



An
Bord
Pleanála

Inspector's Report

ABP-317645-23

Development	Retention for use of site for parking of trucks and retention for boundary fencing and electric gates.
Location	Naas Industrial Estate, Maudlins, Fishery Lane, Naas, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	23566
Applicant(s)	Patrick J. Tansey
Type of Application	Retention Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Patrick J. Tansey
Observer(s)	None.
Date of Site Inspection	18 th September 2023
Inspector	Ronan O'Connor

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History.....	5
5.0 Policy Context.....	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	9
5.3. EIA Screening	9
6.0 The Appeal	9
6.1. Grounds of Appeal	9
6.2. Planning Authority Response	10
6.3. Observations	10
6.4. Further Responses.....	10
7.0 Assessment.....	10
8.0 Recommendation.....	12
9.0 Reasons and Considerations.....	12

1.0 Site Location and Description

- 1.1. The site is located in the north-east corner of Naas Industrial Estate just off the M/N7 off Junction 9. The site is currently used as a commercial lorry/truck parking and staff parking. The site has a gravel surface, and is bounded by an industrial unit to the west. The River Morell runs to the east of the site.

2.0 Proposed Development

- 2.1. Retention for use of site for parking of trucks and retention for boundary fencing and electric gates.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for two no. reasons as follows:

1. The development as proposed for retention and permission is located in an area which is zoned for F: Open Space and Amenity in the Naas Local Area Plan 2021-2027, where it is an objective "to protect and provide for open space, amenity and recreation provision". The provision of a warehouse and commercial parking of trucks/refrigeration trucks are neither permissible nor open for consideration within the zoning matrix as indicated in Table 11.3 of the Plan. The development, if permitted would contravene the Naas Local Area Plan 2021-2027 in terms of land use zoning and would therefore be contrary to the proper planning and sustainable development of the area.
2. The development as proposed for retention and permission is located in an area which is at risk of flooding as indicated in the Naas Local Area Plan 2021-2027, Strategic Flood Risk Assessment. In the absence of a site specific flood risk assessment, the Applicant has not demonstrated to the satisfaction of the Planning Authority that the development would not itself be at risk of flooding, or that it would not give rise to an increased risk of flooding in the area. It is considered that the development would, therefore, be contrary to the provisions of Section 28 Guidelines "Planning System and Flood Risk Management-

Guidelines for Planning Authorities" (2009), and the Naas Local Area Plan 2021-2027, Strategic Flood Risk Assessment, would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area

Decision Date: 18/07/2023

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 12th July 2023)

- Notes site is zoned for Open Space and Amenity within the Naas LAP 2021-2027
- Heavy commercial vehicle park/industry (light and general)/warehouse not permitted or open for consideration
- Would materially contravene the subject zoning
- Subject LAP has just come into effect/Has been assessed in terms of flood risk
- Significant area of the site is located within Flood Zone A and B of the Naas LAP
- Having regard to the zoning of the site, the non-essential nature of the use for regeneration purposes and the availability of alternative lands for the proposed uses, the proposed development is unacceptable
- Kildare County Council and Lagan Construction used the site temporarily as a depot during upgrading works to the N/M7 (development of national importance)/was never envisaged that this will be continued once works were complete
- Current use is considered a significant intensification
- Notes contents of TIA/Stage 1 and 2 Safety Audit
- Notes parking provision
- Notes Landscaping proposals submitted and details same
- Concludes that there is nothing present in this current application which overcomes the previous reasons for refusal as part of the most recent application 23249

Recommendation was that permission be **refused**.

