrial / ancillary office development (case ref. PL 06F.111137). Condition 4 prohibited any industrial use.

Tesco’s Ballymun Distribution Centre – Immediately East

- 4.2.5. PA ref. F23A/0402 – in August 2023 the planning authority granted permission for extensions to the existing distribution centre building. Condition 7 requires the provision of noise insulation having regard to the location of the site within Dublin Airport Noise Zone C. Condition 8 requires Irish Aviation Authority (IAA) and DAA to be notified of the intention to commence crane operations 30 days prior to erection.

4.2.6. PA ref. F99A/1153 – in March 2000 the planning authority granted permission for a 27,881sq.m warehouse with ancillary offices, vehicle maintenance unit, substation, vehicle wash facility, plant room, fuel point with underground fuel storage tanks etc. This permission was subsequently amended in January 2003 under PA refs. F02A/0937 and F02A/0938 which permitted reorientation and redesign of the vehicle maintenance unit etc. and changes to the layout, phasing, height and car parking etc.

4.3. Other applications of note:

Metrolink

4.3.1. ABP-314724-22 – an application was lodged with the Board in September 2022 for Metrolink, which includes ‘Northwood Metro’ at the R108/Northwood Avenue junction.

Dublin Port

4.3.2. ABP-304888-19 – in July 2020 the Board granted permission for ‘MP2 Project’, the second project under Dublin Port’s Masterplan 2040 for phased works within existing port lands in the northeastern part of the port estate, including a container terminal.

Dublin Inland Port at Coldwinters, St. Margaret's, Co. Dublin

4.3.3. PA ref. FW19A/0101 – in September 2019 the planning authority granted permission for storage and logistic use comprising stacked shipping container storage etc.

5.0 Policy Context

5.1. Fingal Development Plan 2023-2029

5.1.1. The current Development Plan came into effect on 5th April 2023. The planning authority decision of 20th January 2023 was made under the previous Plan for the period 2017-2023. This appeal shall be determined under the current Plan.

5.1.2. The appeal site is zoned ‘Metro and Rail Economic Corridor’ (MRE) with a zoning objective to *‘facilitate opportunities for high-density mixed-use employment generating activity and commercial development and support the provision of an appropriate quantum of residential development within the Metro and Rail Economic Corridor.’*

5.1.3. The vision is to *‘provide for an area of compact, high intensity/density, employment generating activity with associated commercial and residential development which*

focuses on the Metrolink, or rail or light rail stations within settings of exemplary urban design, public realm streets and places, which are permeable, secure and within a high-quality green landscape' etc.

5.1.4. 'Cargo Yards', 'Heavy Vehicle Park', 'Logistics' and 'Road Transport Depot' are amongst the development types clearly listed as 'not permitted' in this zoning.

5.1.5. The main objectives relevant to the proposal are set out in chapters 2 (Planning for Growth), 6 (Connectivity and Movement), 7 (Employment and Economy) and 14 (Development Management Standards) of the Written Statement.

5.1.6. The following sections are relevant to the proposed development:

- 2.5 – Employment Lands
- 2.7.2 – Role of Each Settlement ('Santry including Ballymun')
- 6.5.9.2 – Dublin Port
- 6.5.10 – Roads Network
- 6.5.11 – Freight, Delivery and Servicing
- 7.5.1 – Employment and Economic Development
- 13.3 – Non-Conforming Uses
- 14.15.1 – Business Parks and Industrial Areas
- 14.17.4 – Traffic and Transport Assessment
- 14.17.5 – Road Network and Access
- 14.17.7 – Car Parking

5.1.7. Summary of the relevant policies and objectives:

CSO14 Seeks to ensure that space extensive enterprise is located on appropriately zoned lands which are outside the M50 and which do not compromise labour intensive opportunities adjacent to public transport.

CMP28 Seeks to support the ongoing development of Dublin Port having regard to wider transport and infrastructural considerations of the Dublin region including the provision for inland freight facilities such as logistics hubs and freight depots and storage facilities.

- CMO36 Seeks to maintain and protect the safety, capacity and efficiency of national roads and associated junctions in accordance with the Spatial Planning and National Roads Guidelines and the TEN-T regulations etc.
- CMP35 Seeks to facilitate the needs of freight transport in accordance with the NTA's GDA Transport Strategy.
- EEP9 Seeks to promote enterprise and employment throughout the County, including along the Dublin Belfast Economic Corridor and the Metro and Rail Economic Corridor [...] as an engine for economic growth.
- EEO15 Seeks to protect the integrity of the Metro and Rail Economic Corridor from inappropriate forms of development etc.
- EEO16 Seeks to ensure high quality urban design proposals within the MRE zoning, incorporating contemporary architecture etc.
- ZO3 Seeks to generally permit reasonable intensification of extensions to, and improvement of, premises accommodating non-conforming uses.
- DMSO89 Seeks to ensure that the design and siting of any new Business Parks and Industrial Areas, including office developments, conforms to the principles of Design Guidelines as outlined in Table 14.15. In terms of storage, Table 14.15 states that plant, materials and machinery should be to rear of buildings to minimise visual impact. It also details guidance in respect of ancillary structures, setbacks and boundary treatments etc.
- DMSO113 Requires the provision of a TTA where new development is likely to have a significant effect on travel demand and the capacity of the surrounding transport network including the road network etc.
- DMSO114 Seeks to restrict development requiring new or intensified access onto a national road and seek to reserve the capacity, efficiency and safety of National Road infrastructure including junctions in accordance with the provisions of the Spatial Planning and National Roads Guidelines.
- DMSO116 Seeks appropriate setbacks along the road network.
- DMSO119 Requires the number of car parking spaces at new developments in accordance with the standards set out in Table 14.19 etc.

5.2. National Roads Guidelines

- 5.2.1. The Spatial Planning and National Roads Guidelines for Planning Authorities (DECLG, 2012) set out planning policy considerations relating to development affecting national primary and secondary roads, including motorways and associated junctions, outside the 50-60kph speed limit zones for cities, towns and villages. In respect of lands adjoining national roads where a speed limit of greater than 60kph applies, section 2.5 of the Guidelines seeks to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses.
- 5.2.2. In transitional zones, that being sections of national roads on the approaches to or exit from urban centres that are subject to a speed limit of 60kph before a lower 50kph limit is encountered, section 2.5 notes that a limited level of direct access to facilitate orderly urban development may be provided. This is subject to a Road Safety Audit however, carried out in accordance with the NRA's requirements and a proliferation of such entrances, which would lead to a diminution in the role of such zones, must be avoided.
- 5.2.3. Section 2.7 of the Guidelines states that planning authorities must exercise particular care in their assessment of development proposals relating to the development objectives and/or zoning of locations at or close to interchanges where such development could generate significant additional traffic with potential to impact on the national road. They must make sure that such development which is consistent with planning policies can be catered for by the design assumptions underpinning such junctions and interchanges, thereby avoiding potentially compromising the capacity and efficiency of the national road/associated junctions and possibly leading to the premature and unacceptable reduction in the level of service available to road users.

5.3. Development Management Guidelines

- 5.3.1. The Development Management Guidelines (DEHLG, 2007) are intended to promote best practice at every stage of the development management process. Section 7.5 of the Guidelines sets out the main factors to take into account when deciding whether a temporary permission is appropriate. Firstly, it notes that it will rarely be justified for development of a permanent nature that conforms with the provisions of the Development Plan. Secondly, it states that it is undesirable to impose a condition

involving the removal/demolition of a structure that is clearly intended to be permanent. Lastly, it notes that it does not alter or limit the material considerations to which regard must be had in dealing with applications such as impacts on the amenities of an area.

