



An  
Bord  
Pleanála

## Inspector's Report

**PL 25M.246443**

**DEVELOPMENT:**

Waste transfer and recovery facility comprising storage building, office, staff facility, weighbridge, parking spaces and all associated site works. Sites no. 14 and 15, Zone B, Mullingar Business Park, Mullingar, Co. Westmeath.

**Planning Authority:**

Westmeath County Council

**Planning Authority Reg. No:**

15/6153

**Applicant:**

Athcast Ltd.

**Application Type:**

Permission

**Planning Authority Decision:**

Grant Permission

**Appellant:**

Martin Lynch

**Type of Appeal:**

Third Party –v- Grant

**Observers:**

Cathal Kelly

**Date of Site Inspection:**

22 June 2016

**INSPECTOR:**

**Patricia Calleary**

## 1.0 INTRODUCTION

PL 25M.246443 relates to a third party appeal against the decision of Westmeath County Council to issue a notification to **grant permission** for a new waste transfer and recovery facility. The proposed development would comprise a storage building, office/ staff facility, weighbridge, parking spaces and all associated site works. The development would be located on a brownfield site within an established business park in Mullingar, Co. Westmeath. The process would involve the recovery and transfer of recyclable household waste, non-hazardous waste streams and dry recyclable commercial and industrial waste.

## 2.0 SITE LOCATION AND DESCRIPTION

The appeal site with a stated area of 0.41 hectares is a rectangular shape and is broadly flat. It occupies sites No.s 14 and 15 of Zone B within an established business park/industrial estate (Mullingar Business Park) and is positioned c.1km south west of Mullingar town centre.

The site is vacant and untidy. It is fenced off to the front (north) and rear (south) by a standard palisade security fence which is poorly maintained with peeling old paintwork and is damaged in parts. The boundary to the west consists of an interlocking concrete block wall. The boundary to the east is marked by a chain-link fence which is poorly maintained and broken in places. Internally the site has a concrete hardstand area laid out across a large portion on the eastern side. Other parts to the west (side) and north (front) are covered in hardcore and the site is overgrown with vegetation and weed growth. There are two steel container structures on site, one which has the appearance of a site office and the second which appears to have been previously used for storage. There is also a rusted old small tractor and some other rusted steel items located on the site.

A separate recycling centre (Mulleadys) lies immediately west of the appeal site and there are other industrial / commercial buildings located further west. The site is bounded to the east by a vacant corner plot. The business park/industrial estate service road and footpath bounds the site to the north. Lands to the south are occupied by other steel framed industrial type buildings and the L2200 local road which serves as the main access route around the southern environs of the town lies further south. There is a dwelling and farmyard south of the local road, c.110m from the appeal site. The site is located c.2km south west of Mullingar town and to the south of the Royal Canal.

Vehicular access to the site is currently available through a gated entrance on the north boundary leading onto the estate road (L6208) which connects onwards to the R394 via a roundabout to the south west of the site or to Newbrook Road leading east to the town centre at a roundabout to the south.

### **3.0 PROPOSED DEVELOPMENT**

The proposed development would consist of a waste transfer and recovery facility with an annual intake of up to 24,900 tonnes. The facility would comprise of the following: A storage building (GFA of c.695 sq.m), small office with staff facility, weighbridge, parking spaces and all associated site works and services. The development would connect to public water and wastewater utilities. Surface water disposal would be diverted to the public sewer.

The main building design has an industrial appearance with concrete block walls on the lower part and insulated vertical cladding panels on the upper part of the walls and matching roof panels. It is stated on the drawings that the external finish of the walls would match the adjoining building, which I note is finished in render. Eaves height of 9m and a ridge height of 11.45m are proposed. Three roller shutter doors are shown on the drawings (two on the southwest elevation and one on the southeast elevation). Two single leaf doors are shown on the southwest elevation. No windows are proposed. Light is intended to be gained via translucent roof sheeting.

The process would involve the collection and transfer of recyclable household waste, non-hazardous waste streams and dry recyclable commercial and industrial waste. It is stated that the annual capacity would align with business development but would not exceed 24,900 tonnes and would be subject to the provisions of a waste facility permit.

It is anticipated that the facility would serve as a transfer station for the following waste/recyclable materials: timber, glass, mixed dry recyclables (household and commercial), tyres, bulky skip waste, plastic, green garden waste, metal, soil and stones would be received. It is stated that the waste would be received primarily, but not solely, from Westmeath. It is also stated that all incoming waste would be subject to the facility's waste acceptance procedure proposed to be developed in conjunction with the Environmental Management System following a grant of a Waste Facility permit. The stated intention is that waste material received would enter the recycling chain.

## 4.0 PLANNING HISTORY

### 4.1 On the appeal site

There are no planning applications associated with the appeal site.

