



An
Bord
Pleanála

Inspector's Report PL08.247102

Development

10 year permission to demolish existing office building and store, construct a new two storey office building, finish product store / warehouse with grow rooms, enclose existing tank farm, change of use of existing store to production facility, extend evaporator building, construct new electrical sub-station, construct new internal site access roadway with vehicular circulation and parking with associated site lighting, develop hard and soft landscaping elements and all associated ancillary site works all at Kilcoleman, Asdee, Ballylongford, Co. Kerry

The development requires an EPA Industrial Emissions Licence (formerly Integrated Pollution Prevention and Control Licence). An application for the licence has been made and is currently being

processed by the Environmental Protection Agency.

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| Planning Authority | Kerry County Council |
| Planning Authority Reg. Ref. | 15/825 |
| Applicant(s) | Brandon Products Ltd |
| Type of Application | Permission |
| Planning Authority Decision | Grant permission subject to conditions |
| Appellant(s) | Brandon Products Ltd |
| Observer(s) | None |
| Date of Site Inspection | 19/10/2016 |
| Inspector | A. Considine |

1.0 Site Location and Description

- 1.1. The proposed development site is located within the townland of Kilcoleman, Asdee, Ballylongford, Co. Kerry, in a rural area approximately 1km to the north west of the town of Ballylongford, and approximately 8km north east of Ballybunion, in north Co. Kerry. The site is accessed off a local County Road, the L1000 where a speed limit of 80km/ph applies. The site has no roadside boundary as such, across the front of the existing structures on the site and car parking is provided to the front of the buildings. The general area can be described as a rural landscape with a pattern of scattered residential development and small farm holdings. The road network provides for narrow roads, although wide enough for two cars to pass slowly. There are no public footpaths or public lighting. The landscape is generally flat and level.
- 1.2. The site itself has a stated site area of 2.2ha and has road frontage across two roads. The existing factory on the site is located in the south western area of the site while trees have been planted along the boundaries of the site to the north and east, and closer to the factory buildings. The land is currently in agricultural use. The existing facilities on the site comprise the old creamery buildings which have been extended to accommodate the factory requirements. The buildings include concrete structures
- 1.3. with metal cladding in a cream colour. To the rear of the buildings, there is a variety of plant equipment including a scrubber tank, 25m chimney stack, tanks and skips etc all located on a concrete apron. Across the public road there is a single storey house.

2.0 Proposed Development

- 2.1. As per the original public notices, permission was sought, at Kilcoleman, Asdee, Ballylongford, Co. Kerry, as follows:

A 10 year planning permission to

1. Demolish existing office building and store,

2. Construct a new two storey office building, finish product store / warehouse with grow rooms, enclose existing tank farm,
3. Change of use of existing store to production facility,
4. Extend evaporator building,
5. Construct new electrical sub-station,
6. Construct new internal site access roadway with vehicular circulation and parking with associated site lighting,
7. Develop hard and soft landscaping elements and all associated ancillary site works

The development requires an EPA Industrial Emissions Licence (formerly Integrated Pollution Prevention and Control Licence). An application for the licence has been made and is currently being processed by the Environmental Protection Agency.

- 2.2. The information submitted in support of the proposed development includes the relevant plans and particulars relating to the proposed development. The PA considered that further information was required, and following submissions from the EPA who determined that EIA was required for the activity, an EIS was required. An EIS was submitted following a request for further information. Revised public notices were also submitted which advised that an EIS had been submitted.
- 2.3. Following receipt of the response to the further information request, the EPA advised the local authority, by letter dated 16th May, 2016, that 'A licence application was made by Brandon Products Limited, Kilcolman, Asdee, Co. Kerry (Register No: P0957-01) on the 24th January, 2012. However this application was withdrawn by Brandon Products Limited under Regulation 19(1) of the EPA (Industrial Emissions) (Licencing) Regulations 2013 on the 18th April, 2016. The Agency has confirmed that licensable activities are no longer being carried out at the installation.'