- 5.3.2. Section 7.5 does however note that permission could reasonably be granted on an application for the erection of a temporary building to last seven years on land that will be required for road improvements in eight or more year's time, whereas permission would have to be refused on an application to erect a permanent building on the land.

5.4. National Planning Framework

- 5.4.1. Acknowledging demographic trends, Project Ireland 2040 (DHPLH, 2018), the National Planning Framework (NPF), seeks a 50:50 distribution of growth between the Eastern and Midland region and other regions and targets 40% of new housing to be within the existing footprint of built-up areas. In this regard, National Strategic Outcome (NSO) 2 notes the importance of connectivity between centres of population of scale and thereby seeks to maintain the strategic capacity of the national roads network.

- 5.4.2. Similarly, NSO 6, which seeks to provide high quality international connectivity, notes that Tier 1 ports, which are located within close proximity to Dublin, Cork and Limerick account for 80% of national port freight traffic, and their role will be considered in tandem with long-term infrastructural requirements as part of the Regional Spatial and Economic Strategy (RSES) and Metropolitan Area Strategic Plan (MASP) processes.

5.5. Regional Spatial and Economic Strategy

- 5.5.1. The Eastern and Midland Regional Spatial and Economic Strategy (EMRA, 2019) 2019-2031 builds on the foundations of the NPF. Section 8.3 of the RSES sets out a framework for the integration of transport planning with spatial planning policies. Regional Policy Objective (RPO) 8.5 supports the preparation of a regional strategy for freight transport along with relevant transport agencies and the other Assemblies.

- 5.5.2. I note that the appeal site is located in the Dublin MASP area and just inside the Dublin City and Suburbs boundary. One of the guiding principles for the Dublin Metropolitan Area is to plan for increased employment densities within Dublin City and Suburbs and

at other sustainable locations near high quality public transport nodes and to relocate less intensive employment uses outside the M50 ring and existing built-up areas.

5.6. Other Guidance

Greater Dublin Area (GDA) Transport Strategy 2022-2042 (NTA, 2022)

- 5.6.1. The Transport Strategy aims to provide a sustainable, accessible and effective transport system for the GDA which meets the region's climate change requirements, serves the needs of urban and rural communities, and supports the regional economy. Section 13.3 sets out the measures relating to national roads and notes that they are complementary to the National Roads Guidelines (2012). Measure ROAD2 provides *inter alia* that the primary function of national roads is to cater for strategic traffic and this function must be protected. Strategic traffic, in this context, is primarily inter-urban and interregional and includes vehicles involved in the transportation of goods and products, especially those travelling to and from the main ports and airports.
- 5.6.2. Section 15.3 relates to freight with Measure FREIGHT2 setting out the NTA's intention, in collaboration with other authorities, including TII and Irish Rail, and stakeholders to prepare a Strategy for Sustainable Freight Distribution for the Greater Dublin Area – to *inter alia*, support the decarbonisation of the freight sector, to seek to further integrate smart technologies in logistics management and to reinforce the important role that the strategic road and rail network play in the efficient movement of freight.

PE-PDV-02045 (TII, May 2014)

- 5.6.3. Guidance relating to traffic and transport assessment (TTA) is set out in this TII publication. Section 2.1 considers the thresholds at which the production of a TTA in relation to planning applications is recommended. Table 2.1 details the relevant thresholds, including where traffic to/from the development exceeds 10% of the traffic flow on the adjoining road and distribution and warehousing in excess of 10,000sq.m.
- 5.6.4. Section 2.1 notes that due to the strategic role of national roads and the need to ensure that the carrying capacity, efficiency and safety of the network is maintained, the management of development will, require tighter control as indicated in the National Roads Guidelines. Table 2.2 sets out advisory thresholds for TTA where national roads are affected including 100 trips in/out combined in peak hours for the proposal.

5.6.5. Section 2.2 notes that the type and volume of generated traffic on national roads may be of a nature to raise concerns about effects on road safety and road infrastructure. It recommends that if the proposal meets two or more of the criteria in Table 2.3, then a TTA should be requested. These include if the character and total number of trips in/out combined per day give rise to concern, or the site is not consistent with national guidance or local plan policy, or the proposal is part of incremental development.

DN-REQ-03034 (TII, June 2015)

5.6.6. Guidance relating to safety barriers is set out in this TII publication. Section 2.8 defines a 'clear zone' as total width of traversable land on the nearside or offside, within the road boundary, which is to be kept clear of unprotected hazards and available for use by errant vehicles. The zone is measured from the nearest edge of the trafficked lane. Table 4/1 indicates a required clear zone width of 10m for a 120kph straight road.

5.7. Natural Heritage Designations

- South Dublin Bay and River Tolka Estuary SPA (004024) – 6km southeast
- Malahide Estuary SAC (000205) – 7km northeast
- Malahide Estuary SPA (004025) – 7km northeast
- North Dublin Bay SAC (000206) – 7km southeast
- North Bull Island SPA (004006) – 7km southeast
- Baldoyle Bay SAC (000199) – 8km east, northeast
- Baldoyle Bay SPA (004016) – 8km east, northeast
- North-West Irish Sea SPA (004236) – 9km east, northeast

5.8. EIA Screening

5.8.1. Having regard to the nature and scale of the proposal, which is for the retention of a container storage depot, and its proximity to the nearest sensitive locations, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage and there is no requirement for a screening determination or EIA (see Appendix 1).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first party appeal has been lodged by CWPA, on behalf of applicant.

6.1.2. The main grounds of appeal can be summarised as follows:

1st Refusal Reason

- The applicant invites the Board to facilitate a temporary 5-year planning permission by way of condition. It is stated that this will allow for relocation to appropriately zoned lands for permanent operation of the business.
- It submits that a temporary permission does not contravene the zoning objective and vision as the Metrolink, to which the zoning relates, is unlikely to start operating before 2030, and thus blocking the proposal is contrary to compact development.
- It suggests that Dublin Port is gridlocked and lacks the capacity to accommodate the necessary container storage on site. It is stated that the depot is only one of five such facilities in the country to meet growing demand for storage.

2nd Refusal Reason

- The applicant wishes to address concerns regarding negative visual impact by reducing the maximum height of the stacked containers to 6 for the overall site and to 5 along the western boundary, facing the adjacent house.
- This will result in a reduced height by 5.8m to 14.5m and therefore the visual impact on the neighbouring dwelling will be greatly reduced. Moreover, the suggested maximum number of containers will only be present during peak periods and containers will typically be stacked down to the boundary.

3rd Refusal Reason

- The applicant refers to an AA screening report prepared by ESC Environmental Ltd. to assess the likelihood of negative impacts on European sites arising from the proposal. It notes that the report concludes that it is unlikely that there would be any significant impacts either directly or indirectly on the identified Natura sites.

4th Refusal Reason

- The applicant refers to an engineering report prepared by Waterman Moylan Ltd. It suggests that the Roads Section is generally accepting of the proposal but required further information which is now submitted in the subject report.
- It states that the TII submission has been reviewed and it can be concluded that each of the reasons for concern are either incorrectly set out or can be addressed or are addressed as part of the report and therefore permission should be granted.

5th Refusal Reason

- It states that the proposal would not set an undesirable precedent.
- It reiterates that the applicant is inviting a temporary planning permission in order to give their business sufficient time to relocate to a suitable location.
- It notes no third-party submissions were received by the planning authority.