**Enforcement File Ref: 14068** – Warning letters appear to have issued to the applicant and others in 2014 in relation to unauthorised development on site, i.e. commercial activity including the storage of end of life vehicles. (Copies of the warning letters are enclosed with the observer’s submission).

### 4.2 On Adjacent Sites

Site immediately adjacent to the west (Mulleadys recycling facility): Plan Ref: **00750** – Recycling centre and associated services granted permission to Michael & Linda Wallace on 9<sup>th</sup> November 2000. Two subsequent applications were also made on the same site (**02821** – construction of extension granted permission and **055532** – retention permission granted to retain extension).

Site immediately adjacent to the south: **Plan Ref: 14205**– Permission sought for change of use of existing premises from a vehicle testing and servicing facility to a recycling resource centre for the collection and sorting of glass bottles, plastics packaging, cardboard and aluminium cans. The application status is ‘deemed withdrawn’.

## 5.0 PLANNING AUTHORITY DECISION

### 5.1 Planning officer’s report

The following provides a summary of the planning officer’s assessment report on file.

- Provides outline of the proposed development;
- Notes the submissions/observations received from 4 third parties;
- Considers policy of Westmeath County Development Plan 2014-2020 and East Midlands Region Waste Management Plan.

Initially, the planning officer recommended a request for further information on matters including ownership, drawings and technical detail, sightlines, surface water and an environmental management plan. Following receipt of further information, the Planning officer’s assessment noted the following:

- Use and extent of materials to be recycled with total waste not exceeding 24,900 tonnes per annum;

- Visual impact considered acceptable subject to tree planting in the grass verge;
- Proposed storage referenced in one location without details of appearance or materials to be stored – Recommends that this be resolved through condition;
- Boundary should be solid form;
- Condition regarding noise control required;
- Applicant states that the area subject to pluvial flooding will be piped and pass through an interceptor and attenuation;
- Development is considered sub-threshold for purposes of EIA and after screening concludes that an EIS is not required;
- Proposal would not give rise to significant impacts on the integrity of nearby Natura 2000 sites.

A recommendation to **grant permission** was put forward.

## 5.2 Submissions/Observations

The Planning Authority received 4 no. submissions/observations from Mullingar Employment Action Group, ArchEng Tech Consulting Ltd.<sup>1</sup>, Ronan Niland and Martin Lynch (CL Skips). The main planning issues collectively raised include the following:

- Insufficient detail on types and volumes of waste proposed;
- No justification for requirement of another waste facility;
- Sufficient capacity already in place;
- No consideration of dust, noise, odour and effluent;
- No waste permit/waste management plan;
- No quality management/monitoring systems;
- No traffic management details;
- No environmental management plan submitted;
- No AA screening report;
- Cumulative impacts not considered – considers EIA/EIS was required;
- Poor drainage infrastructure;
- No Flood Risk assessment;
- No site waste storage details;
- Will increase fire risk;
- Contamination issues from previous uses on site;
- No quarantine area;
- Applicant's legal interest / ownership queried;
- Restricted site size.

## 5.3 Interdepartmental reports

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<sup>1</sup> The submission received by the Planning Authority from ArchEng Tech Consulting Ltd is stated to be 'on behalf of our client'. The client is not named in the submission.

- Environment section – Requested further information initially. **No objection** subject to conditions;
- Mullingar municipal area – Requested further information initially. **No objection** subject to conditions;
- Water services – Stated **no impact on water services** and accordingly, no report required;
- Senior assistant fire officer – **No objection** subject to sufficient water for firefighting. Notes a fire safety certificate will be required under the Building Control Act.

#### 5.4 Prescribed Bodies

- No reports on file.

#### 5.5 Planning Authority Decision

The Planning Authority issued a decision to **grant permission** subject to 16 conditions, the following of note:

Condition No.2 – Details of boundary treatment and external storage bays to be submitted;  
 Condition No.3 – Landscape scheme;  
 Condition No.10 – Waste activities subject to Waste Facility Permit;  
 Condition No.11 – Noise limits;  
 Condition No.12 – Discharge Licence;  
 Condition No.13 – Storm water to pass through a facility specific silt trap;  
 Condition No.14 – Submission of a Project waste management plan for the construction stage.

### 6.0 GROUNDS OF APPEAL

#### 6.1 Third Party Appeal

A third party appeal was lodged by Martin Lynch of CL Skips, Zone C, Mullingar Business Park.

The principal grounds of the appeal are summarised under as follows:

- Need for the development has not been justified;
- Site too restrictive particularly for lorry movement. Traffic assessment required;
- As the volume at 24,900 tonnes per year is so close to the threshold for requirement of an EIS (25,000), an EIS should have been provided;
- Odour assessment required and an odour abatement system;
- A flood risk assessment is required;

- Insufficient detail of onsite waste storage;
- Treatment of contaminated run-off due to external storage is an issue.