3.2.2. Other Technical Reports

Roads: No objection subject to conditions

Area Engineer: No objection subject to conditions

EHO: No objection subject to conditions

Water Services: No objection subject to conditions

CFO: No objection subject to conditions

3.3. Prescribed Bodies

3.3.1. Irish Water – No response

3.3.2. Department of Transport – No objection

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1.1. 22/249 Refuse permission [decision date 26/04/2022] for (A) the retention permission for the use of the site for commercial use for the parking of trucks and refrigeration container trucks, (B) the retention permission for boundary fencing, electric gates and concrete bollards to protect the adjoining stream, (C) planning permission for storage warehouse with staff facilities for commercial use having a floor area of 1121 M2 and surface dressing of the hand-standing yard and all associated site works including the provision of car and truck parking spaces for 2 no. reasons as follows:

1. The development as proposed for retention and permission is located in a area which is zoned for F: Open Space and Amenity in the Naas Local Area Plan 2021-2027, where it is an objective "to protect and provide for open space, amenity and recreation provision". A Warehouse and commercial parking of trucks/refrigeration trucks are neither permissible nor open for consideration within the zoning matrix as indicated in Table 11.3 of the Plan.

The proposed development for permission and retention would, if permitted, contravene the Naas Local Area Plan 2021-2027 in terms of land use zoning and would therefore be contrary to the proper planning and sustainable development of the area.

2. The development as proposed for retention and permission is located in an area which is at risk of flooding as indicated in the Naas Local Area Plan 2021-2027, Strategic Flood Risk Assessment. In the absence of a site specific flood risk assessment, the Applicant has not demonstrated to the satisfaction of the Planning Authority that the development would not itself be at risk of flooding, or that it would not give rise to an increased risk of flooding in the area. It is considered that the development would, therefore, be contrary to the provisions of Section 28 Guidelines "Planning System and Flood Risk Management -Guidelines for Planning Authorities" (2009), and the Naas Local Area Plan 2021-2027. Strategic Flood Risk Assessment, would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

21/522 Permission **refused** for (A) the retention permission for the use of the site for commercial use for the parking of trucks and refrigerated container trucks, (B) the retention permission for boundary fencing, electric gates and concrete bollards to protect the adjoining stream, (C) planning permission for storage warehouse with staff facilities for commercial use having a floor area of 1121M² and surface dressing of the hard-standing yard and all associated site-works including the provision of car and truck parking spaces [decision date 11/11/2021]. One reason for refusal:

1. The proposed development is located in an area which is currently unzoned under the Kildare County Development Plan 2017-2023. Furthermore the subject site is zoned F-Open Space and Amenity under the Draft Naas Local Area Plan 2021-2027, where it is an objective "to protect and provide for open space, amenity and recreation provision" Industrial warehousing units are 'N- Not permitted in the land use zoning matrix of the Draft Naas Local Area Plan. The proposed development would not comply with the policy provisions of the Kildare County Development Plan 2017-2023, as the lands are not zoned for the uses proposed and would therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Section 28 Guidelines

- Flood Risk Management Guidelines for Planning Authorities (November 2009)

5.2. Development Plan

Kildare County Development Plan 2023 -2029

The Kildare County Development Plan 2023 -2029 came into effect on 28th January 2023.

Chapter 15 Development Management Standards

Section 15.9.2 refers to Industry and Warehousing Development and states the following:

- Industry and warehousing schemes will be required to present a good quality appearance, helped by landscaping and careful placing of advertisement structures.
- In relation to industrial development the following should be taken into consideration:
- Individual buildings should exhibit a high quality of modern architectural design and finish (including the use of colour). Prominent corner-face of buildings shall be appropriately articulated
- In the case of two or more industrial / warehouse units, a uniform design is required for boundary treatments, roof profiles and building lines;
- Areas between the building and road boundary may include car parking spaces provided adequate screen planting is incorporated into the design proposal;
- Adequate provision shall be made on the site for parking of vehicles, storage and stacking space. Storage and stacking areas shall be located to the rear of the building or, where such facilities are located at the side, provision for screening shall be made;

