



An
Bord
Pleanála

Inspector's Report PL26.247177

Development	Planning permission for change of use from manufacturing unit to use as a renal dialysis unit with all associated site works
Location	Whitemill Industrial Estate, Clonard Road, Co. Wexford
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20160152
Applicant(s)	Fresenius Medical Care (Ireland) Ltd.
Type of Application	Planning permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Fresenius Medical Care (Ireland) Ltd.
Observer(s)	John Clifton David Nevins
Date of Site Inspection	1 st December 2016
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located within the Whitemill Industrial Estate in Clonard, in the western suburbs of Wexford Town. Whitemill Industrial Estate occupies a large block of land to the west of the town and is generally bordered by Clonard Road (N) to the north, Clonard Avenue to the east and Whitemill Avenue to the south. However, Clonard Road is somewhat of a circular road as it also bisects the industrial area N-S (which I will refer to as Clonard Road (E)), and a further section, (which I will refer to as Clonard Road (S)), also runs E-W between Whitemill Avenue and Clonard Road (N). The lands to the north of Clonard Rd (N) and to the south of Whitemill Ave are predominantly residential in use, as are the lands to the east. There are retail parks located to the east (adjoining Clonard Avenue) and to the south west. The site is the appeal is located on Clonard Road (S), on the northern side of the carriageway, approx. 150m to the west of the junction with Clonard Road (E).
- 1.2.** The site (0.4ha) comprises a vacant industrial unit in the form of a single-storey detached building set within its own landscaped grounds. There is an off-street parking area to the south (front) and a large grassed area to the west of the building. The site to the immediate east comprises an accountancy business (office) and an Educate Together School and the site to the immediate west forms part of the Wexford County Council depot. The premises on the opposite side of the road are Drover Foods (manufacturing) and a logistics business.

2.0 Proposed Development

- 2.1.** It is proposed to change the use of the unit from manufacturing to a renal dialysis unit which would primarily involve alterations to the internal layout of the unit. The proposal also includes a small extension at the front to form an entrance lobby, which would increase the floor area from 618m² to 623m², and to upgrade the facades with new windows and doors, a new colour scheme and new powder coated cladding. A new ramped and stepped access would also be provided. The existing car park contains 22 no. parking spaces and it is proposed to reduce this to 19 spaces with 2 no. disabled space and to resurface the car park. It is intended to provide one non-illuminated sign. A new bin store, generator unit enclosure and condenser enclosure would be located to the rear of the building.

- 2.2.** The applicant, Fresenius Medical Care (Ireland) Ltd., is an international commercial medical products/clinical service provider which has been selected by the HSE, following a tendering process, to operate a satellite facility. The proposed unit would provide haemodialysis as an outpatient clinic serving 40 patients. It is stated that it would operate 6 days a week over 2-3 shifts. Clinical waste would be collected weekly by specialist contractors. It is stated that patients in Wexford currently have to travel to Waterford or Dublin for renal dialysis, which can be required up to three times a week.
- 2.3.** The application was accompanied by several documents in support of the proposal. These included a letter of support from the HSE (including the location criteria), a letter of support from the landowners, an Architectural Design Statement (CTD Architects), A Planning Supporting Statement (John Spain), an Engineering Assessment Report (Waterman Moylan) and a Screening Report for Appropriate Assessment (Openfield Ecological Consultants).

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for one reason. This was based primarily on the industrial zoning objective of the site which would result in a non-conforming use which would be contrary to Sections 11.02, 11.03 of the current Development Plan for the area and to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 3.2.1.1** It was noted that the site is zoned industrial, that it forms part of a long established industrial estate (set up by the IDA), and that it is serviced by a wide range of public services and infrastructure to support its industrial zoning objective. It was noted that 'Medical and Related Consultancies' uses are Not Normally Acceptable in Zone F and it was pointed out that there are only two other zones where this use is not permitted, namely 'open space' and 'core retail'. It is noted, however, that the initial

report from the Executive Planner (7/04/16) had considered that the proposed use may be acceptable in principle given the good level of accessibility and the nature of the uses adjoining the site (e.g. school and offices). The identified need for the service in the area was also acknowledged.