2.4. Following receipt of the above confirmation from the EPA, the Local Authority required further public notices from the applicant omitting the reference to the Licence

3.0 Environmental Impact Statement

3.1.1. The factory has been operating at this location since 2008 and Brandon Products Ltd. specialises in the development and production of bio-stimulants for horticultural application. Their products are exported worldwide. The requirements for EIS for certain types and scales of development is provided for within Schedule 5 Development for the purposes of Part 10 (Environmental Impact Assessment) of the 2001, Planning & Development Regulations. The current proposed development is considered to fall within the scope of Part 1: 6 of Schedule 5 being

‘Integrated chemical installations, ie. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are –

(c) the production of phosphorous, nitrogen or potassium based fertilisers (simple or compound fertilisers)

As a result of the submission from the EPA, and on the basis that the applicant had made an application to the Agency for an Industrial Emissions (IPPC) Licence, Kerry County Council, by way of a request for further information, requested that an Environmental Impact Assessment be carried out with regard to the proposed development.

3.1.2. An Environmental Impact Statement was submitted and is presented in a single volume which includes appendices and a non-technical summary. The EIS provides 16 chapters and seeks to address all environmental matters associated with the proposed development. I have read this EIS in its entirety. The EIS provides a non-technical summary as well as a reasoning for the EIS, including its scope and the

structure and methodology of same. The EIS submitted provides information in relation to a number environmental aspects and describes the potential affects the development will have on the receiving environment. It is also to be noted that the EIS is also advertised in the revised public notices pertaining to the development, submitted following the submission of the response to the Planning Authority's further information request.

- 3.1.3. Having regard to the nature of this appeal, relating solely to a condition, I do not propose to summarise the EIS at this stage.

4.0 Planning Authority Decision

4.1. Decision

The Planning Authority decided to grant permission for the development as proposed, subject to 23 no conditions including the following:

Condition 8:

- (a) The activity shall not proceed without a valid licence under the Air Pollution Act being in place.
- (b) The licensee shall, within three months of the date of grant of this permission, install and maintain in a prominent location on the site a wind sock, or other wind direction indicator, which shall be visible from the public roadway outside the site.
- (c) All operations on-site shall be carried out in a manner such that air emissions and/or odours do not result in significant impairment of, or significant interference with amenities or the environment beyond the site boundary and at odour sensitive locations.
- (d) All odorous air arising from seaweed processing activities, including storage of seaweed waste sludge, shall, within nine months of the date of grant of this permission be directed to thermal oxidation equipment for treatment. Odorous air

shall only be introduced to the thermal oxidisation equipment when the appropriate operating conditions, which as a minimum shall meet those set out in a licence issued under the Air Pollution Act, have been achieved.

(e) The emission from the existing abatement system shall cease on commencement of emissions from the thermal oxidation equipment, or nine months from the date of grant of the licence under the Air Pollution Act, whichever is sooner.

(f) The applicant shall comply with all of the conditions set out in the licence issued under the Air Pollution Act.

Reason: In the interest of public health and to prevent pollution.

Condition 16:

The Planning Authority may by notice in writing limit or vary the hours or any or all activities / operations at the facility.

Reason: In the interests of public health.

4.2. **Planning Authority Reports**

The report of the area planner can be summarised as follows:

- The initial Planners report considered the proposed development in terms of the policy requirements of the County Development Plan and the planning history associated with the site. The report also considers the other technical submissions made in relation to the site and notes that the EPA has determined that an EIS is required. An AA screening report is also presented which concludes that the potential for significant effects to Natura 2000 sites cannot be ruled out and that further information is required.
- Following receipt of the response to the further information request, which included an EIS, the Planning Report notes the submission of the EPA which confirmed that licensable activities are no longer being carried out at this

installation. An updated AA Screening Report is also presented which concludes that the proposed development is acceptable and concludes that no significant effects on Natura 2000 sites are envisaged from the construction of the proposed development. With regard to EIA, the report concludes that the development is acceptable subject to compliance with conditions recommended by other submitted expert reports. The Planning report concludes recommending that permission be granted subject to conditions.

4.3. **Other Technical Reports**

Internal Reports:

Biodiversity Officer: Further information is required as the site is in proximity to the Lower Shannon cSAC and the River Shannon and River Fergus Estuaries SPA. An Article 6 Habitats Directive Screening Report is required to be submitted and depending on the findings and the need for mitigation measures, a Stage 2 NIS may be required.

