

An
Bord
Pleanála

Board Direction
BD-014786-23
ABP-316491-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 04/12/2023.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

Having regard to the:

- provisions of the Kildare County Development Plan 2023-2029, including Policy Section 2.13.1, which identifies the subject site and its surrounding area as a Strategic Economic and Employment Zone, and policies and objectives regarding economic growth and enterprise, renewable energy and fuel, biodiversity and green infrastructure, and climate,
- location, nature, size and scale of the proposed facility and established character and pattern of development in its vicinity, including other employment and industrial uses in an existing business park,
- location of the proposed development next to the Newbridge South Orbital Relief Road (NSORR) and its proximity to the national road network, including the M7 and M9 Motorways,

- requirement for the proposed facility to be subject to, and regulated under, an Industrial Emissions Licence to be issued by the Environmental Protection Agency,
- nature of the receiving environment,
- mitigation measures proposed for construction and operational phases of the proposed development,
- submissions on file including those from prescribed bodies, the appellant and the Planning Authority,
- documentation submitted with the application, including the Environmental Impact Assessment Report, Appropriate Assessment Screening Report and Natura Impact Statement,

it is considered that, subject to compliance with the conditions set out below, the proposed development would:

- be in accordance with the provisions of the Kildare County Development Plan 2023-2029 and with European, national, and regional planning policy,
- be in accordance with the planned industrial expansion of Newbridge Business and Technology Park, Co. Kildare,
- be acceptable in terms of traffic safety and convenience, and the protection of ground and surface water quality,
- not give rise to a risk of serious pollution given its regulation under licence by the Environmental Protection Agency, or be prejudicial to public health,
- not seriously injure the amenities of the area or property in the vicinity, and
- not have a negative impact on archaeological or cultural heritage.

The proposed development would, therefore, be in accordance and with the proper planning and sustainable development of the area.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development. The Board considered that the Environmental Impact Assessment Report (EIAR), supported by the documentation submitted by the application adequately considers alternatives to the proposed development, and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment. Having regard to the examination of environmental information contained within the Inspectors report, to the EIAR and supplementary information provided by the applicant and the submission from the planning authority and the appellant, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows;

- **Biodiversity:** Development of the site will result in terrestrial habitat removal and disturbance and displacement of species occurring on or around the site. The impacts from such activities would be adequately mitigated by; implementation of the Construction and Environmental Management Plan and appointment of an Ecological Clerk of Works; adherence to relevant published guidance including CIRIA guidance on water pollution and Inland Fisheries Ireland guidelines on protection of fisheries, Bat Conservation Ireland guidance on lighting design and National Roads Authority Guidelines for the treatment of badgers, bats and otters; monitoring of badger setts during post-construction; measures for the diversion as outlined in Section 6.7 of the EIAR; proposed planting and landscape works using native species; clear delineation and fencing off of habitat conservation areas and retained trees/vegetation; timing and management of tree/vegetation removal works, with pre-development surveys of features to be removed; erection of bat boxes and bird nesting boxes; biosecurity measures for invasive species.
- **Groundwater and / or surface water:** the development could give rise to impacts on groundwater and surface water as a result of run-off sediments, accidental spillages of chemicals, hydrocarbons or other contaminants entering waterbodies during construction. These impacts would be adequately mitigated by; the implementation of the Construction and Environmental

Management Plan and of standard best practice guidance and measures, including measures for the control of soils, materials and pollutants, and drainage design and the management of surface water; soil and stockpile management; the measures outline at section 8.5 of the EIAR including the prevention of works within 10 metres of the Pinkeen Stream where possible, and the installation of silt traps and petrol interceptors; standard measures for the storage and management of fuels, lubricants and hydraulic fluids and other potential contaminants to avoid spillage, properly secured; excavation, sealed storage and off-site disposal measures for the management of any sediments impacted by contamination.

- **Landscape and visual amenity;** potential impacts on the landscape and visual amenities of the area will be adequately mitigated by the capacity of the receiving environment and the existence of other similar type industrial structures in the business park area, and separation from sensitive receptors in the area, such as residential properties, along with landscaping proposals for the site.
- **Residential amenity;** potential impacts on population and human health during the construction phase due to noise, airborne emissions and dust, traffic movements and general disturbance would be adequately mitigated by; separation from sensitive receptors, implementation of the CEMP and the Dust Management Plan and adherence to identified emission limit values and guidelines.
- **Climate:** Construction and operation of the proposed development would give rise to some greenhouse gas emissions. The impacts from such activities would be adequately mitigated by measures to minimise energy usage outlined in the EIAR and the associated documentation submitted with the application, including the design of the energy plant within the overall development, which will enable no GHG emissions associated with the energy required to power the facility in operational phase.
- **Vehicular traffic movements;** traffic generated during construction will give rise to potential disturbance and congestion along the local road network. These impacts would be adequately mitigated by; proximity of the development

site to the national road network and Newbridge South Orbital Relief Road, the short term nature of the construction activities; implementation of a Construction Traffic Management Plan.