## **7.0 APPEAL RESPONSES**

### **7.1 First Party Response**

- No response received.

### **7.2 Planning Authority Response**

- Refers to the 2 planning reports which assess the merits of the planning application.
- Need for odour abatement system, environment management plan and on-site waste storage are issues in relation to operation of the site and will be dealt with and regulated at waste facility application stage.

### **7.3 Observations**

An observation was received from ArchEngTech Consultants Ltd. on behalf of Cathal Kelly who objects to the development. The principal planning concerns and issues raised are outlined under as follows:

- Contends that applicant is not the legal owner and that the information received in response to that question is incorrect and hence application should be deemed invalid;
- Several major watercourses and potential for impact on Natura 2000 sites. No screening report for Appropriate Assessment. Contrary to Policies P-CSI, P-CS4 and P-RE10;
- EIA required when cumulative impacts with adjoining neighbour undertaking same activity are considered;
- Concern regarding lack of Environmental Management Plan – lies contrary to stated policy in Mullingar LAP;
- Concerns regarding noise, air and light pollution;
- No traffic management plan submitted;
- Site subject to pluvial flooding – no flood risk submitted;
- Insufficient detail on waste intake, treatment and onward movement;
- Sufficient capacity at adjoining similar facility which has the capacity of 50,000 tonnes per annum but is currently only running at 18% (9000 tonnes p.a.). Provided an outline of the companies collecting and recycling waste material in the area. (P.16 of the observation);

- Refers to Enforcement Notice 14068 served on the applicants and others in relation to storing end of life vehicles. Land may be contaminated from that activity;
- Drawing does not show connection to public sewer;
- Drawing provides insufficient detail on process and material storage;
- Risk of fire, emission and noise will increase for neighbouring properties due to proximity beside a similar activity. Letter from fire Protection Company referenced (and copy attached).

A number of appendices are attached with the observation, most of which are on the public planning file. I refer the Board to those which are new:

- Appendix H: Folio Map Abstracts;
- Appendix K: Email correspondence with map attached from Planning Authority to ORS regarding flooding;
- Appendix L: Warning Letters;
- Appendix M: Photograph of site during un-authorized use period;
- Appendix N: Folio Map with Council Right of Way.

## 8.0 POLICY CONTEXT

### 8.1 Local Planning Policy

The proposed development is governed by the policies and provisions contained in the **Westmeath County Development Plan 2014-2020** (CDP) and the **Mullingar Local Area Plan 2014-2020**.

#### 8.1.1 Mullingar Local Area Plan 2014-2020.

Section 3.6 – Location of enterprise/employment lands in Mullingar;  
 Section 3.8 – Policies and objectives including **P-EC3, P-EC11, O-EC5 and O-EC7** apply;  
 Section 6.3 – Traffic Management and Section 6.6 -Transport & Movement Policies and Objectives;  
 Section 6.11 – Wastewater Management and Section 6.12 - Wastewater Policies & Objectives;  
 Section 6.13- Surface water and Section 6.14 - Surface water policies and objectives;  
 Section 6.15 – Flood Risk management and Section 6.17 - Flood Risk Management policies and objectives; Section 9.8 – Flood Risk management and planning applications;  
 Section 6.19 – **Waste Management**;



Section 6.21 – **Waste & Litter Management** Policies and Objectives.  
**Policy P-WM2:** *To encourage waste prevention, minimisation, reuse, recycling and recovery as methods of managing waste;*  
Section 6.22 – Noise, air and light pollution and Section 6.23 Noise, Air & Light Policies;  
Section 9.2 – EIA;  
Section 9.3 – Appropriate Assessment;  
Section 9.7 – Noise Management;  
Section 9.11 – Industrial and Commercial Development;  
Section 10.2.3 – **Enterprise and Employment** and **Objective O-LZ3** – *‘To provide for Enterprise, Employment and related uses including industrial and service uses such as Class 3 offices, which due to their scale or nature cannot be located within the town centre’. Under this zoning objective: Recycling facilities are open for consideration;*  
Section 14.4.4 – Sight distances – Local road requirement is 90m.

### **8.1.2 Westmeath County Development Plan 2014-2020 (CDP)**

#### **Waste Management**

Waste management policies for Westmeath are contained in the Waste Management Plan for the Midlands Region 2005-2014.

Section 9.15 – Waste & Litter Management Policies and Objectives:

- **P-WM1** To implement the Midlands Waste Management Plan 2005-2014 and any subsequent plan made thereafter.
- **P-WM2** To encourage waste prevention, minimisation, reuse, recycling and recovery as methods of managing waste.

