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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Kilkenny County Council**

**Planning Register Reference Number: 19/668**

**Appeal** by An Taisce of Tailors' Hall, Back Lane, Dublin against the decision made on the 14<sup>th</sup> day of November, 2019 by Kilkenny County Council to grant subject to conditions a permission to JHOK Limited care of Malone O'Regan Consulting Engineers of 3-4 Canada Street, Waterford in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Seven year planning permission for a continental cheese manufacturing plant. The development will include a part single storey and part two-storey production building approximately 14 metres high with intakes, processing plant and equipment, packing, stores, dispatch, offices, laboratories, utilities and personnel facilities, a 10 bay milk intake and cream dispatch building approximately 11 metres high and associated plant and equipment with office, milk testing and personnel facilities, storage silos up to 28 metres high for milk, whey and water, pipe and service bridges, salt silos and brine mixing, sprinkler storage tank and pumphouse; wastewater treatment plant comprising balancing, wastewater treatment and sludge drying and a truck wash; waste recovery compound and store and a monitoring building. Site development works will include earthworks; security fencing,

traffic barriers, a new entrance, internal roads and paved areas; car, truck and bicycle parking; drains and services; connection to existing watermain and foul drain in the Park and a treated wastewater outfall pipeline from the on-site wastewater treatment plant to the existing Irish Water outfall within the Waterford City Wastewater Treatment Plant at Gorteens; attenuation ponds, fire water retention pond, site lighting, signage and landscaping. The application also seeks retention of and alterations to the existing construction compound which will be removed on completion of the works; all at IDA Ireland, Belview Science and Technology Park, Gorteens, Slieverue, County Kilkenny. (The development consists of an activity for which an Industrial Emissions Licence is required). An Environmental Impact Assessment Report and a Natura impact statement was submitted to the planning authority with the application.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the established nature of the existing Glanbia Development on the adjoining site, the nature, scale and form of the development, and its location relative to nearby sensitive receptors,
- (b) mitigation measures which are proposed for the construction and operation phases of the development,
- (c) the provisions of the current Kilkenny County Development Plan and the Ferrybank/Belview Local Area Plan 2017, including the zoning of the subject lands under the latter plan for an Industrial/Technology Park (ITP),
- (d) the nature of the landscape and the absence of any specific conservation or amenity designation for the site,
- (e) the pattern of development in the area including the proximity to the existing Glanbia facility and the separation distance of the site from existing dwellings,
- (f) the submissions on file including those from prescribed bodies and the planning authority,
- (g) the documentation submitted with the application, including the Environmental Impact Assessment Report and Natura impact statement, and

- (h) the report and recommendation of the Inspector.

### **Appropriate Assessment: Stage 1**

The Board agreed with and adopted the screening assessment and conclusions carried out in the Inspector's report that the only European sites in respect of which the proposed development has the potential to have a significant effect are the Lower River Suir Special Area of Conservation (Site Code: 002137) and the River Barrow and River Nore Special Area of Conservation ( Site Code: 002162).

### **Appropriate Assessment: Stage 2**

The Board considered the Natura impact statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions and observations on file and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development on the aforementioned European sites 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. In completing the appropriate assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the development and the proposed development, both individually, when taken together and in combination with other plans or projects,
- (b) the mitigation measures, which are included as part of the current proposal, and

- (c) the Conservation Objectives for the 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 sites, having regard to the sites' Conservation Objectives. In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' Conservation Objectives.

**Environmental Impact Assessment:**

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- (c) the submissions from the planning authority, the observers and prescribed bodies in the course of the application, and
- (d) the Inspector's report.

The Board agreed with the summary of the results of consultations and information gathered in the course of the environmental impact assessment, and the examination of the information contained in the Environmental Impact Assessment Report and the associated documentation submitted by the applicant, and the submissions made in the course of the application as set out in the Inspector's report. The Board was satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation which are incorporated into the Board's decision.

### **Reasoned Conclusions on the Significant Effects:**

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below.