Following receipt of the response to the FI request, a further report was prepared by the Biodiversity Officer. This report notes the details presented in the EIS and concludes that there is no evidence of significant use of the site by protected species was noted. In addition, no discharges / emissions from activities on-site are discharged, with waste waters being recycled within the production process. Further to the best practices outlined in the EIA/AA screening report, no significant effects on surface waters is considered likely from the proposed development at construction or operational phase. The report acknowledges the comments from the Environment Section, and concludes that no significant impacts from noise and/or odour on ecological receptors is considered likely.

Environment Section: The Environment Section of Kerry County Council engaged the services of an independent expert consultant to report on the proposed development following the submission of the response to the further information request. The report notes that a key issue associated with the development is the

management of odours arising from the facility. Having regard to the details as presented, the report states that a grant of permission could not be recommended unless Best Practice Means, involving the use of thermal oxidation technology, is employed and that this requirement could be included by way of condition. This would correlate with the position of the EPA. Subject to compliance with environmental conditions, as presented, the report recommends a grant of planning permission.

Listowel Roads Office: Further information required in relation to showing compliance with conditions of previous planning permission, 06/3080 and requires a drawing be submitted of the junction of the access road and the public road showing 120m sight distances.

Following receipt of the response to the FI request, a further report was prepared by the Roads Section advising no objection to the proposed development and recommending conditions be attached to any grant of planning permission.

Archaeologist: There are no recorded monuments in the immediate area and the site is previously disturbed. No mitigation is required.

Conservation Planner: No objection.

Building Control: No objection but notes that a Fire Safety Certificate and a Disability Access Certificate are required.

SEE Planning: As the proposed development requires an Industrial Emissions Licence from the EPA, the PA must request observations from the Agency to assist in its deliberations in relation to whether an EIA is required.

External Reports:

HSE: Advises no comments / observations to be made.

In a letter from the EPA, dated 17th May, 2016, the Local Authority is advised that the as no licence or any other form of environmental permit was in place, the EPA has

had no statutory role in relation to the environmental performance of Brandon Products Ltd. The Agency has dealt with the odour issue through the licence application process and details of same has been provided to the Board. The second letter advises that a detailed Best Available Technology assessment of the operation and its operations has been undertaken and BAT is strictly binding on operators of activities covered by the Industrial Emissions Directive. It is the Agency's view that BAT can and should also be applied to environmentally significant activities in non-IED sectors.

4.4. **Third Party Observations**

An Taisce: Notes the rural location of the site beside a tourist route and submits that it is essential that any new development be located and landscaped so as to integrate into the surrounding landscape. All current regulations regarding emissions to the environment should be met.

5.0 **Planning History**

The following is the relevant planning history relating to the subject site:

PA Ref. 06/3080: Permission granted on 3rd April 2007, to Brandon Products Ltd, for alterations and extension to old creamery building for use as seaweed processing facility, on the current appeal site.

ABP ref PL 08.225219 (PA Ref. 07/2304): Permission refused to Michael O'Sullivan Agri Parts, by Kerry County Council for erection to two warehouses on a site immediately to the east of the current appeal site. This decision was upheld following a 1st party appeal, and permission was refused on 21st April 2008, for three reasons relating to landscape impact, traffic hazard and concerns relating to drainage.

PA Ref. 14/384: Application by Brandon Products Ltd. deemed to be invalid.

ABP ref PL 08.244100 (PA ref 14/562): Permission granted by Kerry County Council for the construction of a 25m high chimney stack to replace existing 15m high chimney stack. This decision was upheld following a third party appeal.

6.0 Policy Context

6.1. Development Plan

The Kerry County Development Plan, 2015-2021 is the relevant policy document pertaining to the subject site.