6.2. Planning Authority Response

6.2.1. The planning authority's response can be summarised as follows:

- Refers the Board to the Chief Executive's Order which details the assessment of the planning application and has no further comments to make.
- Provision should be made for financial contribution in accordance with the Council's Development Contribution Scheme if the appeal is successful.

6.3. Observations

6.3.1. A total of 3 no. observations were received from DAA, TII and RMLA Planning Consultants on behalf Tesco Ireland Ltd. The DAA and TII observations refer directly to their previous submissions to the planning authority as noted in section 3.3 above.

6.3.2. The Tesco observations raise some additional concerns, summarised as follows:

- It states that the lands subject to the appeal are owned by Tesco Ireland Ltd.
- It provides a chronological background to the subject application and appeal including a reference to High Court proceedings pursuant to Section 160 of the Planning Act taken against the applicant by the observer.

- It also suggests that Question 10 of the planning application form provided entirely inaccurate information and a misrepresentation of the legal interest in the land.

No landowner consent

- Tesco, as landowners, did not consent to the application being made. The application was lodged in full knowledge that it was being made without landowner consent and therefore the Question 10 response is misleading.
- A copy of a letter to the applicant's solicitors in that regard is enclosed with the observation in addition to a letter prior to the appeal.

Dismissal of the First Party Appeal

- It requests the Board to dismiss the first party appeal on that the grounds that the application fails to comply with Article 22(1A)(g) of the Planning Regulations which is a mandatory requirement for the application to proceed and be valid.
- It requests the Board to consider the live enforcement case and subsequent notice issued under PA ref. ENF20/289B in the context of Section 138 of the Planning Act. In this regard, it notes that the enforcement notice has not been complied with and is subject of legal proceedings in addition to High Court proceedings brought by the observer against the applicant (*Tesco Ireland v Stateline Transport*) and it is submitted that the application and appeal has been made to delay proceedings.

1st Refusal Reason

- In response to the applicant's request to the Board for a temporary 5-year permission, it states the applicant has confirmed in an affidavit that one year is required to locate and develop an alternative site.
- Notwithstanding, it states that the use of the site for the storage of containers, whether that be one year, five years or permanently is a material contravention of the provisions of the Development Plan and the applicant does not have sufficient title to implement such a permission in any event.

2nd Refusal Reason

- It is submitted that the limited reduction in height is not sufficient to lessen the visual impact of the site on surrounding areas and as the distance from the boundaries

remains unchanged, the development will continue to have an overbearing and intrusive impact on the visual amenities of the area.

- Having regard to the weight bearing capacity and ground condition comments in the health and safety report submitted with the appeal, it is stated that there is potential for health and safety risks if the containers are not on a suitable surface and stacked in a suitable manner.

3rd Refusal Reason

- It notes that section 3.1 of the AA screening report refers to the site being serviced by a 'Class 1 Klargest intercepter' but states that there are no drawings showing the connection between the surface water drainage of the appeal site and the Stateline site. In this regard, the 3rd refusal reason has not been fully addressed.

4th Refusal Reason

- It is stated that it is misleading to suggest that the Roads Section is generally accepting of the proposal and the impacts on Tesco, users of the road network and pedestrians have not been properly assessed.
- The suggestion in the engineering report that a conditioned post-installation glint and glare inspection/survey could be undertaken is considered disrespectful having regard to the concerns that the on-site lighting may have a detrimental impact on the operation and safety of the M50 motorway.

5th Refusal Reason

- Having regard to the protracted enforcement history, the observer fully supports the 5th refusal reason in that to authorise the development by way of retention permission would set an undesirable precedent for other similar developments.

Conclusion

- The proposal is not supported by local planning policy and has an overbearing and intrusive impact on the visual amenities of the area, and in addition to the inadequate traffic and transport information, should be refused.
- This unauthorised development is occurring at a large commercial scale.

- There are potential health and safety risks with the container stacks and an Engineering Report (Kavanagh Mansfield) has been submitted in that regard.
- The proposal has created significant impacts on the residential amenities of adjoining properties (noise and dust) from the volume of trucks entering the site.
- The appeal site is not appropriate for the level of containers stored on the site and there are concerns regarding the proximity of the containers to the boundaries including the adjacent M50 motorway.

7.0 **Assessment**

7.1. **Preliminary Points**

7.1.1. Having examined the application details and all other documentation on the appeal file, including the appeal submissions and observations, and inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal.

7.1.2. The issues can be addressed under the following headings:

- Zoning
- Visual and Residential Amenity
- Public Health
- Appropriate Assessment
- Traffic and Transport
- Procedural Matters

7.2. **Zoning**

7.2.1. Noting the 'ME' Metro Economic Corridor zoning objective under the previous Fingal Development Plan 2017-2023, where 'Road Transport Depot' and 'Cargo Yard' were listed as 'Not Permitted', the planning authority's first refusal reason states that the development would materially contravene the provisions of the Fingal Development Plan 2017-2023 and would contravene the Metro Economic Corridor zoning objective.

- 7.2.2. The current Development Plan came into effect on 5th April 2023 and whilst the zoning was renamed 'MRE' Metro and Rail Economic Corridor, the objective, vision and classes of development associated with it are largely identical. In this regard, I note that 'Cargo Yards', 'Heavy Vehicle Park', 'Logistics' and 'Road Transport Depot' are amongst the development types listed as 'not permitted' in this zoning. The current use of the appeal site for the storage of shipping containers, and for which the applicant now seeks permission to retain, evidently falls within these broad categories.
- 7.2.3. Therefore, in recognition of the zoning constraints, the applicant has requested that the Board consider granting a temporary permission for a 5-year period. This, they consider, would not contravene the zoning objective and vision on the basis that the Metrolink project, which they state relates to the zoning, is not likely to start operating before 2030. The inference being that the zoning objective sterilises the appeal site or at least 'blocks the proposed use' until such time as Metrolink is fully operational.
- 7.2.4. This is a proposition that I find difficult to reconcile with. The zoning objective and vision are explicit and seek to facilitate high-density mixed-use employment generating activity and commercial development, and provide for an area of compact, high intensity activity within settings of exemplary urban design. It is clearly not intended to 'block' or prohibit any development type other than those classes of development listed as 'not permitted', including cargo yards and road transport depots etc. The proposed development, to my mind, is therefore contrary to the MRE zoning objective of the Development Plan and I agree fully with the planning authority in this regard.
- 7.2.5. As a rationale for the proposal, the applicant has suggested that Dublin Port lacks the capacity to accommodate the necessary container storage on site. Whilst I do not have any evidence before me to support this claim, I do accept that there are some constraints at Dublin Port, as a result of escalated demand for container freight routes to Europe following Brexit, and notwithstanding additional container storage capacity permitted under ABP-304888-19. In this regard, I note that the '3FM Project', Dublin Port's third and final project under Masterplan 2040, seeks to provide a new container terminal on the Poolbeg Peninsula. This facility would be the largest on the island.
- 7.2.6. In this regard, I note that policy CMP28 seeks to support the ongoing development of Dublin Port having regard to wider transport and infrastructural considerations of the Dublin region including the provision for inland freight facilities such as freight depots

and storage facilities. However, this would be contingent on a regional strategy for freight transport, as noted in policy CMP35 of the Development Plan, RPO 8.5 of the RSES, and outlined in section 15.3 of the NTA's current GDA Transport Strategy. Therefore, I do not consider policy CMP28 forms a supportive basis for the proposal.