### **8.2 Regional Waste Management Policy**

The proposed development is governed by the policies and provisions contained in the **Eastern-Midlands Region (EMR) Waste Management Plan 2015-2021**. The region consists of the four Dublin Authorities and Louth, Meath, Longford, Westmeath, Offaly, Kildare, Laois, Wicklow. The plan’s goal for 2030 is to increase the target for preparing for reuse and recycling of 60-70% in line with best practice across Europe. Local Authorities aim to cease landfilling activities for all major waste streams by 2030. The plan states that the preferred treatment method for non-recyclable residual waste will be recovery.

The EMR Waste Management plan (Appendix E) lists 7 materials recovery facilities (MRFs)<sup>2</sup> in the region (Nov 2014). Section 12.4.1 of the plan states that these handle mainly commercial waste but also household recyclables and that they are typically located in industrial areas. It is also stated that the throughput of commercial/industrial recyclables in MRFs was c.230000 tonnes in 2012. Appendix E of the Plan lists 25 waste transfer facilities<sup>3</sup> in the region.

## 9.0 ASSESSMENT

I have read and considered the contents of the planning application, grounds of appeal, responses and relevant planning policy. I have also attended the site and immediate environs. The following assessment covers my considerations on the key planning issues and also encapsulates my *de novo* consideration of the application. I consider the key issues in determining the application and appeal before the Board are as follows:

- Principle of development
- Traffic, Access and Parking
- Neighbouring Amenity
- Water Pollution
- Fire Safety
- Flood Risk
- EIA/EIS requirement
- Appropriate Assessment
- Legal Interest / Ownership

I outline my considerations on each of those issues as presented under.

### 9.1 Principle of development

The site is located within an established industrial / business park. It has a stated Objective (**O-LZ3**) – **'To provide for Enterprise, Employment and related uses including industrial and service uses'** in the current Local Area Plan for Mullingar 2014-2020 (LAP). The Land Use Zoning Matrix of the Plan (p.181) states that recycling facilities are **'open for consideration'** within this zoning category. The Westmeath County Development Plan 2014-2020 has a stated policy under P-WM1 to implement the Midlands Waste Management Plan 2005-2014 and P-WM2 – to **encourage** waste

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<sup>2</sup> Section 12.4.1 of the EMR Waste Management Plan refers to 5 Material Recovery Facilities while Appendix E lists 7.

<sup>3</sup> Section 12.4.4 states that there are 24 waste transfer facilities in the region.

prevention, minimisation, reuse, **recycling and recovery** as methods of managing waste.

Based on the above, I am satisfied that the proposed development for waste transfer and recovery facility, is consistent with the land use zoning objective. The business park is an older estate with a mixed business and light industrial character. There is an operational recycling facility immediately west of the appeal site. I do not consider the proposal would be incompatible with the established existing uses in the immediate vicinity.

Having regard to the foregoing, I am satisfied that the proposal is acceptable in principle and would be sited in a suitable location. Given the specific nature of the proposed development and the issues raised by the third party appellant and the observer, I intend to consider the impact of the proposed development on the environment and the amenities of the wider area in the following sections of my assessment.

## **9.2 Traffic, Access and Parking**

The site is highly accessible via an existing internal service road which directly fronts the site and leads southwest to connect to the R394 regional road. Access is also available from the Newbrook Road to the east. The site is located c.1km southwest of the train station. The service roadway has a carriageway width of c.7m with footpaths on either side. 90m sightlines are achievable in both the east and west direction when exiting from the site onto the service road, which are in accordance with Section 14.4.4 of the Mullingar Local Area Plan 2014-2020. The internal service roadway was lightly trafficked on the day of my inspection on 22 June 2016.

The appellant considers that the site is restrictive with poor on-site HGV parking provision. It is further submitted that the development would impact on local traffic. The observer considers the facility would cause an increase in the number of traffic movements in and out of the business park and that this aspect has not been considered. Reference is made to Objectives O-TM1 (which refer to objectives to prepare a traffic management plan for the town) and O-TM2 (HGV strategy for the town). The observer provides traffic movement figures which are stated to be related to the 2 neighbouring properties.

No response to this or other issues raised at appeal stage were received by the Board from the first party. However, following a request for further information during the consideration of the application by the Planning Authority, the applicant provided details on access, swept path analysis (for rigid and articulated trucks), car parking and lorry parking. 11 no. car

parking spaces and 2 no. lorry parking spaces are shown on Dwg No. 151\_372\_201 received by the Planning Authority on 8th February 2016.