6.1.1. Chapter 3, and in particular Section 3.3 of the Plan, deals with Rural Development Policies and identifies three classes of landscapes in the County. The subject site is located within an area zoned 'Rural Secondary Special Amenity'. Such landscapes are considered sensitive landscapes which can accommodate a limited level of development, which will be dependant on the degree to which it can be integrated into the landscape. The road to the southwest of the site forms the boundary of the 'Rural Secondary Special Amenity Area'. Lands on the opposite side of the access road are zoned 'Rural General'. This area of 'Rural Secondary Special Amenity' runs between the R551 and the Shannon Estuary to the north.

6.1.2. Chapter 12 of the Plan deals with Zoning & Landscape and the following policy objectives are considered relevant:

ZL-1: Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

ZL-4: Regulate residential development in Rural Areas in accordance with the zoned designation of that area and the policies outlined in the Rural Settlement Strategy set out in Section 3.3 of this Plan.

Section 12.3.1 deals with zoning designations which includes Rural General. It is provided that developments within such areas be integrated into their surroundings

in order to minimise the effect on the landscape and to maximise the potential for development. The Plan further provides that 'proposed developments in areas zoned Rural General, should in their designs take account of the topography, vegetation, existing boundaries and features of the area as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings.'

6.1.3. Chapter 4 of the Plan deals with Economic Development & Employment and section 4.7 relates to the Tarbert / Ballylongford Area and Section 4.11 deals with Environment. The following objectives are considered relevant:

ES-1: Support and lead sustainable economic and employment growth in all sectors of the economy in accordance with the principles and objectives of this Development Plan and the proper planning and sustainable development of the area.

ES-5: Actively foster and support the sustainable development of new indigenous industries and the expansion of existing firms.

ES-11: Ensure all economic development proposals shall demonstrate compliance with the objectives of this Plan and the Development Management, Standards and Guidelines specifically as they relate to landscape flood risk management, biodiversity, built and cultural heritage.

ES-36: Ensure that proposals for new industrial/commercial developments, extension or refurbishment of an existing development, maximise clean technology, waste minimisation and energy and water conservation in their design and operational practices. Any proposal shall demonstrate compliance with objective ES-11 and all other objectives and Development Management, Standards and Guidelines of this Plan.

6.1.4. Chapter 12 of the Plan deals with Zoning and Landscape.

6.1.5. Chapter 13 of the Plan deals with Development Management - Standards & Guidelines where section 13.10 deals with Industrial and Commercial Developments. The plan provides guidance in relation to industrial developments and provides that 'in general, these facilities should be located in appropriately zoned land in towns and villages or existing industrial estates'. In determining planning applications, this section provides a number of factors which need to be considered including:

'the expansion of industrial and commercial developments in rural areas will not be permitted where the new scale of the extended/new structure and commercial activity can not be accommodated by virtue of infrastructural limits or through any adverse impact on the environment.

7.0 The Appeal

7.1. Grounds of Appeal

This is a first party appeal against the decision of Kerry County Council to include condition 8 and by association on the basis that there is no issue with human health, condition 16 in its decision to grant planning permission for the proposed development. The appeal documents include a number of appendices which include the notification of the decision, summary of odour emissions assessment and review of TMS report, copy of Brandon Products Ltd objection to EPA Licence PD and Copy of Brandon Products Ltd response to odour complaints. There is also a request for an Oral Hearing. The grounds of appeal can be summarised as follows:

- An Air Pollution Licence is not required and just because there are traces of ammonia, mercaptans and hydrogen sulphide in an emission does not mean that it is subject to an Air Pollution Licence.
- The appellant does not agree that a Thermal Oxidiser (TO) is warranted based on the following lines of evidence:

- The current low emissions verified by independent laboratory measurements
- Modelling of worst case scenario emissions by Awn Consulting Ltd which show worst case odour emissions at only 23% of the relevant odour criterion
- A consistent record of odour monitoring (six months) which confirms there is no actual evidence of nuisance odours.
- The reasoning for removal of the requirement of TO is summarised as follows:
 - The conclusions of the TMS Report (prepared on behalf of Kerry County Council) was based on inaccurate assumptions, inaccurate assessment of the emission data and a general lack of understanding of the conservative nature of the odour model developed by Awn air specialist. In addition, the report relies on the EPA recommendation for a TO and has not adequately considered the low emission concentrations.
 - The Board is requested to review the objection to the EPA Proposed Determination. It is advised that the appellant had to withdraw from the licencing process as the EPA relied on unsubstantiated allegations of odours post the final abatement solution being installed as well as historical complaints. There is no scientific data to justify the belief of the EPA inspector. There is scientific data to confirm that nuisance odours do not occur. Company records confirm a 99% record of zero production odours over a six month period and the EPA has agreed the appellants withdrawal from the EPA licence process. The requirement for a TO should be reviewed based on measured and modelled data.
 - The EPA and TMS have proposed BAT should be followed in the operation of the activity. There is no specific relevant BAT document for the seaweed extract industry and both have proposed that EU BAT