- The building line from adjoining land-uses will be determined at Local Area Plan level having regard to the nature of uses and site-specific matters, or in accordance with Section 15.7.7 of this Plan;
- The front building line shall be as determined in consultation with the planning authority and, where required, the existing roadside boundary shall be set back;
- Any industrial or commercial development shall not be injurious to the residential amenity of adjoining properties;
- A landscaping plan shall be included with any planning application which details landscaped areas to the front of the building line and the provision of a buffer zone (minimum 5-10 metres) where the development adjoins another zoning or where it would impact on the amenities of adjoining land uses;
- Proposals shall be submitted to incorporate Sustainable urban Drainage Systems (SuDS) and other nature-based surface water drainage solutions as part of all plans and development proposals. Priority shall be given to SuDS that incorporate green infrastructure and promote biodiversity including green roofs, walls and rain gardens, with underground retention solutions only being considered when all other options have been exhausted.
- Other measures that address climate change shall include the encouragement and support of solar and wind energy as part of any proposals.
- Signage shall be an appropriate scale and designed into the scheme.
- Any mechanical plant or air handling units shall be appropriately screened.

Naas Local Area Plan 2021-2027

Subject site is zoned F – ‘Open Space and Amenity’ To protect and provide for open space, amenity and recreation provision

Objective IO 3.1 (a) Ensure all development proposals within the areas identified as ‘Flood Risk Assessment’ on LUZ SFRA Map 9.1, where Justification Tests have been carried out as part of the Strategic Flood Risk Assessment and where residual flood risk remains are the subject of site-specific flood risk assessment appropriate to the nature and scale of the development being proposed (b) Flood Risk Assessments for such developments must assess climate change scenarios in

accordance with the allowance outlined in the OPW Flood Risk Management Climate Change Sectoral Adaptation Plan 2019.

Strategic Flood Risk Assessment of the Naas Local Area Plan 2021-2027

5.3. Natural Heritage Designations

5.3.1. c 7km north-west of Red Bog SAC (site code 000397).

5.4. EIA Screening

5.4.1. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

5.5. AA Screening

5.5.1. Having regard to the modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. One no. first party appeal was submitted on 25th July 2023. The grounds of appeal are summarised as follows:

- Notes that Kildare County Council filled the lands with hardcore filling/road planing material/fenced the site with fencing and secure gates
- Site was used for storage of road making material/parking of machinery/trucks/refuse trucks

- Site B (with reference to attached map) was granted permission 20/406 on 15th Jan 2021
- The appeal submission refers to procedures relating to a Material Contravention of a Development Plan
- Makes reference to ‘Simmons on Planning Law’ by Dr. Browne
- Makes reference to s.140 of the Local Government Act, 2021 (as amended)
- Request that ABP considers this application favourably and direct Kildare County Council to give Elected Members the opportunity to consider the merits of a Material Contravention of the 2017-2023 Kildare County Development Plan

6.1.2. Appeal attachments include copy of preplanning meeting notes and flood maps from the OPW.

6.2. **Planning Authority Response**

6.2.1. Requests that ABP uphold the decision to refuse permission (response received 16th August 2023).

6.3. **Observations**

6.3.1. None.

6.4. **Further Responses**

6.5. None.

7.0 **Assessment**

7.1. The planning issues raised in this appeal are as follows:

- Principle of Development
- Flooding
- Material Contravention Procedure

Principle of Development

7.1.1. The Planning Authority's first reason for refusal refers to a contravention of the Naas Local Area Plan 2021-2027, having regard to the open space zoning of the site. The first party appeal submission does not seek to justify the principle of the proposal in any way but rather makes reference to the Material Contravention procedure (which I shall discuss below). In relation to the principle of development, I note the site is zoned Subject site is zoned F – 'Open Space and Amenity' To protect and provide for open space, amenity and recreation provision' and the uses proposed here (Heavy Commercial Vehicle Park) are 'normally not permitted', with reference to 11.1.1 of Land Use Matrix of the Naas Local Area Plan 2021-2027. I see no reason to diverge from the opinion of the Planning Authority in their assessment here. 'Normally not permitted' uses are those uses which will not be permitted, except in very exceptional circumstances, and where it can be demonstrated and justified that the proposal does not contravene Section 28 Ministerial Guidelines. No exceptional circumstances have been demonstrated here, and the application therefore falls on this basis. Generally speaking, it is hard to see how a use such as that proposed for retention here would be in line with the overall zoning objective for the site. I am of the view that the proposal represents a material contravention of the Naas Local Area Plan 2021-2027, having regard to the zoning objective for the site.