Appropriate Assessment Stage 1

The Board considered the Screening Report for Appropriate Assessment and all other relevant submissions and carried out an appropriate assessment screening exercise in relation to the potential effects of the proposed development on designated European sites. The Board noted that the proposed development is not directly connected with or necessary for the management of a European Site and considered the nature, scale and location of the proposed development, as well as the report of the Inspector.

The Board agreed with the screening report submitted with the application and with the screening exercise carried out by the Inspector. The Board concluded that, Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development individually, or in combination with other plans or projects, would not have a significant effect on the following European sites (i.e., there is the *possibility* of significant effects occurring): South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Bay SPA (004024) and North Bull Island SPA (004006)

Appropriate Assessment Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for the South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Bay SPA (004024) and North Bull Island SPA (004006) in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment as well as the report of the Inspector. In completing the assessment, the Board considered the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, the mitigation measures which are included as part of the current proposal

and the Conservation Objectives for these European Sites. In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the sites' Conservation Objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Bay SPA (004024) and North Bull Island SPA (004006) or any other European Site in view of the sites' Conservation Objectives and that there is no reasonable scientific doubt as to this finding.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the Planning Authority submitted on the 3rd February 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the Applicant shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Detail of the finishes of the buildings and structures on site shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

- 3.

- a) The proposals, mitigation measures and commitments set out in the Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) and Construction Environmental Management Plan (CEMP_ shall be implemented in full as part of the proposed development.
- b) An Ecological Clerk of Works (ECoW) with suitable experience shall be appointed to ensure all mitigation measures outlined in the EIAR, NIS and CEMP shall be carried out. The ECoW shall submit yearly reports to the planning authority demonstrating compliance with mitigation measures and ecological considerations during the full extent of the construction phase.
- c) Should any such issues arise, the Ecological Clerk of Works shall be responsible for the supervision of implementing protection measures, immediately notifying the NPWS, and preparing any necessary documentation.

Reason: In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

4. All over ground tanks containing liquids other than water shall be contained in a waterproof bunded area, which shall be of sufficient volume to hold 110 per cent of the volume of the tanks within the bund. All water contaminated with hydrocarbons, including stormwater, shall be discharged via a grit trap and three-way oil interceptor with sump. The sump shall be provided with an inspection chamber and shall be installed and operated in accordance with the written requirements of the planning authority.

Reason: In order to protect groundwater.

5. Prior to the commencement of any works associated with the development hereby permitted, the Applicant shall submit a detailed Construction and Environmental Management Plan (CEMP) for the written agreement of the planning authority. The CEMP shall incorporate details for the following:
 - a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,

- b) Location of areas for construction site offices and staff facilities,
- c) Details of site security fencing and hoardings,
- d) Details of on-site car parking facilities for site workers during the course of construction,
- e) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- f) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works,
- g) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels, including implementation of the Dust Management Plan,
- h) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater,
- i) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil,
- j) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water bodies, sewers or drains,
- k) collection and disposal of construction waste,
- l) onsite road construction,
- m) environmental management measures during construction, including working hours, noise control, and dust and vibration control,
- n) the location of any archaeological or cultural heritage constraints,
- o) a plan detailing how engagement and liaison with local residents and businesses will be established and how it is proposed to keep the public and other bodies informed of impending disruption to traffic flow in the area of proposed works, and
- p) phasing protocols.

A record of daily checks that the construction works are being undertaken in accordance with the CEMP shall be kept at the construction site office for inspection by the planning authority. The agreed CEMP shall be implemented in full in the carrying out of the development. The Plan shall include all necessary requirements by the Planning Authority with regard to the provision of an environmental audit and any such reports necessary to ensure no environmental degradation of the site or surrounding area.

Reason: In the interest of public safety and ecological protection.

6. Prior to the commencement of development, a finalised construction traffic management plan shall be submitted to and agreed in writing with, the planning authority, which plan shall include;
 - a) Details of the timing and routing of construction traffic to and from the construction site and works areas, and associated directional signage,
 - b) Proposals to manage the delivery of abnormal loads, including routing and scheduling,
 - c) Measures to obviate queuing of construction traffic on the adjoining road network,

Reason: In the interests of pedestrian and traffic safety.

7. Prior to the commencement of development, the Applicant shall prepare a Construction Surface Water Management Plan (CSWMP) to safeguard the ecological integrity of local surface and groundwater and to protect water quality and the wildlife habitat of any watercourses, including the Pinkeen Stream.

The CSWMP shall be submitted to the planning authority for written agreement prior to the commencement of development.

Reason: In the interest of protection of water quality, groundwater and environmental protection.

8. Prior to the commencement of development, the Applicant shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management

Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of proper planning and sustainable development.

