



An
Bord
Pleanála

Board Order
ABP-312181-21

Planning and Development Acts 2000 to 2022

Planning Authority: Wicklow County Council

Planning Register Reference Number: 21/677

Appeal by John Maguire of 6 Cuala Road, Bray, County Wicklow and by Kish Renewables Limited care of AKM Design of Unit 6, Kingswood Business Centre, 4075 Kingswood Road, Citywest Business Campus, Dublin against the decision made on the 15th day of November, 2021 by Wicklow County Council to grant subject to conditions a permission to the said Kish Renewables Limited in accordance with plans and particulars lodged with the said Council.

Proposed Development: Construction of a biofuel facility comprising of a part three storey and part single storey commercial building with a total floor area of 1,771 square metres, covered truck filling/unloading area. Pipe bridge and tank farm storage area. The overall building height is 14 metres with solar panels on the roof. The maximum height of any storage is 12 metres and the boiler room chimney is 15 metres. Extension to the existing Kish Business Park, access road, footpaths, 21 number car parking spaces, 10 number cycle parking spaces and parking and circulation areas for 10 number trucks, two number vehicular entrances, pedestrian access, boundary treatment and landscaping, ESB substation and new underground foul and storm water drainage system for the site including rainwater harvesting, attenuation pond,

full retention of oil interceptor and associated works. The application site is 1.6 hectares, all Kish Business Park, Clogga Road, Arklow, County Wicklow. The undeveloped site is located in the townlands of Kish and Bogland. Further public notices were received by the planning authority on the 21st day of October, 2021.

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.

Reasons and Considerations

Having regard to the:

- (a) zoning objective for the subject site (E1 – Employment), which is to provide for the development of enterprise and employment, and the other relevant provisions of the Arklow and Environs Local Area Plan 2018-2024,
- (b) provisions of the Wicklow County Development Plan 2022-2028,
- (c) relevant national, regional and local policy relating to energy, waste and the circular economy,
- (d) planning history of the site and the surrounding area, and
- (e) location, nature, size and scale of the proposed facility and established character and pattern of development in its vicinity, which includes industrial uses in an existing business park,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential

amenities of the area, would be acceptable in terms of traffic safety and convenience, would be in accordance with the planned industrial expansion of Arklow and would, therefore, be in accordance with the provisions of the Arklow and Environs Local Area Plan 2018-2024 and Wicklow County Development Plan 2022-2028. The proposed development would, therefore, be in accordance and with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of potential significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the site's conservation objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the following European Sites: the Kilpatrick Sands Special Area of Conservation (Site Code 001742), the Buckroney-Brittis Dunes and Fen Special Area of Conservation (Site Code 000729) and the Slaney River Valley Special Area of Conservation (Site Code 000781) or any other European site, in view of the site's conservation objectives, and concluded that a Stage 2 Appropriate Assessment, and the submission of a Natura impact statement is not, therefore, required. This screening determination is based on the nature of the receiving environment, the distance to the nearest European Sites and hydrological pathway considerations.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development taking account of:

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

The Board considered that the Environmental Impact Assessment Report, as amended, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed renewable energy development, and identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment. The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report, as amended and associated documentation submitted by the applicant and submissions made in the course of the application and appeal.

Reasoned conclusion on the significant effects

While the proposed development would not give rise to any significant direct or indirect effects on the environment, the project could potentially give rise to minor localised impacts which can be mitigated appropriately, and which are outlined as follows:

- **Biodiversity:** due to the removal of existing agricultural grassland, hedgerows and overland land drains which traverse parts of the site, this would result in a loss of species breeding habitats. Species such as fox and Irish hare are those which may potentially be affected by disturbance and the removal of terrestrial habitats. It is considered that there would be no long term significant negative impacts on any habitats or species on the site, or within its the vicinity, as sufficient breeding habitats will be retained through existing suitable habitats adjacent the subject lands.
- **Groundwater and/or surface water:** as part of the construction phase through ineffective control measures during site enabling and construction works, the mobilisation of sediments and other materials and the requirement to undertake construction activities in the vicinity of groundwater sources. The construction of the proposed project could also potentially impact negatively on ground and surface waters by way of contamination through accidental leakages and spills. These impacts would be mitigated by measures outlined in a Construction and Environmental Management Plan and the implementation of mitigation measures related to the control and management of sediments, spills, contamination, drainage management and maintenance of plant, machinery and equipment. There are several mitigation measures proposed as part of the project, including the following:

- All storage areas to be bunded so the likelihood of any spillages to ground is low.
 - During the operational stage any accidental leaks would be contained within the bunded area, or if outside of storage compounds, diverted into the stormwater infrastructure and treated within oil interceptors.
 - The concrete hardstand would minimise the potential for discharge to ground. Therefore, the underlying aquifer which is locally important and has a low vulnerability would be unlikely to be affected. I note also that the virgin oils and fats and biodiesel end-product are biodegradable.
 - The operational stage impacts would be mitigated by installing suitable lighting fixtures.
- **Residential amenity:** during the construction phase in terms of noise, air-borne emissions/dust, traffic safety and general disturbance may potentially be affected. However, these impacts would be mitigated through the protection of air quality, control of noise and dust, regular monitoring, traffic management and landscape planting around the east and south boundaries of the site to help ameliorate visual impacts.
 - **Landscape:** as the proposed development would be visible from several locations in the surrounding area, including from far afield, the subject site is not within a sensitive landscape character area and it is considered that given the scale, nature and physical distance of the development proposed from sensitive receptors in the area, such as dwellings, that it would not result in unacceptable negative visual impacts.

- **Vehicular traffic movements:** on the adjoining local road network due to construction and operational phases, the predicted number of HGV trips over a working day is expected to be relatively low during the construction phase. The operational phase is not expected to generate large volumes of trip movements. The mitigation of impacts on the existing road network and the adjoining land uses (including residential uses) would include implementing various dust and suppression measures and ensuring that construction vehicles and delivery and servicing traffic accessing the site would be via the existing business park road.
- **Air and Climate:** due to a positive reduction in carbon dioxide emissions through the production of biogas as a replacement for fossil energy sources.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed as set out in the Environmental Impact Assessment Report, as amended and subject to compliance with the conditions set out below, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the inspector.

Overall, the Board is satisfied that the proposed development would not have any unacceptable effects on the environment.

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 submitted on the 11th day of October 2021, 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. The proposals, mitigation measures and commitments set out in the Environmental Impact Assessment Report lodged with the application shall be implemented in full as part of the proposed development.

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

3. The total volume of biofuel produced by the facility shall not exceed 100,000 tonnes per annum.

Reason: In the interest of clarity.

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. The development shall be operated and managed in accordance with an Environmental Management System (EMS), which shall be submitted by the developer to, and agreed in writing with, the planning authority prior to commencement of development. This shall include the following:
 - (a) Proposals for the suppression of onsite noise.
 - (b) Proposals for the ongoing monitoring of sound emissions at dwellings in the vicinity.
 - (c) Proposals for the suppression of dust on site and on the access road.
 - (d) Proposals for the bunding of fuel and lubrication storage areas and details of emergency action in the event of accidental spillage.
 - (e) Management of all landscaping with particular reference to enhancing the ecological value of the hedgerow along the northwestern boundary of the site.
 - (f) Monitoring of ground and surface water quality, levels and discharges.

- (g) Details of site manager, contact numbers, including out of hours, and public information signs at the entrance to the facility.

Reason: In order to safeguard local amenities.

- 6. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall incorporate all the construction stage mitigation measures outlined in the Environmental Impact Assessment Report, and shall provide details of intended construction practice for the development, including and not limited to:
 - (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 onsite car parking facilities for site workers during the course of construction,
 - (e) 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,
 - (f) measures to obviate queuing of construction traffic on the adjoining road network,
 - (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,

- (h) 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,
- (i) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (j) 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,
- (k) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil, and
- (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.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

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

7. A comprehensive boundary treatment and landscaping scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
- (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) 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 three 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.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

8. 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 carpooling 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.

9. Prior to the commencement of development, the developer or any agent acting on its behalf, 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 sustainable waste management.

10. 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 be fully implemented and operational, before the proposed development is made available for occupation.

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

11. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
- (b) employ a suitably-qualified archaeologist prior to commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues: -

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any

further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

12. Water supply and drainage arrangements, including the attenuation and 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.

13. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreements with Uisce Éireann.

Reason: In the interest of public health.

14. Site development and building works shall be carried out only between the hours of 0800 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.

15. The developer shall pay to the planning authority a financial contribution of €106,172 (one hundred and six thousand and one hundred and seventy two thousand euros) 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. The application of any indexation required by this condition 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.

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.



Una Crosse

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

Dated this 27th day of October 2023.