Reference for Animal Slaughterhouses and Animal By-Products be applied. The appellant disagrees with this choice of BAT and advises that this BAT does not require the use of TO where high concentration emissions do not occur.

- Records show that odour thresholds are not exceeded at the facility.
- Since 2015, the abatement technology currently operating at the site has been shown to be reliable and meet the requirements of BAT confirmed by:
 - The current abatement achieves circa 98% odour destruction.
 - Monitoring confirms the consistency of emissions and effective removal.
 - Odour patrol records confirm a 99% record of zero production odours over six months, and cannot be considered a nuisance odour. Odour abatement equipment is operating effectively.
 - Under the worst case scenario of simultaneous failure of both the bioscrubber and AEROX abatement systems, the 99.5thile of mean hourly odour concentrations will be 8400 OU_E/s based on the 25m stack height. This is 56% of the relevant odour criterion, well below the odour limit value.
- There is no scientific justification for replacement of the existing abatement system which is operating to a high standard and in compliance with BAT with a costly and unnecessary TO.
- The associated costs with enforcing such unnecessary mitigation measures are unaffordable and the appellant would have to expand operations in a different jurisdiction.

- It is requested that the Board amend the condition to remove the requirement for a Thermal Oxidiser and to remove the requirement for an Air Pollution Licence.
- It is further requested that condition 16 be removed as it has been demonstrated that there is no issue with regard to human health.
- Finally, it is requested that should the Board decide that a thermal oxidiser is required, that permission be amended such that the warehouse development and 2 storey office building on-site can be constructed without the need for a TO. There are no emissions from the warehouse as it is for storage of packaged goods only.

7.2. Planning Authority Response

The PA has not responded to this third party appeal.

7.3. Observations

There are no observations noted.

7.4. Further Responses

The EPA responded to the request for comments issued by An Bord Pleanála on the 4th October in relation to the appeal. The comments advise that the licence application, made by the appellant on the 24th January, 2012, was withdrawn under Regulation 19(1) of the EPA (Industrial Emissions) (Licensing) Regulations 2013 on the 18th April, 2016. The Agency has confirmed that licensable activities are no longer being carried out at the installation.

The submission advises that as the facility has been the cause of a serious odour issue in the area, the Board is referred to the submission made by the Office of Environmental Enforcement on 17th May, 2016 to Kerry County Council in relation to the proposed development. The letter concludes that the Agency has no further comment to make on the planning application or the appeal.

8.0 ENVIRONMENTAL IMPACT ASSESSMENT

8.1. In the first instance, it is appropriate to determine whether the proposed development is development for the purposes of Part X of the Act 2000, as amended, (as defined under schedule 5 of the Regulations 2001, as amended) and therefore requires the carrying out of EIA. The proposed development is essentially for an extension to an existing production facility and as such, might be considered as falling within the scope of 6(c) under part I of schedule 5 of the Regulations 2001, as amended. The Environmental Impact Statement was required by the EPA in their consideration of the IPPC Licence. The EIS was submitted following a request for further information issued by Kerry County Council. The Board will note that the IPPC licence application to the EPA has been withdrawn and the EPA have confirmed that the activity which required the licence is no longer being carried out on the site.