There is no prescriptive requirement set out in the Mullingar LAP regarding car parking provision for a transfer/recovery facility. The closest category is warehousing which under Table 9.11 requires 1.5 car space per 100 sq.m of gross floor area. The current proposal has a stated floor area of 695 sq.m and accordingly 11 spaces are acceptable. On receipt and consideration of the further information received, the Mullingar Municipal Area office recommended a grant of permission subject to the attachment of standard conditions. Based on the foregoing and information gathered on my site visit, I cannot agree with points put forward in the observation that the proposal would cause a traffic hazard. Neither do I agree with the point made that the development would compromise the implementation of a HGV Management strategy for the town.

I am satisfied that the surrounding road network already in place can accommodate the proposed development and would not compromise traffic safety at this location. I am also satisfied that HGV manoeuvring can safely access and egress the proposed facility. There is sufficient parking proposed for cars and HGVs for a development of its nature. Having regard to the foregoing, I recommend that the development should not be refused for reasons of traffic, access or parking.

### **9.3 Neighbouring Amenity**

Concerns have been raised in the grounds of appeal regarding potential adverse impacts of the proposed development on neighbouring properties with particular reference to environmental matters including **noise, odour, air quality** and **dust**. In this respect, it is of relevance to restate that the setting of the site is within a business park and the wider area comprises predominately industrial and commercial activities. There is one individual house and farm shed located c.110 south of the site. There is an established housing development (Cloonmore Heights) located off Newbrook road, sited c.140m to the north east of the appeal site. I have shown the location of these on an aerial map in the appendix to this report. There are no other houses or sensitive receptors within close proximity of the appeal site. I consider that any impacts on neighbouring amenity must be considered in the context of its setting within a business / industrial park. As I understand from the drawings and documents, waste transfer and recovery activities including the unloading and loading of HGVs would be conducted inside the proposed building, hence reducing noise levels or the release of odour, dust or other emissions to the air. Furthermore, the operation of the plant would be subject to a waste facility permit and site

operation activities would be governed by the conditions of the permit which would include a requirement for environmental monitoring. The applicant has stated their intention to carry out noise and dust monitoring.

I am mindful of the large separation distance between the appeal site and sensitive receptors such as houses which would further serve to reduce the potential for any adverse impact on the amenities of the wider area. Therefore, subject to the attachment of appropriate conditions, I am satisfied that the proposed development would not give rise to unacceptable environmental impacts on the amenities of neighbouring properties, most particularly residential properties in the wider area. I am also recommending that a condition requiring the preparation and implementation of an Environmental Management System should attach to any order to grant permission.

#### **9.4 Water Pollution**

With regard to the potential for contaminated run-off from the development which could adversely impact on water quality of the Royal Canal (a proposed NHA) 90m north of the site, I note from an examination of the drawings and documents that external surface water run-off and overflow of excess harvested rainwater from the building roof would be collected, attenuated and thereafter directed through an approved class 1 petrol/oil interceptor prior to discharge to the public surface water sewer on the footpath to the front/north of the site.

Surface water from the external yard area is shown to be collected via gullies and directed into the foul water system following passing through a class 1 interceptor. A new manhole is proposed to the rear of the site on what is shown as a 3m wide wayleave. It is stated in the response to further information, that all contaminated runoff from the facility including any residue from within the building would also be directed to this foul sewer network via a Class 3 interceptor and silt trap (though a class 1 is shown on the drawings). It is also stated that a discharge to sewer application would be submitted to Irish Water which is a statutory requirement. No hazardous waste is proposed to be accepted at the facility and a quarantine area is proposed to deal with any hazardous waste which would be inadvertently accepted prior to its removal offsite by an authorised contractor.

Having regard to the foregoing, the requirement for a waste facility permit under separate statute, the significant separation distance between the facility and the nearest sensitive watercourse, the Royal canal, and subject to adherence to appropriate environmental management, I am satisfied that

the development would not give rise to any significant risk of pollution of surface waters or ground water.

## **9.5 Fire Safety**

Concerns were also raised regarding fire risk, where it is noted that the risk could be doubled having regard to the proximity to the adjoining property in the same industry/business. A letter from 'Writech Industrial Services Ltd.' who are also based in Mullingar Business Park is included with the observation and with one of the third party objections. The letter states that its proximity to an adjoining 'waste handling facility' could result in increased fire insurance or withdrawal of fire insurance for other properties in the area. This statement is put forward without any evidence and I do not concur with its assertion. The building(s) proposed on site would be required to obtain a fire safety certificate under the Building Control Acts and Regulations. There is no reason that the building should be refused planning permission because of a perceived fire safety risk where there is no evidence that such a risk, beyond any normal risk even exists and where fire risk can be managed in the same way as any commercial / industrial building through implementation of the requirements of the Fire Authority and appropriate management of operations.