The main significant effects, both positive and negative are:

- impacts to **biodiversity** likely to arise during construction works due to the removal of agricultural grassland and hedgerows/treeline and shrubs in preparation for the construction of the factory. The impacts arising from the removal of habitat and disturbance will be mitigated by additional planting, appointment of an Ecological Clerk of Works, a Construction and Environmental Management Plan, provision of artificial bat roosts, management of vegetation to outside the bird breeding season, attenuation of surface water and following best practice and procedures during the construction phase,
- potential environmental impacts arising from **wastewater discharge and surface water run-off**. Having regard to the Environmental Impact Assessment Report submitted by the applicant and the mitigation measures contained therein, which include the development of a wastewater treatment plant that will treat effluent on site prior to discharge to the Lower River Suir via the existing Irish Water outfall pipe, surface water management, SuDS and attenuation tanks, it is considered that all potential discharges, which are both governed by the Industrial Emissions licence from the Environmental Protection Agency and discharges that may result from spillage or firewater, can be adequately contained. Subject to full compliance with all mitigation measures listed in the documentation, there is no potential for significant adverse impact on the receiving environment proximate or removed from the site, either from this proposed development alone or in combination with other developments,

- indirect impacts on **climate** are likely to arise in the production of 450 million litres of milk but the emissions arising are already accounted for and regulated through the National Climate Action Plan as part of dairy sector overall emissions. This impact is expected to be offset by virtue of the increased production efficiency of the existing dairy herd, compliance with the Government's and Glanbia's sustainability programmes and implementation of other mitigation measures as outlined in the Environmental Impact Assessment Report, including use of state-of-the-art energy systems,
- construction phase impacts in the form of short-term increases in **traffic** (private cars and HGVs) on the local road network are recognised and are addressed in the specific reasonable and practical mitigation measures contained in the Environmental Impact Assessment Report and the construction and environmental management plan. Noise and vibration levels would be within acceptable emissions limits during normal operation,
- the proposed development entailing a series of large modern industrial design buildings would have an impact on the **visual character** of the area. This impact is considered acceptable, given the location of the site within the IDA Belview Science and Technology Park on land that is zoned for an Industrial/Technology Park in the Ferrybank/Belview Local Area Plan 2017, and will be mitigated by the existing vegetative screening and provision of additional planting under the landscape plan, and



- there are potential positive impacts for **employment opportunities and economic activities** in the region. Impacts arising from noise, dust, traffic, and construction will be mitigated by the Construction Environmental Management Plan including appropriate traffic management measures. There will be no negative impacts subject to mitigation measures outlined or otherwise addressed by condition.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures referred to above, including proposed monitoring as appropriate, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions set out in the Inspector's report.

### **Proper Planning and Sustainable Development**

The Board considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the current Kilkenny County Development Plan, would not seriously injure the visual or residential amenities of the area, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the planning authority, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. This permission shall be for a period of seven years from the date of this Order.

**Reason:** In the interest of clarity.

3. All environmental mitigation measures set out in the Environmental Impact Assessment Report and associated documentation submitted by the applicant with the application shall be implemented in full except as may otherwise be required in order to comply with the conditions of this Order.

**Reason:** In the interest of clarity and to protect the environment during the construction and operational phases of the development.

4. All mitigation measures set out in the Natura impact statement and associated documentation submitted by the applicant with the application shall be implemented in full except as may otherwise be required in order to comply with the conditions of this Order.

**Reason:** In the interest of clarity and to protect the environment during the construction and operational phases of the development.

5. Monitoring of the construction phase shall be carried out by a suitably qualified competent person to ensure that all environmental mitigation measures contained in the documentation which accompany the application are fully implemented. A designated member of the company's staff shall interface with the planning authority or members of the public in the event of complaints or queries in relation to environmental emissions. Details of the name and contact details and the relationship to the operator of this person shall be available at all times to the planning authority on request whether requested in writing or by a member of staff of the planning authority at the site.