Material Contravention

- 7.2.7. The planning authority have stated that the development would materially contravene the provisions of the previous Development Plan 2017-2023. In such circumstances, they were precluded from granting permission other than under the provisions of Section 34(6) of the Planning and Development Act 2000, as amended. Oddly, the first refusal reason does not state that there is a material contravention of the zoning objective or indeed any other policy or objective of the Development Plan 2017-2023.
- 7.2.8. This vague approach to the issue of material contravention is rather unhelpful, particularly so given the new Development Plan 2023-2029 under which the appeal falls to be determined. Regarding the zoning objective however, I am satisfied that the proposal represents a material contravention as it consists of a use that is clearly 'not permitted' within this zoning. In this regard, the uses that are 'permitted in principle' in this zoning generally reflect the objective to facilitate high-density employment generating activity. Having regard to the nature and scale of the development, which is effectively a large outdoor storage facility, high-density employment is unlikely, nor has the applicant advanced such a case in their appeal.
- 7.2.9. Moreover, objective CSO14 seeks to ensure that such space extensive uses are located outside the M50 so labour intensive uses, close to public transport, are not compromised. This reflects the guiding principles of the MASP which seeks to support increased employment densities within Dublin City and Suburbs near public transport and to relocate less intensive employment uses outside the M50 and existing built-up areas. This would appear to provide additional weight to the zoning objective and whilst I accept that policy EEP9 seeks to promote enterprise and employment throughout Fingal, including along the Metro and Rail Economic Corridor as an engine for economic growth, I have no information that supports the proposal in this regard.
- 7.2.10. I am also cognisant of other Development Plan objectives relevant to the proposal including objective EEO15 which seeks to protect the integrity of the Metro and Rail Economic Corridor from inappropriate forms of development and objective EEO16

which seeks to ensure high quality urban design proposals within the Metro and Rail Economic Corridor zoning. These objectives outline a general approach to development within the zoning and are not, in my view, sufficiently specific so as to justify the use of the term “materially contravene” in terms of normal planning practice. They do, however, help direct the decision-maker towards a refusal on a zoning basis.

- 7.2.11. In such circumstances, I am satisfied that there are no conflicting objectives in the Development Plan and the objectives, insofar as the proposed development is concerned, are clearly stated, particularly with regard to zoning. The provisions of Section 37(2)(b)(ii) of the Planning Act do not therefore apply in this instance. I am also satisfied that the proposed development is not of strategic or national importance and the provisions of Section 37(2)(b)(i) do not apply, nor is it supported by the RSES, and the Dublin MASP in particular, or any other guidelines, directives or policy outlined in Section 37(2)(b)(iii). Finally, I do not consider that permission should be granted having regard to the pattern of development, and permissions granted, in the area since 5th April 2023 and therefore the provisions of Section 37(2)(b)(iv) do not apply.

Temporary Permission

- 7.2.12. The appeal site is not subject to ‘land-take’ as a result of the Metrolink project and evidently the development is not analogous to the example of a temporary building for 7 years on land required for road improvements in 8 years or more as referenced in section 7.5 of the Development Management Guidelines. Therefore, I do not consider that a temporary permission is appropriate in this particular case. In this regard, the economic benefits of the proposal do not outweigh the obvious material contravention, even for a limited temporary period, and the applicant has not advanced such a case.

Fallback Position

- 7.2.13. I note that permission for the applicant’s established transport depot to the south of the appeal site appears to have been permitted under PA ref. F06A/0512, albeit without the construction of the three-storey workshop building. The site was zoned ‘GI’ at that time with the zoning objective to facilitate general industrial employment.
- 7.2.14. Section 13.3 of the Development Plan notes that there are uses which were in existence on 1st October 1964, or which have valid permissions, or which are unauthorised but have exceeded the time limit for enforcement proceedings, which do

not conform to the zoning objective. The adjacent permitted transport depot could now be considered such a use having regard to its current 'MRE' zoning objective.

- 7.2.15. Objective ZO3 of the Development Plan seeks to permit the reasonable intensification or¹ extensions to, and improvement of, premises accommodating non-conforming uses, subject to normal planning criteria. The applicant has not pursued this, and I do not consider it applies in any event as Stateline's 'transport depot' and 'container depot' could not reasonably be considered as the same planning unit and therefore any suggestion that one is a reasonable intensification of the other does not stack up. In this regard, I note that Tesco Ireland have indicated that they own the appeal site.

Conclusion on Zoning

- 7.2.16. The proposal contravenes the 'MRE' zoning objective, this contravention is material as it evidently includes a use class that is 'not permitted' within the zoning nor is the proposed development expressly supported elsewhere in the Development Plan.
- 7.2.17. In such circumstances I do not consider that the provisions of Section 37(2)(b) of the Planning Act apply and therefore the proposed development should be refused.

7.3. Visual and Residential Amenity

- 7.3.1. By virtue of its height, scale and proximity to the site boundaries, the planning authority's second refusal reason considered that the proposal is visually dominant and intrusive in the street scene and landscape and gives rise to a negative impact on the visual and residential amenity of the area generally and adjacent house specifically by way of overbearance, overshadowing and loss of light. This, they considered, would be contrary to the Design Guidelines for Business Parks and Industrial Areas (Table 12.7) and objective DMS103 of the Fingal Development Plan 2017-2023 etc.
- 7.3.2. The planning authority's fifth refusal reason considers that the development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively seriously injure the visual and residential amenities of the area.
- 7.3.3. The Design Guidelines for Business Parks and Industrial Areas as set out in Table 12.7 of the Fingal Development Plan 2017-2023 and associated objective DMS103 have been generally replicated in Table 14.15 and objective DMSO89 of the current

¹ I note that the wording in the Development Plan states "reasonable intensification of extensions to and improvement of premises", however the word "of" would appear to be a typographical error.

Plan, the latter which seeks to ensure proposals conform with the guidelines. I note that Table 14.15 appears to relate specifically to 'enterprise and employment lands' which seem to me to be those lands subject of a 'GE' General Employment zoning objective i.e. seeks to 'provide opportunities for general enterprise and employment.'

- 7.3.4. Therefore, I am not convinced that Table 14.15 or objective DMSO89 are directly related to the subject proposal. In this regard, I note that the design proposals within the 'MRE' zoning are generally managed under objective EEO16, however I do accept that the criteria under Table 14.15 have a degree of relevance given the non-conforming nature of the proposal. The 'storage' criteria is of particular note which states that it should be reserved to the rear of buildings to minimise the visual impact. In this regard I note that the planning history of the appeal site and adjoining lands indicates that external storage was previously restricted along the northern boundary.

Visual Amenity

- 7.3.5. The development to be retained is clearly visible from many viewpoints including from Gulliver's Retail Park and the adjoining Cedarview housing estate to the south, and from North Ring Business Park to the east, although these views are generally intermittent and non-critical in my opinion. Other such views exist from the R108, north of the M50, and travelling southbound. The appeal site is generally well screened from the west and therefore there are no views travelling northbound along the R108.
- 7.3.6. The most impactful views are when travelling eastbound along the M50, from Junction 4, and to a lesser degree westbound towards this junction. The visual impact is stark and clearly identifiable given the proposal is for the retention of the development currently on site. I agree with the planning authority that this impact is exacerbated by the elevated nature of the appeal site relative to the M50 and this is not helped by the relatively sparse nature of the landscape buffer, less than 10m in places, when compared to the c. 30m dense buffer along the northern boundary of the Tesco site.
- 7.3.7. Therefore, the development as it stands, is visually dominant along its frontage with the M50 and whilst I do not necessarily agree with the planning authority that this is a 'street scene' nor do I accept that this section of the M50 is of any particular landscape value, the proposal is visually jarring and out of context, and on balance, unacceptable.