## **9.6 Flood Risk**

The appellant considers that a flood risk assessment is required. Based on my review of the OPW's online National Flood Hazard mapping, I note that there are no flood events recorded on or proximate to the appeal site. Data from the OPW Catchment Flood Risk Assessment and Management programme (CFRAM) studies indicate that the site would have a low risk of flooding as it lies predominately outside of an area prone to flooding. A very small area which may be prone to pluvial flooding (Indicative 1% AEP /100-yr event) is located on the north east corner of the site. The applicant has considered this and states that it is intended to place a drained concrete slab in this corner to accommodate on-site parking facilities. Drainage is proposed to be attenuated prior to discharge to an existing 225mm surface water pipe located in the footpath immediately north of the site.

In conclusion, I do not consider the development should be refused for reasons of flood risk, nor do I consider that a Flood Risk assessment is required in this instance.

## **9.7 EIA/EIS Requirement**

The appellant and observer assert that an EIA should have been undertaken for the proposed development and that an EIS is required given the annual intake of 24,900 tonnes, only 100 short of the 25,000 tonne threshold where an EIS becomes a mandatory requirement. It is also stated by the observer that when taken in conjunction with the same neighbouring activity, the two sites would collectively be above the threshold and an EIS would be required. I intend therefore to consider this aspect as set out under, having particular regard to legislative requirements.

Section 172 of the Planning and Development Act specifically provides as follows: *'an environmental impact assessment shall be carried out by a planning authority or the Board, as the case may be, in respect of an application for consent for –*

- (a) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations, 2001 which exceeds a quantity, area or other limit specified in that Schedule, and*
- (b) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule but which the planning authority or the Board determines would be likely to have significant effects on the environment.'*

Schedule 5 of the Planning and Development Regulations 2001, as amended sets the thresholds for projects which would require an EIS. Specifically, Part 2, Subsection 11(b) provides that an EIS is required for *'installations for the **disposal of waste** with an annual intake greater than 25,000 tonnes'*.

At the outset, I consider that there is a difference between **disposal** of waste and waste **transfer and recovery**. The proposed development consists of a facility for waste transfer and recovery within an existing industrial / business park. The operation would provide for the bulking up of waste volumes through the collection/delivery and transfer of specified non-hazardous waste streams stated at being no greater than 24,900 tonnes per annum and the sorting into separate waste classes prior to transportation off-site to end users or for further processing. Of significance, the transfer/recovery facility is not an end product / waste disposal installation itself. I have had regard to the definition of **disposal** and **recovery** within Section 4 of the Waste Management Act 1996-2011 and the third schedule of the same act when arriving at this view. Accordingly, I consider that the proposal does not involve the development of a waste 'disposal' installation and therefore is not a prescribed class of development for the purposes of Section 176 of the Planning and

Development Act, 2000, as amended. I consider the facility instead provides for waste 'recovery'.

The appellant also asserts that when the proposed facility is taken in conjunction with the adjoining existing facility, the relevant threshold (25,000 tonnes) would be exceeded and there is a need to consider the potential cumulative impacts. I consider that Part 2, Subsection 11(b) of the Planning and Development Regulations, 2001, as amended suggests otherwise and it is clear to me that the proposed facility for waste transfer and recovery does not require the preparation of an Environmental Impact Statement.

Notwithstanding the foregoing, should the Board arrive at a different conclusion on this matter and consider that the development does in fact comprise of a 'disposal' activity', Article 103(1) of the Planning and Development regulations, 2001 as amended becomes relevant as it outlines that EIS can be requested for sub-threshold development where it would likely to have significant effects on the environment. Schedule 7 of the regulations list the criteria to be considered in determining whether or not a project would or would not be likely to have significant effects on the environment. These are also outlined in the EPA Guidelines entitled '*Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding sub-threshold development*', 2003. The criteria outlined in the regulations and guidelines include (i) **characteristics of the proposed development**, (ii) **location of the proposed development**, (iii) **characteristics of potential impacts**. Further guidance with regard to the wider need for EIA is set out in the '*Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment*' published by the Department of the Environment, Community and Local Government (2013).

Accordingly, I propose to screen the proposal for the purpose of environmental impact assessment as follows:

#### Characteristics of the proposed development

The proposed development consists of the provision of a new waste transfer and recovery facility within an existing business/industrial park would involve the collection, delivery, recovery and onward transfer of up to 24,900 tonnes of specified waste per annum. Waste streams received would be sorted into separate non-hazardous waste classes prior to transportation off-site to end users or for further processing. I note that there is an existing similar facility located immediately west of the appeal site, however, it should also be noted that the subject proposal concerns a



'stand-alone' development within the confines of its own site, physically separated and unrelated to the adjoining facility. In relation to the use of natural resources, I do not envisage any significant impacts arising as a result of the proposed development.