**Reason:** To safeguard the amenities of the area.

6.
  - (1) Prior to the commencement of development, the developer shall enter into a connection agreement with Irish Water.
  - (2) Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

7. Lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The scheme shall minimise obtrusive light outside the boundaries of the development at all times.

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

8. 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, and
  - (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.

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.

9. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include all mitigation measures arising from the EIAR and provide details of intended construction practices for the development, including:-
- (a) hours of operation,
  - (b) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
  - (c) location of areas for construction site offices and staff facilities,
  - (d) details of site security fencing and hoardings,
  - (e) details of car parking facilities for site workers during the course of construction,
  - (f) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site,
  - (g) measures to obviate queuing of construction traffic on the adjoining road network,
  - (h) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
  - (i) 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,

- (j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (k) 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,
- (l) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains,
- (m) a maintenance contract for the oil interceptor to ensure it is emptied on a regular basis shall be submitted,
- (n) details of construction lighting, and
- (o) details of key construction management personnel to be employed in the development.

The plan shall include measures for monitoring dust, noise, groundwater and surface water and shall include a proposal for periodic reporting to the planning authority. A record of daily checks that the works are being undertaken in accordance with the Construction and Environmental Management Plan and monitoring results as appropriate shall be available for inspection by the planning authority. A Construction Manager shall be appointed to liaise directly with the Council for the duration of the construction of the scheme.

**Reason:** In the interests of amenities, environmental protection, and public health and safety.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006.

**Reason:** In the interest of sustainable waste management.

11. A noise management plan, which shall include a monitoring programme, shall be put in place by the developer in respect of the construction phase of the development. The nature and extent of the plan and the monitoring sites shall be agreed in writing with the planning authority prior to commencement of the development. The results of the programme shall be submitted to the planning authority on a monthly basis.

**Reason:** To protect the residential amenities of the area.

12. During construction, the wheels of all trucks shall be washed prior to their exit from the site in a wheel wash facility. Details of the construction, installation and operation of this facility shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To safeguard the amenities of the area.

13. All solid wastes arising on the site shall be recycled as far as possible. Materials exported from the site for recovery, recycling or disposal shall be managed at an approved facility and in such a manner as is agreed with the planning authority. In any case, no such wastes shall be stored on the site except within the confines of the buildings on site. Adequate on-site arrangements for the storage of recyclable materials prior to collection shall be made to the satisfaction of the planning authority.

**Reason:** To safeguard the amenities of the area.

14. (1) The site shall be landscaped and planted in accordance with a scheme to comprise predominantly native and naturalised hedgerow, shrub and tree species reflecting those species naturally occurring in the locality. This plan shall be prepared with input from an ecologist. Full details (including drawings) shall be submitted in a landscape plan to be agreed in writing with the planning authority prior to commencement of development. It is desirable that the plan will reflect the principle of no net loss of native trees or hedgerows.
- (2) Prior to commencement of development, the applicant shall submit the exact details of the type and location of a sturdy fence to be erected to protect the trees and hedgerows on the site to be retained. The design and location of this protective fence shall be determined by taking into account the recommendations of BS 5837:2012 with particular regard to the calculation of the Root Protection Area (RPA). This fence is to be erected prior to the commencement of development works on site and retained in place until all construction works are completed.



**Reason:** In the interests of proper planning and sustainable development and protecting the biodiversity value of the site.

15. (1) The applicant shall put in place a Traffic Management Plan for the construction and operational phase of the development, which prohibits HGV's turning west at the IDA Roundabout onto the L3412 Abbey Road when exiting the IDA Science & Technology Park. All HGV traffic must utilise the available national and regional road network.
  
- (2) The developer shall agree a Road Maintenance Plan with the planning authority which shall be implemented during the construction phase. This plan shall ensure to keep public roads clean with roads swept using a suction sweeper. No debris and/or dust/dirt associated with the proposed development shall be deposited on the public roads.

**Reason:** In the interest of development control and traffic safety.

16. 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

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**Dave Walsh**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

**Dated this            day of            2020.**