8.2. The Board will note that the activity which required EIA under the EPA Acts, 1992 as amended is identified as Class 5.14 of the First Schedule of the EPA Act and is the same text as 6(c) under part I of schedule 5 of the Planning & Development Regulations 2001, as amended which states as follows:

6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are-

(a)

(b)

(c) for the production of phosphorous, nitrogen or potassium based fertilisers (simple or compound fertilisers),

8.3. As this particular activity has ceased at the facility, it is my opinion that EIA is no longer applicable. In addition, given that this appeal is related solely to the inclusion of a condition only, I will restrict my assessment to the consideration of those relevant conditions and I don't propose to consider the issue of EIA further.

9.0 Assessment

9.1. Having regard to the nature of the proposed development and the details submitted with the planning application and appeal documents, it is clear that this appeal relates only to the inclusion of two conditions, being condition 8 and 16 of the Planning Authority decision. In this regard, the provisions of Section 139 of the Planning & Development Act, 2000-2011 apply and the merits of the inclusion of the conditions should only be considered.

9.2. Condition 8 of the PAs decision requires as follows:

- (a) The activity shall not proceed without a valid licence under the Air Pollution Act being in place.
- (b) The licensee shall, within three months of the date of grant of this permission, install and maintain in a prominent location on the site a wind sock, or other wind direction indicator, which shall be visible from the public roadway outside the site.
- (c) All operations on-site shall be carried out in a manner such that air emissions and/or odours do not result in significant impairment of, or significant interference with amenities or the environment beyond the site boundary and at odour sensitive locations.
- (d) All odorous air arising from seaweed processing activities, including storage of seaweed waste sludge, shall, within nine months of the date of grant of this permission be directed to thermal oxidation equipment for treatment. Odorous air shall only be introduced to the thermal oxidation equipment when the appropriate operating conditions, which as a minimum shall meet those set out in a licence issued under the Air Pollution Act, have been achieved.
- (e) The emission from the existing abatement system shall cease on commencement of emissions from the thermal oxidation equipment, or nine months from the date of grant of the licence under the Air Pollution Act, whichever is sooner.

(f) The applicant shall comply with all of the conditions set out in the licence issued under the Air Pollution Act.

Reason: In the interest of public health and to prevent pollution.

- 9.3. The Board will note that the appellant has requested that the Board remove the condition in full and submits that an Air Pollution Licence is not required. It is submitted that the presence of traces of ammonia, mercaptans and hydrogen sulphide in an emission does not mean that it is subject such a licence. In this regard, the Board will note that while the requirements for IPPC no longer apply, the TMS report, Section 5.0 submits that a licence under the Air Pollution Act, 1987 (Licencing of Industrial Plant) Regulations (SI No. 288 of 1988) is required to be secured from the Planning Authority. The Third Schedule of the Air Pollution Act, 1987 details processes which require that an Air Pollution Licence is required. In particular, Classes 20 and 21 are relevant in the current appeal as a number of referenced substances are indicated as being present in the emissions from the facility.
- 9.4. Given that the proposed development will be required to comply with the requirements of an Air Pollution Licence, as determined by the Local Authority, I consider that it is reasonable to include at a minimum, sections (a) to (c) and (e) of condition 8 as written. It is also reasonable to require that the developer comply with the conditions as set out in the required licence. It is clear that the primary issue arising from this appeal is the requirement to install a thermal oxidation as the appropriate abatement system for treating odours arising from the facility. To this end, I have considered the full suite of arguments and assessments as presented on both sides of the issue.
- 9.5. The EPA, as well as the independent consultant engaged by the Planning Authority to review the aspects of the proposed development relating to odour assessment and management, submit that the Best Available Techniques solution should be applied to deal with the abatement of odorous emissions. The first part disagrees

with the determination that thermal oxidation is the appropriate technique to deal with odour abatement. In the appeal, the first party has requested that the Board review the objection to the EPA Proposed Determination (with regard to the IPPC Licence application) where it is submitted that the EPA relied on unsubstantiated allegations of odour, both before and after the installation of the final abatement solution at the facility in July 2015.