9. Prior to the opening of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and car pooling by staff employed in the development and to reduce and regulate the extent of staff parking. The mobility strategy shall be prepared and implemented by the developer and details to be agreed with the planning authority shall include the provision of centralised facilities within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

Reason: In the interest of encouraging the use of sustainable modes of transport.

10. The landscaping scheme lodged with the application, as amended by the further plans and particulars received by the Planning Authority, submitted on the 3rd February 2023, shall be carried out within the first planting season following substantial completion of external construction works. In addition to the proposals in the submitted scheme, the following shall be carried out:

- a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development,
- b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings,

- c) details of proposed street furniture, including bollards, lighting fixtures and seating,
- d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes, and
- e) measures for the protection of those trees which are proposed to be retained shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

11.

- a) An Arboricultural Consultant will be engaged to carry out a post construction Tree Survey and Assessment on the condition of the retained trees and hedgerows. Any necessary remedial or planting works should be undertaken. A Completion Certificate should be signed off by the Arborist when all permitted development works are complete and in line with the recommendations of the tree reports and plans. The Tree Survey and Assessment and Certificate should be submitted to the planning authority upon completion of the construction phase.
- b) The clearance of any vegetation, including trees, scrub and hedgerows, should be carried out outside the bird breeding season (1st March – 31st August, inclusive).

Reason: To facilitate the identification and subsequent protection of trees to be retained on the site, in the interest of visual amenity and in the interest of biodiversity.

12. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

- a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation, including hydrological and geotechnical investigations, relating to the proposed development,
- b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works,
- c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove, and
- d) agree in writing the archaeological method statements for mitigation with the Department of Culture, Heritage and the Gaeltacht, prior to commencement of any works onsite.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

13. Water supply and drainage arrangements, including the attenuation and disposal of surface water, provision of swales and/or constructed wetlands as appropriate, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

14. Prior to the commencement of development, the developer shall enter into a Connection Agreement(s) with Uisce Éireann to provide for a service connection(s) to the public water supply and wastewater collection network.

Reason: In the interest of public health.

15. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development. The agreed lighting system shall include a recommended strategy for reducing the impact of lighting on bats and be fully implemented and operational before the proposed development is made available for occupation.

Reason: In the interest of public safety and visual amenity.

16.

- a) Prior to the opening and operation of the completed purpose-built brewery, the Applicant shall remove the temporary construction site entrance and restore the kerb line, grass verge, footpath and cycle track to the condition prior to the construction of the temporary entrance. The Applicant shall reinstate the surface wearing course of the Newbridge South Orbital Ring Road for a distance of 20 metres on the Great Connell Road side and for a distance of 50 metres on the M7 Motorway side. Prior to the commencement of these works, the Applicant shall liaise with the Newbridge Kildare Municipal District Area Office for the agreement of these works.
- b) Construction and operation HGV access to the site shall be from the Newbridge South Orbital Relief Road (NSORR) only with a right out/ left in arrangement only for HGVs off the NSORR into the development, unless otherwise agreed with the planning authority.
- c) Vehicular access (not HGVs) for staff and visitors for the operational phase of the development to the site shall be both from the Newbridge South Orbital Relief Road (NSORR) and the Great Connell Road.
- d) Prior to the opening and operation of the development, the Applicant shall submit to and agree in writing with the planning authority, a Stage 3 Road Safety Audit.

Reason: In the interest of traffic safety.

17. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

19. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the

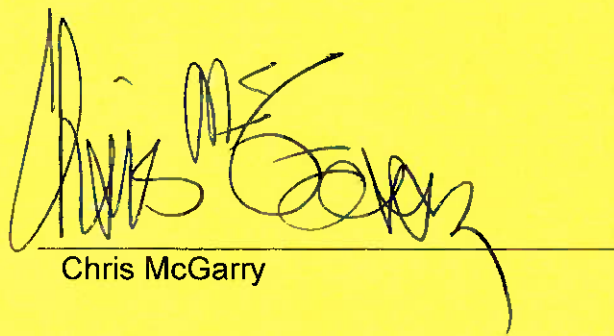
Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Note:

The Board noted the content of the applicant's response submission dated 22/05/2023, to the appeal, which entailed suggested changes to the energy proposals which form part of the overall development, and considered the subsequent commentary of the Inspector regarding these suggested changes, along with his recommendation that these changes could be confirmed by way of planning condition. However, having regard to the totality of the documentation on file, the Board determined that the proposed development as lodged with the planning authority and including the detail submitted at further information stage, would be consistent with the proper planning and sustainable development of the area, and that a grant of permission on the basis of the nature and extent of the proposed development set out therein, was warranted, broadly in line with the decision of the planning authority to grant permission. Furthermore, the Board considered that should be applicant propose any further changes to elements of the proposed development to the extent as proffered in the appeal response submission dated 22/05/2023, that these should be subject to a separate planning application exercise.

Board Member



Chris McGarry

Date: 04/12/2023