Regarding other characteristics of the proposed development, I would not anticipate any significant production of waste or risk of accidents on site. There is no doubt that there is potential for the generation of noise and odour arising out of on-site activities but I consider that these would be local and can be mitigated against through adherence to best practice during the operation of the facility. I am satisfied therefore that there is no evidence that the proposal either alone or when taken in culmination with adjoining facilities would have significant effects on the environment and accordingly I am satisfied that having regard to the characteristics of the proposal, is not likely to give rise to significant effects on the environment.

#### Location of the proposed development

The appeal site is located in a vacant brownfield site within a business park and is surrounded by mainly light industrial uses. It is located on appropriately zoned lands and is serviced with public infrastructure and utilities. It is not subject to any amenity designation identified under the applicable Development Plan, nor is it located within an area protected under legislation, including SPAs or SACs statutory designations. It is well separated from residential or other such sensitive receptors. Overall I consider the development would not result in adverse impacts or significant effects on the environment based on location.

#### Characteristics of potential impacts

I would not consider that the impacts would be of significant magnitude when taken in its context. Impacts would be minor localised and be for a limited short-term duration, e.g. noise levels and odour emissions. These can be managed by good operation practice.

#### EIA Screening Conclusion

Having regard to the criteria to be taken into account in considering whether or not a development would be likely to have significant effects on the environment, to the size and scale of the development proposed, the nature of the receiving environment, I consider that, subject to suitable mitigation and good management, the development is not likely to have significant effects on the environment and a sub-threshold EIS would therefore not be required in this instance.

#### **Overall Conclusion – EIA/EIS Requirement**

I consider that the proposal does not involve the development of a waste 'disposal' installation and therefore is not a prescribed class of development for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended. Instead, I consider the facility fits within the meaning of waste 'recovery' and that an EIS is not required. Should the Board form a different opinion, and consider it is a waste disposal installation, I have screened the proposal for the purpose of environmental impact assessment. I consider a sub-threshold EIS would not be required in this case.

### **9.8 Appropriate Assessment**

The appeal site does not lie within a Natura 2000 site. The closest Natura 2000 sites are Lough Ennell SAC (Site Code 000685) located 2km south of the appeal site and Lough Ennell SPA (Site Code 004044) located 2.4km south.

I am conscious that the surface water discharge could potentially be polluted by hydrocarbon spills and/or some contamination from waste movement to and from the facility associated with vehicular movements in and around the site. The applicant is proposing an interceptor prior to discharge to the adjacent drainage channels. The site where the project is located has a concrete yard and hardcore in-situ. I consider that the site itself has little or no conservation value or ecological connection with the Natura 2000 sites. Overall I consider that the measures which are proposed would address concerns regarding any significant risk of pollution of surface waters or ground water or hence lead to any significant effects on the conservation objectives of the aforementioned Natura 2000 sites.

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a brownfield infill serviced location, together with its separation from any designated European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

I do not consider that an NIS or Appropriate Assessment is necessary in this case.

### **9.9 Legal Interest / Ownership**

In respect of the matter of legal interest / ownership issues and Folio numbers which relate elsewhere, I am satisfied, having carried out my own research of the Property Registration Authority (PRA) website that the site is contained within Folio WH1582F as stated by the observer. However, the applicant's solicitor, through written correspondence stated that the applicant, Athcast Limited is the full owner of ICO Electric Systems Ltd. who appear to own the site, while different folio numbers were referenced in their letter. In relation to Folio QH15824F referenced, this is likely to be a simple typographical error which should have read WH15842F. This Folio (WH15842F) contains two plans (3896 and 3897) which together cover the appeal site.

In relation to Folio WH9865F referenced in the solicitor's letter, this may also be another typographical error which likely should have read WH9868F. This Folio (WH9868F) covers the site immediately to the east of the appeal site which it is stated is also owned by the applicant and which I note is included within the blue line boundary on the landholding map submitted with the application. The Planning Authority consider that the applicant has a lease on the appeal site and I note that the PRA website shows the site having a leasehold which I do not consider an issue.

The issue of ownership would require clarification. However, case law has previously determined that where a company had yet to be formed<sup>4</sup> or a company which had no legal interest in a site but which was controlled by the same shareholders<sup>5</sup>, had sufficient interest in the lands in question to make the application.

I am satisfied, based on the information on file, that the applicant is legally entitled to make the planning application. It is also of relevance to note that a grant of planning permission does not in itself confer the right to implement a grant of planning permission. Accordingly, I am satisfied that the permission should not be refused because of legal interest/ ownership issues.