7.3.8. As noted, the applicant has submitted revised drawings with the appeal in an attempt to mitigate some of these visual impacts. I note a reduction in height of the container stacks to 6 no. for the overall site and to 5 no. along the western boundary. Unfortunately, this does not address the haphazard appearance of the proposal and whilst additional buffer planting along the northern bank could be conditioned in addition to a further reduction in container stacks in stepped fashion along the boundaries of the site, I am still not convinced that it would address the overall impact.

Residential Amenity

7.3.9. As noted, the second refusal reason also suggests that the proposal will negatively impact on the residential amenity of the neighbouring dwelling specifically, by reason of overbearance, overshadowing and loss of light. In this regard, the applicant's appeal drawings show container stacks reduced from 7 no. high along the western boundary to 5 no. high. This reduces the overall height by 5.8m to a maximum height of 14.5m. This, they suggest, will greatly reduce the impact on the neighbouring house.

7.3.10. The neighbouring house is c. 57m from the common boundary and c. 71m from the nearest stack of containers along the western boundary. The house has an illustrated ridge height of c. 66.40mOD, the top of the western embankment is shown as 62.50mOD and the top of the container stack is illustrated as 71.20mOD, 14.5m high.

7.3.11. As the distance of the nearest container stack from any potential ground floor window of the neighbouring house (c. 71m) is more than three times its height above the centre of such a window (c. 43.5m), I do not consider the proposal impacts on daylight to any degree. In fact, the existing trees along this western boundary, the tops of which are shown as 72.61mOD and which is consistent with my observations, have the potential to cause far greater impact on daylight and would also absorb any overshadowing to the limited degree it would occur, having regard to the orientation and path of the sun. Similarly, the trees along the western boundary screen any perceived overbearance.

Conclusion on Visual and Residential Amenity

7.3.12. In such circumstances, I do not consider that the proposal, revised at appeal stage, adversely impacts on the residential amenity of the neighbouring house to the west by reason of overbearance, overshadowing or loss of light, nor does it adversely impact on the residential amenities of any property in the wider area where views are limited.

7.3.13. However, I consider the proposal represents a haphazard and unsustainable pattern of development on inappropriately zoned land where it is an objective to seek to ensure high quality urban design proposals, thus negatively impacting on visual amenity. Such impacts are most acute on M50 users, where their attention could be distracted.

7.4. Public Health

7.4.1. The planning authority's third refusal reason raises public health concerns in the absence of adequate drainage information and notwithstanding the comments from the Water Services Section, who I note had no objection subject to conditions, including a prohibition on surface water from discharging to the foul water network.

7.4.2. The observer notes that the AA screening report refers to the site being serviced by a 'Klargester interceptor' but states that there are no drawings showing the connection between the surface water drainage from the appeal site and the transport depot.

7.4.3. In addition to the AA screening report, the appeal documentation includes a drainage construction summary in respect of contractor works carried out in June 2021. It states that all surface water from 'site 2' drains to the existing interceptor in 'site 1' but I have no independent evidence before me to corroborate this statement by the contractor.

7.4.4. I have therefore reviewed the drainage layout permitted for 'site 1' (PA ref. F06A/0512) and I note the location of a 'Klargester' petrol interceptor downstream of an attenuation tank and upstream of storm discharge to an existing 225mm surface water drain, located along the northern side of the estate road. This outfalls to the Santry River.

7.4.5. I also note that there are a number of road gully's located towards the northeastern corner of the transport depot, or 'site 1', which may have provided a point of connection with the appeal site and this could be demonstrated by condition with the planning authority. Although I do accept that there is some merit to the above observations.

Conclusion on Public Health

7.4.6. On balance, I do not consider the proposal presents any danger to public health by reason of inadequate surface water drainage, subject to condition, and it would be unreasonable to uphold this aspect of the third refusal reason. The Board however may wish to seek further information in terms of an existing drainage layout, particularly given the conflicting information outlined in the AA screening report, but I do not consider this necessary, having regard to the substantive reasons for refusal.

7.5. **Appropriate Assessment – Screening**

- 7.5.1. As noted, the planning authority's third refusal reason also considers that in the absence of an AA screening report and drainage information, it was not adequately demonstrated that the proposal would not have a significant effect on a European site.
- 7.5.2. An AA screening report was submitted with the appeal. It considers the location, scale and nature of the works are such that it will not directly or indirectly impact on any of the habitats or species of the Natura sites considered, nor will it contravene their conservation objectives, plans or targets. It states that the development is separated from any direct hydrological/geographical pathway or connection and the proposal does not require water abstraction or direct discharge to surface water, land or air. Moreover, it states that no changes to surface water quality are anticipated given that there are no direct discharges, with the nearest pathway 100m away, concluding that significant impacts, either directly or indirectly on the identified Natura sites, is unlikely.
- 7.5.3. The requirements of Article 6(3) of the Habitats Directive as related to screening the need for AA of a project under Section 177U of the Act are considered fully hereunder.

Test of likely significant effects

- 7.5.4. The project is not directly connected with or necessary to the management of a European site and, therefore, it needs to be determined if the development proposed to be retained is likely to have significant effects on European sites.
- 7.5.5. The proposed development is examined in relation to any possible interaction with European sites designated as SACs and SPAs to assess whether it may give rise to significant effects on any European sites in view of their conservation objectives.

Submissions and Observations

- 7.5.6. Uisce Éireann have no objection subject to a condition in respect of a connection agreement, albeit stated as 'prior to commencement'. The Water Services Section have no objection subject to conditions prohibiting surface water from discharging to the foul water network and requiring compliance with the regional CoP for drainage.

European Sites

- 7.5.7. The appeal site is not located in a European site. Having regard to the source-pathway-receptor (S-P-R) model, a summary of eight European sites that occur within

a possible zone of influence of the proposal are outlined in section 5.7, six of which have been excluded at preliminary screening. The excluded sites either have no pathway or hydrologically, the combination of distance, dilution and dispersal would have no significant impact on these sites. There is, however, a pathway to North Dublin Bay SAC and North Bull Island SPA (both 7.4km away) via the Santry River which enters Dublin Bay at a point north of the Causeway Road to North Bull Island.

- 7.5.8. This requires further consideration, notwithstanding the submitted AA screening report which states that surface water drainage is linked in with the neighbouring site to the south which is serviced by a 'Class 1 Klargestar interceptor before entering the environment via a soakaway'. As noted, I have reviewed the permitted drainage layout for the transport depot to the south, which outfalls to the Santry River via an existing 225mm surface water drain to the northern side of the estate road. It is therefore unreasonable to say that surface water enters the environment via a soakaway. This suggests that it infiltrates to ground as opposed to discharging to a watercourse.

North Dublin Bay SAC

- 7.5.9. According to the Site Synopsis, North Dublin Bay SAC covers the inner part of north Dublin Bay, the seaward boundary extending from the Bull Wall lighthouse across to the Martello Tower at Howth Head. The North Bull Island is the focal point of this site.