Flood Risk

7.1.2. The Planning Authority's second reason for refusal refers to flood risk. In relation to same, the appeal submission has enclosed a map which purports to demonstrate that the site is not in fact within an area of flood risk. With regard to mapping on Floodinfo.ie, I note that there is a small area to the eastern extent of the site that is within Flood Zone A and B. However, while the use itself is not a highly vulnerable use (with reference to Table 3.2 of the Flood Risk Management Guidelines'), and the area impacted by this flood zone is small, the construction of hard standing in an area that is impacted by flooding does have the potential to increase the flood risk, both on this site, and on sites adjacent to this, With reference to the flood mapping within the Naas LAP Strategic Flood Risk Assessment, I noted that the site lies within an area identified as 'Flood Risk Assessment' (Map 9.1 refers) within which a site specific flood risk assessment, appropriate to the scale and nature of the development being proposed, is required (Policy IO 3.1 of the Local Area Plan

refers). No such assessment has been submitted in this instance. I would therefore recommend that the Council's reason for refusal is upheld in this instance.

Material Contravention Procedure

7.1.3. The First Party appeal raises the issue of material contravention, and the submission focuses on the material contravention procedure that is followed at planning application stage, where relevant, rather than the procedure followed by the Board at appeal stage. Notwithstanding, the Planning Authority has not referred to a material contravention of the Naas Local Area Plan 2021-2027 in any of the 2 no. reasons for refusal, therefore I am of the view that the provisions of s.37(2)(b) of the Planning and Development Act 2000 (as amended) do not apply here. Notwithstanding, and having regard to s.37(2)(a) of the PDA 2000 (as amended), the Board may in determining an appeal under this section decide to grant a permission, even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates. In this instance, it is my recommendation that the Board do not do so in this instance, having regard to the issues of concern I have raised above, noting that, in my view, the proposal for retention, materially contravenes the recently adopted LAP having regard to the zoning of the site, and is also in contravention of flood risk policies pertaining to the site.

8.0 Recommendation

8.1. I recommend that permission for retention be **REFUSED** for the 2 no. reasons as set out below.

9.0 Reasons and Considerations

1. The development as proposed for retention and permission is located in an area which is zoned for F: Open Space and Amenity in the Naas Local Area Plan 2021-2027, where it is an objective "to protect and provide for open space, amenity and recreation provision". The provision of a warehouse and commercial parking of trucks/refrigeration trucks are neither permissible nor open for consideration within the zoning matrix as indicated in Table 11.3 of the Plan. The development, if permitted would materially contravene the Naas

Local Area Plan 2021-2027, having regard to the zoning of the site, and would therefore be contrary to the proper planning and sustainable development of the area

2. The development as proposed for retention and permission is located in an area which is at risk of flooding as indicated in the Naas Local Area Plan 2021-2027, Strategic Flood Risk Assessment. In the absence of a site specific flood risk assessment, as required by Objective IO 3.1 of the Naas Local Area Plan 2021-2027, the applicant has not demonstrated to the satisfaction of the Board that the development would not itself be at risk of flooding, or that it would not give rise to an increased risk of flooding in the area. It is considered that the development would, therefore, be contrary to the provisions of Section 28 Guidelines "Planning System and Flood Risk Management- Guidelines for Planning Authorities" (2009), Policy IO 3.1 of the Naas Local Area Plan 2021-2021 and contrary to the overarching flood risk management strategy as set out within the, Strategic Flood Risk Assessment of the Naas Local Area Plan 2021-2027. The proposal, therefore, would be prejudicial to public health and would 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.

Ronan O'Connor
Senior Planning Inspector

19th September 2023