## **10.0 CONCLUSION AND RECOMMENDATION**

Further to the above assessment of matters pertaining to this appeal, including the consideration of the submissions made in connection with the appeal and including my site inspection, I recommend that the decision of

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<sup>4</sup> *(Alf-a-Bet Promotions Ltd.) v. Bundoran UDC*

<sup>5</sup> *Schwestermann v. An Bord Pleanála*

the Planning Authority be upheld in this instance and that permission be **granted** for the reasons and considerations and subject to the conditions set out below.

## REASONS AND CONSIDERATIONS

Having regard to the policies and provisions of the Westmeath County Development Plan 2014-2020 and the Mullingar Local Area Plan 2014-2020, particularly the 'Enterprise and Employment and related uses' zoning objective for the site, to the provisions of the Eastern-Midlands Region Waste Management Plan 2015-202, the location of the site in an established business/industrial area which is accessible to the national road network and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the site would be a suitable location for the proposed development of a waste transfer and recovery facility and the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health, would not create an unacceptable risk of water pollution and would not have an adverse impact on the environment or result in significant effects on European sites. 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 on the 7<sup>th</sup> day of August 2015, as amended by the further plans and particulars received by the planning authority on the 8<sup>th</sup> day of February 2016, 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. Details of the external storage bays proposed on site and of the boundary treatment along the perimeter of the site shall be submitted to, and agreed

in writing with, the planning authority prior to commencement of the development.

**Reason:** In order to allow the planning authority to assess the impact of these matters on the visual amenity of the area before development commences.

3.

a) The proposed development shall be limited to the handling of 24,900 tonnes of waste or recyclable materials annually on this site, which limit shall not be exceeded without a prior grant of planning permission.

**Reason:** To define the scope of the permission and to ensure any changes will be assessed.

4.

a) All yard areas (including parking and turning areas) within the site shall have an impermeable concrete surface. Areas of the yard which are already concrete surfaced shall be made good/replaced as appropriate.

b) Prior to operation of the facility, all parking and turning areas and other road markings shall be fully delineated.

c) The commercial weighbridge shall be installed prior to operation of the facility.

**Reason:** In the interest of orderly development.

5.

a) All drainage arrangements including the disposal of surface water shall be in accordance with the detailed requirements of the planning authority.

**Reason:** To prevent water pollution.

6. Prior to commencement of development, details of boundary treatment along the site perimeter shall be submitted to the planning authority for written agreement and the agreed walls/fencing shall have been erected prior to operation of the facility.

**Reason:** In the interest of orderly development.

7. Waste activities shall be subject to a Waste Facility Permit under the Waste Management (Facility Permit and Registration) Regulations 2009 (SI No.821 of 2007), as amended.

**Reason:** In the interest of orderly development and environment protection.

8. Prior to commencement of operation of the facility, the developer shall submit for the written agreement of the planning authority a proposal for an Environmental Management System (EMS) for the facility, which shall include measures to minimise emissions from the facility and shall include a monitoring programme for litter, dust, noise and surface water quality.

**Reason:** In the interest of environmental protection and protection of the amenities of the area.

9. The noise level shall not exceed 55 dB(A) sound level (corrected sound level for a tonal or impulsive component) at the nearest noise sensitive receptor between 0800 and 1800 hours, Monday to Friday inclusive, between 0800 and 1400 hours on Saturday and shall not exceed 45 dB(A) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the amenities of property in the vicinity of the site.

10. The hours of operation shall be as follows, unless otherwise agreed in writing with the planning authority:
  - a) Between 0800 hours and 1900 hours, Monday to Friday.
  - b) Between 0800 hours and 1400 hours on Saturdays.
  - c) Between 0800 hours and 1400 hours on Public Holidays.
  - d) The proposed development shall not operate on Sundays.

**Reason:** In the interest of the amenities of the area.

11. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) A plan to scale of not less than 1:500 showing –
  - (i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species.

- (ii) Details of screen planting.
- (iii) Details of roadside planting.
- (iv) Hard landscaping works, specifying surfacing materials and finished levels.

(b) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased 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:** To protect the amenities of property in the vicinity of the site.

12. Prior to commencement of operation of the facility, the developer shall submit for the written agreement of the planning authority, a detailed waste management plan for the construction phase of the development. The focus of the plan shall be to maximise the re-use and recovery of waste and minimise the amount of waste consigned to landfill. When preparing the plan, regard shall be had to the following document:

*Best practice guidelines on the preparation of waste management plans for construction and demolition projects* published by the Department of Environment, Heritage and Local Government (July 2006).

**Reason:** In the interest of orderly development and environment protection.

13. 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 the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

14. The developer shall pay to the planning authority a financial contribution in respect of Clonmore Link Road and Robinstown Link Road in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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Patricia Calleary  
Senior Planning Inspector

14 July 2016

**Appendix:** Location Maps & photographs