- 7.5.10. This SAC is selected for the following habitats:

- [1140] Mudflats and sandflats not covered by seawater at low tide
- [1210] Annual vegetation of drift lines
- [1310] *Salicornia* and other annuals colonising mud and sand
- [1330] Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- [1395] Petalwort *Petalophyllum ralfsii*
- [1410] Mediterranean salt meadows (*Juncetalia maritimi*)
- [2110] Embryonic shifting dunes
- [2120] Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- [2130] Fixed coastal dunes with herbaceous vegetation (grey dunes) *priority
- [2190] Humid dune slacks

7.5.11. Map 3 of the Conservation Objectives Series illustrates the distribution of mudflats and sandflats not covered by sea water and Map 4 shows their marine community including 'fine sand to sandy mud' where the Santry River enters Dublin Bay. Map 5 illustrates the distribution of saltmarsh habitats, the qualifying interests (QI's) of which include *Salicornia* and other annuals colonising mud and sand, Atlantic salt meadows and Mediterranean salt meadows. These QI's are focussed to the west of Bull Island. Map 6 shows the distribution of sand dune habitats and petalwort, the QI's of which include annual vegetation of drift lines, embryonic shifting dunes, shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes'), fixed coastal dunes with herbaceous vegetation ('grey dunes') and humid dune slacks. These QI's are focussed to the east of Bull Island. Other than the tidal mudflats and sandflats, the appeal site is remote to the majority of QI's for which this SAC has been selected.

7.5.12. The Conservation Objectives for the North Dublin Bay SAC includes the requirement to maintain the favourable conservation condition of mudflats and sandflats not covered by seawater at low tide.

North Bull Island SPA

7.5.13. According to the Site Synopsis, the North Bull Island SPA covers all of the inner part of north Dublin Bay, with the seaward boundary extending from the Bull Wall lighthouse across to Drumleck Point at Howth Head. The island is home to two golf courses, a Nature Reserve and Dollymount Strand, which extends along the east side.

7.5.14. In addition to Wetlands [A999], this SPA is selected for the following species:

- [A046] Light-bellied Brent Goose *Branta bernicla hrota*
- [A048] Shelduck *Tadorna tadorna*
- [A052] Teal *Anas crecca*
- [A054] Pintail *Anas acuta*
- [A056] Shoveler *Anas clypeata*
- [A130] Oystercatcher *Haematopus ostralegus*
- [A140] Golden Plover *Pluvialis apricaria*
- [A141] Grey Plover *Pluvialis squatarola*

- [A143] Knot *Calidris canutus*
- [A144] Sanderling *Calidris alba*
- [A149] Dunlin *Calidris alpina alpina*
- [A156] Black-tailed Godwit *Limosa limosa*
- [A157] Bar-tailed Godwit *Limosa lapponica*
- [A160] Curlew *Numenius arquata*
- [A162] Redshank *Tringa totanus*
- [A169] Turnstone *Arenaria interpres*
- [A179] Black-headed Gull *Chroicocephalus ridibundus*

7.5.15. The Conservation Objectives for North Bull Island SPA seek to maintain the favourable conservation condition for each of the bird species for which the SPA has been selected. In this regard, I note that site population trends are generally increasing, and the site conservation condition is favourable for the majority of species (Table 4.3).

Identification of Likely Effects

7.5.16. The appeal site is hydrologically connected to the North Dublin Bay SAC and North Bull Island SPA. On this basis, I consider that potential impacts associated with the construction and operational phase of the development proposed to be retained, primarily relate to potential impacts on water quality including:

1. the deterioration of water quality as a result of sediment and pollution loads arising during the construction phase;
2. the deterioration in water quality as a result of sediment and contaminants etc. during the operational phase from the containers picked up in transit which may be discharged into surface water, particularly during high rainfall events; and
3. the deterioration in water quality as a result of pollution loads from the movement of vehicles and machinery during the operational phase and the potential for spillages of oils, fuels and other pollutants which could be transported to the surface water system during high rainfall events.

Construction Phase

7.5.17. During the construction phase there was potential for surface water runoff from site works to temporarily discharge overland to the Santry River. However, in the absence of streams or drainage ditches on, or bounding, the appeal site, and having regard to the earth banks along the site boundaries, the hydrological connection was indirect and extremely weak. The intervening transport depot, car park, roads and permeable areas mean that water quality in these sites would not have been negatively affected by any contaminants, such as sediment from the works to facilitate the container storage depot. It is unlikely that this aspect of the construction phase resulted in significant environmental impacts that could affect European sites within the wider catchment. Moreover, no dewatering would have occurred during this phase, and in this regard, I note the site's Ground Waterbody WFD Status for 2016-2021 is 'good'. Although, I note that the WFD Status for the Santry River is 'poor' for the same period.

Operational Phase

7.5.18. During operation, it is stated that the proposal is connected to the drainage layout permitted under PA ref. F06A/0512 and I note the location of a Class 1 Klargester petrol interceptor downstream of an attenuation tank, and upstream of its discharge to an existing 225mm surface water drain, located along the northern side of the estate road. This drain outfalls to the Santry River prior to discharging to the sea. I also note that there will be no additional loading on the receiving WWTP and therefore no adverse direct or indirect impact will arise on the water quality of the Natura 2000 sites and notwithstanding the River Waterbody WFD Status 2016-2021 for the Santry River.

Consideration of residual effects

7.5.19. Airborne pollution during construction, namely dust, is unlikely to have affected the North Dublin Bay SAC, which consists of mudflats etc. As noted, the more sensitive receptors of this SAC are in the vicinity of North Bull Island, c. 8km away, and dust would have settled before this point. It is also unlikely to be a factor during operation.

7.5.20. Noise disturbance on bird species that occur in the SPA as a result of the works to facilitate the depot can also be ruled out due to distance from their favoured locations and such noise is likely to have been absorbed within the M50 noise environment.

- 7.5.21. I also note that the site generally offers no supporting habitat, *ex situ* or otherwise for such species, including those whose populations are in decline and whilst I accept that a number of species, including Golden Plover and Black-tailed Godwit, forage within the wider landscape in arable fields and grasslands, it is highly unlikely at the appeal site. In this regard, I note that this area of hardstanding is relatively remote within the overall context and noise from the M50 is likely to deter bird activity. Moreover, none of the SCI species for which the North Bull Island SPA is designate, appear in the National Biodiversity Data Centre 1km grid around the appeal site (NBDC ref. O1541).
- 7.5.22. Other extant development is similarly served by urban drainage systems and the WWTP. A NIR was prepared for the Development Plan which included the MRE zoning for the site. No likely significant effects on the water quality of any European sites were identified. No likely significant in-combination effects are identified here.
- 7.5.23. The appeal site is not immediately adjacent to, or within, a European site, therefore there is no risk of habitat loss or fragmentation or any effects on QI species directly or *ex-situ*. The existing environment includes a WWTP and urban drainage systems. The acceptable distance between the proposed development and any European sites, and the weak and indirect stormwater pathway is such that the proposal will not result in any likely changes to the European sites that comprise part of the Natura network.

Mitigation Measures

- 7.5.24. In terms of operation, I note that the proposal connects to a drainage system which incorporates SuDS measures including attenuation tank and petrol interceptor as detailed above. I accept that the interceptor is designed to remove contaminants and may therefore have the effect of reducing the harmful effects of the project on SAC and SPA, or other European sites. However, having regard to the recent *Eco Advocacy CLG* judgement (C-721/21), I am satisfied that these and other measures are features that were incorporated as standard features inherent in the construction of such facilities, irrespective of any effect on such sites, and are not therefore relied upon to reach a conclusion of no likely significant effects on any European site.