- 9.6. The TMS report considers that the applicants have underestimated the odour emission rates from the existing facility by a factor of 2. As such, the future potential for odour emissions is also underestimated. In terms of assessment, the report submits that the EIS model utilises data from a limited series of measurements in 2001 and 2013. The report concludes that the applicant has submitted a flawed assessment and has failed to demonstrate that the proposed activity will not have an adverse impact on the environment or amenity in the area. In response, the applicant has submitted that the odour emissions rate for 'do-nothing' was increased by a factor of 5, compared to the average of measured values and increased by a factor of 2.7 compared to the highest surveys.
- 9.7. The issue relating to this appeal is whether the bioscrubber and AEROX ozonation system with 25m stack represents BAT and / or BPM (Best Practical Means) for the control of air emissions from the facility. The TMS report notes that the EIS shows that significant levels of malodorous substances are present in the emissions from the bio-scrubber, in excess of the odour threshold. A bio-scrubber is considered not suitable in this instance due to insolubility of certain compounds in water. It is recommended that the facility can operate without adverse environmental impact if BPM are employed for odour control. In the opinion of the TMS report writer, thermal oxidation is BPM.
- 9.8. In response, the appellant (first party) submits that the alleged odours have not been substantiated before the July 2015 abatement solution was installed. Company records suggest that there is been 99% record of zero production odours over a six month period. It is requested that the Board review the requirement for TO (Thermal
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Oxidation) based on actual measured and modelled data. The appeal also notes Section 5.3.2 of the BREF (2005) used in the TMS report (Reference Document on Best Available Techniques in the Slaughterhouses and Animal By-Products Industries) identifies that thermal oxidation is one of two options available for the treatment of odours and therefore, cannot be argued as the only BAT for the production of Brandon products. The current abatement system at the facility achieves 98% odour destruction. It is further considered that as there is no BAT note which deals directly with the subject industry and the BAT Guidance for the purposes of Food Products from Vegetable and Raw Materials (2008) is more appropriate. The current system complies with this BAT and over the six month monitoring period, no nuisance odours exist.

9.9. In addition to the above, the Board will note the concern raised by the appellant with regard to the financial outlay associated with the requirement for TO. Having undertaken a site visit, I can confirm that I found no odours in the vicinity of the subject site. I do acknowledge that the proposed development will increase production at the facility also. The issue arising in relation to the appeal of the subject condition of planning permission, primarily relates of the type of odour abatement system used for this facility. In my opinion, this is clearly a matter for the licencing code. In planning terms, I am satisfied that the development can be accommodated and consider that a grant of planning permission would be in accordance with the proper planning and sustainable development of the area.

9.10. In terms of the requirements of Condition 16, which states that 'the Planning Authority may by notice in writing limit or vary the hours or any or all activities / operations at the facility', in the interests of public health, and having regard to the requirement to apply to the Local Authority for an Air Pollution Licence, I am satisfied that the condition is unnecessary.

10.0 Recommendation

10.1. Having regard to the nature of the condition the subject of this appeal, I am satisfied that the determination by the Board of the relevant application as if it had been made in the first instances is not warranted. I therefore recommend that planning authority be directed, in accordance with Section 139, Subsection (1) of the Planning & Development Act, 2000-2011, to AMEND condition 8, of the grant of planning permission as follows:

Condition 8:

- (a) The activity shall not proceed without a valid licence under the Air Pollution Act being in place.
- (b) The licensee shall, within three months of the date of grant of this permission, install and maintain in a prominent location on the site a wind sock, or other wind direction indicator, which shall be visible from the public roadway outside the site.
- (c) All operations on-site shall be carried out in a manner such that air emissions and/or odours do not result in significant impairment of, or significant interference with amenities or the environment beyond the site boundary and at odour sensitive locations.
- (d) The applicant shall comply with all of the conditions set out in the licence issued under the Air Pollution Act.

Reason: In the interest of public health and to prevent pollution.

and OMIT condition 16 of the grant of planning permission for the following stated reasons and considerations.

11.0 REASONS & CONSIDERATIONS

11.1. Having regard to the details of the development as proposed, the history associated with the facility together with the submissions made on behalf of the applicant and

the technical reports on the Planning Authority file, it is considered that the proposed development, is acceptable in planning terms and that a grant of permission would not conflict with the interest of proper planning and sustainable development of the area. It is further considered that an Air Pollution Licence is required for the development and as such, the inclusion of condition 8 as amended is appropriate.

A. Considine

Inspectorate

22nd November, 2016