Screening Determination

- 7.5.25. 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 and projects, would not be likely to give rise to significant effects on North Dublin Bay SAC, North Bull Island SPA or any other European site, in view of the site's Conservation Objectives, and appropriate assessment (and submission of a Natura Impact Statement) is therefore not required.

7.5.26. It would be unreasonable to uphold this aspect of the third refusal reason. The Board however may wish to seek further information in terms of an existing drainage layout, particularly given the conflicting information outlined in the AA screening report, but I do not consider this necessary, having regard to the substantive reasons for refusal.

7.6. Traffic and Transport

7.6.1. In the absence of adequate information to assess the transportation aspects of the proposal, the planning authority's fourth refusal reason states that the proposal would be contrary to proper planning etc. and could lead to the creation of a traffic hazard. This appears to be based on the Roads Section comments who recommended that further information be sought by the planning authority in respect of parking demand, site operations including circulation routes and lighting. They also sought a TTA in accordance with the TII guidelines and details to demonstrate that the structures, presumably the stacked containers, are secured and outside the M50 clear zone.

7.6.2. As noted, the appeal documentation includes an engineering report in response to the fourth refusal reason. It responds to each of the issues raised by the Roads Section. In the interests of completeness, I will consider each of the response items as follows.

Car Parking Demand

7.6.3. The applicant has indicated that the 'depot' has 41 no. employees, 90% of whom travel by car with an average occupancy of 1.2 persons per car, 2% by bicycle and 8% by other means. There is therefore car parking demand of 30 no. spaces per day and it is stated that these are facilitated adjacent to the offices to the south of the appeal site. It also states that there is bicycle parking for the employees who cycle to work. The operating hours of the facility are indicated as 0600 to 1800 hours, Monday to Friday.

7.6.4. It is unclear whether the 41 no. employees are attributable to the 'transport depot' or the 'container depot', or indeed whether this is a cumulative figure for both sites. The layout drawing for the transport depot permitted under PA ref. F06A/0512 illustrates

12 no. car parking spaces and 23 no. HGV spaces. The layout drawing submitted with the appeal illustrates c. 11 no. car spaces and c. 16 no. HGV spaces *in situ*. Having inspected the site and observed the *ad hoc* parking arrangement around the office structure, and reviewed the permitted and proposed layouts, I consider it is highly unlikely that there is sufficient space for 30 no. cars adjacent to the offices as indicated.

- 7.6.5. The parking requirement for a development of this nature is not defined in Table 14.19 of the Development Plan, as noted by the Roads Section, and I agree that it should be assessed on a first principles basis. In such circumstances, it evidently falls short of the space that the applicant themselves have indicated is required for its employees.

Internal Circulation

- 7.6.6. In terms of internal circulation, the applicant refers to the layout drawing submitted with the appeal which indicates the autotrack movements of articulated trucks with up to 45ft long trailers, in parallel with forklift movements. Pedestrian walkways are also illustrated and outside of the swept path of both the trailers and the forklift vehicles.

- 7.6.7. I accept that the autotracking indicates that conflict between vehicular movement on the appeal site will be avoided, and this is consistent with my site observations. I also note that the proposed walkways are 2.0m wide and provided around the container stacks, except where the stacks are in close proximity to the appeal site boundaries. Whilst they are not delineated on site, this could be addressed by planning condition.

Lighting

- 7.6.8. The applicant states that standard service yard lighting has been installed and given the setback from the M50, there has been no reported light overspill issues. However, it is suggested that a glint and glare inspection/survey could be conditioned and any adjustments, including the provision of louvres, could be undertaken to address issues raised. The applicant notes that Tesco to the east and IKEA to the west have floodlighting at an equivalent setback from the M50, with floodlit pitches further west.

- 7.6.9. The 7 no. floodlighting columns proposed to be retained are c. 20m high, 5 no. located along the southern boundary and 2 no. located along the eastern boundary. Having regard to the distance from the M50, c. 150m in the case of 3 no. columns and 115m in the case of 2 no. columns along the southern boundary, and 65m and 95m respectively in the case of the columns along the eastern boundary, I do not consider

there is any reasonable prospect that the lighting will adversely impact on road safety. The floodlighting could be cowled away from the M50 by condition in any event.

M50 Clear Zone

- 7.6.10. In terms of clearance from the M50 and referencing the health and safety report submitted with the appeal, it is stated that the containers are stacked on site in accordance with industry standards. It notes that this report identifies a setback in excess of 40m from the M50 to the containers and states that this setback is similar to that provided to other developments along the M50 in this area. It also states that the TII clear zone requirements for a straight roadway with a 120kph design speed is 10m, and this is easily achievable at the appeal site where a 40m setback is provided.
- 7.6.11. I am satisfied that a 40m separation from the container stacks to the M50 is sufficient having particular regard to the health and safety report which notes that the containers are unlikely to have any impact even in the event of a collapse due to the banking etc. in the wooded perimeter, and if stacks no higher than 9m to 11m along this boundary.

Site Operations and TTA

- 7.6.12. In terms of site operations, I note that the containers are transported nationwide by hauliers following unloading at Dublin Port and other ports, after which they are returned to one of five container depots, including the appeal site, for storage. It is stated that this involves one inbound movement, and one outbound movement. Drivers then collect empty containers from the storage depot and deliver to customers for onward shipping which also involves one inbound and outbound movement. It is stated that there are up to 300 no. movements per 12-hour day, 150 inbound and 150 outbound, with a peak hourly movement of up to 15 no. inbound and outbound trips.
- 7.6.13. The applicant suggests that the container depot, by nature of its operation, generates a low number of vehicular movements averaged across the day and is ideally located in close proximity to Dublin Port and the national motorway network. Assuming a worst case of 100% trips via the M50, and a 60/40 split east and westbound, it is stated that the facility generates up to 18 two-way trips eastbound and 12 two-way trips westbound in the peak hour. Noting that the M50 has an average daily traffic flow of 143,586 vehicles at this location in 2022, and assuming a 10% peak hour flow, it is

stated that the traffic movements from the subject site would represent 0.1% of this traffic. On this basis, the applicant suggests that it is well below the TTA threshold.

- 7.6.14. In this regard, the applicant also provides a direct rebuttal to the TII comments. Specifically, it states that TII have incorrectly interpreted the proposals to include an access off the M50 at this location. In respect of the carrying capacity of the national road network, the applicant states that the peak hour trips are existing, negligible, and would represent 0.1% of the traffic flow along the M50 at this location. In respect of TII's concerns regarding lighting and a clear zone, it reiterates that a glint and glare inspection/survey could be conditioned and the minimum 10m clear zone is achieved.
- 7.6.15. As noted, TII guidance document PE-PDV-02045 sets the indicative thresholds for a TTA. Table 2.1 requires a TTA where traffic to and from the development exceeds 10% of the traffic flow on the adjoining road. The applicant has adopted the literal interpretation and considers the M50 'the adjoining road'. Their proposition that the proposal represents 0.1% of the traffic flow appears reasonably made on this basis.
- 7.6.16. However, I interpret the 'adjoining road' to be the road which services the site, or the Old Ballymun Road in this instance. It is a 500m long cul-de-sac off Northwood Avenue and serves Compass Distribution Park, including Stateline Transport and Tesco's Ballymun Distribution Centre, in addition to Gulliver's Retail Park to the south and a number of houses. The stated 300 no. movements per 12-hour day would appear to exceed the 10% threshold set out in Table 2.1 of the guidelines for this road having regard to the observed movements. In this regard, it is reasonable to assume that the Old Ballymun Road has less than 3,000 movements over this 12-hour period.
- 7.6.17. Moreover, during the 10-minute period that I was at the appeal site, I observed a total of 5 no. HGV's either inbound or outbound. Whilst this is a representative sample of the peak hourly movement of 30 no. HGV's, it extrapolates to 360 no. movements per 12-hour day. I therefore consider that the applicant's engineering report presents a slight underestimation of overall HGV movements to and from the appeal site, where loading and unloading of trucks takes place in a matter of minutes with little dwell time.
- 7.6.18. In this regard, the Roads Section considered that traffic surveys of the Old Ballymun Road/Northwood Avenue, Northwood Avenue/R108 and R108/M50 junctions were required as part of an overall TTA. I share these concerns, particularly having regard to the significant build-up of traffic that I observed on Northwood Avenue junction when

carrying out my inspection of the wider area. The applicant has failed to address the impacts of the proposal on the Old Ballymun Road and its link to the R108, contrary to objective DMSO113 which requires a TTA where new development is likely to have a significant effect on travel demand and the capacity of the surrounding network.

- 7.6.19. In the absence of a TTA, and having general regard to the underestimation in HGV movements to and from the appeal site, I have residual concerns that the proposal could adversely affect the capacity, efficiency and safety of national road infrastructure, and Junction 4 of the M50 specifically, contrary to Plan objective DMSO114 and the provisions of the Spatial Planning and National Roads Guidelines.

Conclusion on Traffic and Transport

- 7.6.20. Having regard to my site observations, and in the absence of robust documentary evidence to the contrary, I consider that the development to be retained generates a significant volume of traffic, including a high number of HGV movements, which the road network in the vicinity of the site is not capable of accommodating safely, due to a restricted length and capacity, giving rise to traffic congestion and a traffic hazard.

- 7.6.21. Moreover, it is considered that this significant volume of additional traffic movements would interfere with the free flow of traffic on, and would compromise the level of service and carrying capacity of, the M50 generally, and Junction 4 specifically, and would therefore fail to protect public investment in the national road network. I recommend that the fourth refusal reason should be upheld generally, as modified.

7.7. Procedural Matters

- 7.7.1. As noted, Tesco Ireland, one of the observers on the subject appeal, has stated that they are the landowner of the appeal site. The crux of their observation rests on the fact that the application to the planning authority was made without their consent. In this regard, they suggest that the application and therefore the appeal are invalid.

- 7.7.2. The validation of a planning application is a matter for the planning authority, and it was clearly made valid in this case. On balance, I consider that the applicant has demonstrated a sufficient interest in the appeal site for the purposes of the making of an application and in any case, this is a matter to be resolved between the parties, having regard to the provisions of S. 34(13) of the Planning Act 2000, as amended.

8.0 Recommendation

8.1. I recommend that permission be **refused** for the reasons and considerations below.

9.0 Reasons and Considerations

1. The site is located in an area zoned objective 'MRE' to 'facilitate opportunities for high-density mixed-use employment generating activity and commercial development and support the provision of an appropriate quantum of residential development within the Metro and Rail Economic Corridor' in the current development plan for the area. The Board considers that the development proposed to be retained would materially contravene the zoning objective, as set out in this plan. The Board pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37(2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case. The development proposed to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The development to be retained generates a significant volume of traffic, including a high number of movements by heavy goods vehicles, which the road network in the vicinity of the site is not capable of accommodating safely due to the restricted length and capacity of Old Ballymun Road in the vicinity of the site and the restricted capacity of its junction with Northwood Avenue on to the R108 towards Junction 4 of the M50. The proposed development would, therefore, give rise to traffic congestion and would endanger public safety by reason of traffic hazard.
3. This large-scale container storage depot on inappropriately zoned land close to Junction 4 on the M50 motorway, represents a haphazard and unsustainable pattern of development that is prejudicial to the orderly development of Dublin City and Suburbs, and the policies and objectives to promote such development on appropriately zoned and serviced land within it, including on 'general employment' and 'warehousing and distribution' zonings. Furthermore, and in the absence of information to demonstrate otherwise, it is considered that the additional traffic movements which would be generated would interfere with the free flow of traffic

on, and would compromise the level of service and carrying capacity of, the road at this location and would fail to protect public investment in the national road network. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Philip Maguire

Planning Inspector

9th February 2024

Appendix 1

Form 1 – EIA Pre-Screening

Case Reference	ABP-315822-23		
Proposed Development Summary	Retention of shipping container storage depot with associated security hut, fencing and 7 no. floodlighting columns etc.		
Development Address	Compass Distribution Park, Santry, Dublin 9		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	Yes	X	
	No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No		N/A	No EIAR or Preliminary Examination required
Yes	X	Class 10(a) – 15ha Class 10(b)(iv) – 10ha	Proceed to Q.4
4. Has Schedule 7A information been submitted?			
No		X	Preliminary Examination required
Yes			Screening Determination required

Inspector: _____ Date: _____

Form 2 – EIA Preliminary Examination

Case Reference	ABP-315822-23	
Proposed Development Summary	Retention of shipping container storage depot with associated security hut, fencing and 7 no. floodlighting columns etc.	
Development Address	Compass Distribution Park, Santry, Dublin 9	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The appeal site has a stated area of 2.7ha. The adjacent transport depot, which is outlined in blue, has an area of c. 0.55ha.</p> <p>The retention of use of the site as a shipping container storage depot involved some previously executed earthworks including a surface water drainage connection to the transport depot site.</p> <p>Removal of topsoil etc. and other construction wastes would have been relatively minimal. Localised construction impacts would have been temporary.</p> <p>Waste, emissions and pollutants during the operational phase appear to be minimal. Surface water passes through pass through a petrol interceptor before outfall to an existing drain in the estate road. Emissions from HGV's is not exceptional in the context of the M50 to the north.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having</p>	<p>The maximum capacity of the depot is stated as 2,148 no. containers or 3,887 TEU. For context, I note that the indicative maximum capacity of the container terminal at Dublin Inland Port at Coldwinters is 2,108 no. containers whereas the proposed annual cargo handling capacity at Dublin Port's Poolbeg Peninsula terminal would be 600,000 TEU. The capacity of the facility is not considered to be exceptional in the context of the existing environment, albeit not port related.</p>	Uncertain

<p>regard to other existing and/or permitted projects?</p>	<p>There are other existing and proposed logistics-type developments in the surrounding area and whilst generally they will not have a significant cumulative effect, I have some residual concerns regarding cumulative traffic impacts, although no real likelihood of significant effects on the environment arise.</p> <p>Traffic and transport impacts have been addressed individually in section 7.6 of the IR.</p>	
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>There are no ecologically sensitive locations in the immediate vicinity of the appeal site. The nearest European site is located c. 6km to the southeast – South Dublin Bay and River Tolka Estuary SPA (004024). The appeal site is not directly hydrologically connected to this site but is connected to the North Dublin Bay SAC (000206) and North Bull Island SPA (004006) via a surface water drainage outfall to the Santry River. Section 7.5 of the IR concludes that the project individually, or in combination with other plans and projects, would not be likely to give rise to significant effects on North Dublin Bay SAC, North Bull Island SPA or any other European site, in view of the site’s Conservation Objectives.</p> <p>There is no potential to significantly impact on the ecological sensitivities of these European sites or other significant environmental sensitivities in the area.</p>	<p>No</p>
<p>Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

Inspector: _____

Date: _____