- 3.2.1.2 However, a Supplementary Report (12/04/16) from the Senior Planner noted that in addition to the uses observed in the initial report, there are a number of heavy industrial uses in the vicinity of the site and that the southern part of the Council Depot site has been identified as a possible household recycling and waste disposal site for the town. It was considered that the proposed use was not appropriate for the site, that it did not comply with the development plan, that there is a limited amount of zoned, serviced industrial land in Wexford town and that if granted, the proposal could restrict the existing and future use of adjoining sites. Although the urgent need for such a facility was noted, it was pointed out that permission had been granted for a similar use in an alternative location (no details given) and that there is a vacant medical unit 1-2km from the site. It was concluded that industrially zoned/serviced land, such as this, is a valuable resource which should be protected for industrial uses to enable location and expansion of such uses that require higher tolerance of noise, air emissions etc. and greater land take, and that such a non-conforming use would restrict the use of adjoining industrial lands. This could impact on investment decisions of the manufacturing sector when considering locations for new investment and expansion.
- 3.2.1.3 A request for further information was issued on 13/04/16 in which it was stated that given that the site is zoned for industrial use, the P.A. required clarification from the HSE and the medical consultants that the use of adjacent sites for the purposes of manufacturing, civic recycling and a refuse transfer and transport depot would be acceptable in close proximity to a dialysis unit. It was stated that the P.A. may consider the proposed use based on the urgent public health need for the facility if it was demonstrated that the use would not restrict existing and future uses of adjoining lands for manufacturing. The response from the applicants (11/07/16) reiterated the urgent need for the facility, their view that the area was one of mixed use, that the proposed use is sui generis and that, as such, the proposed use would be appropriate in this location. It was acknowledged, however, that the use of an

adjoining site for waste recycling would have the potential to have a negative impact on a renal dialysis unit.

3.2.1.4 The Planning report (3/08/16) responded to the FI as follows -

- In Wexford, waste transfer can only be located in industrial zoned land and that locations for such uses are limited to some rural areas and industrial zoned land.
- The adjoining Council depot building had been set back from the road to enable the front of the site to be developed as a household waste recycling centre for Wexford Town, as the only civic site in the district is located as Holmestown, some 9km from the town.
- The comments regarding the mixed uses in the area were noted but it was pointed out that some of these are outside of the industrial zone and are located in a Neighbourhood centre zone.

It was concluded that the site is not suitable for the proposed development as it would introduce a non-conforming use, which would jeopardise existing and future manufacturing uses in the vicinity, including the development of a waste recycling centre. It was further considered that it would result in the loss of industrial floor space and would sterilise industrial lands which are zoned and serviced for this purpose and which are a scarce resource.

3.2.2. Other Technical Reports

Executive Scientist – further information was requested regarding details of solid waste and hazardous waste likely to be generated and of all waste contractors.

Disability Access Officer – no objection subject to standard conditions.

3.3. Third Party Observations

3.3.1 Submission from David Mulcahy Planning Consultant on behalf of Ms. Elaine Doyle (18/03/16) expressed concern regarding incompatible use in an industrial area which materially contravenes the zoning objective for the site. Reference is made to a precedent in Kilkenny whereby planning permission was refused for an identical use in an industrial estate. It is also pointed out that the letter from the HSE, which

accompanied the application, stated that it is a “mandatory requirement” that the unit must not be located in an industrial area.

- 3.3.2 Submission from James Wallace (22/03/16) which states that the industrial lands were established by the IDA on a 999 year lease and that the terms of the lease dictate that the site must be used for manufacturing purposes only.

4.0 Planning History

96/1948 – planning permission granted to Acorn Fashions Ltd. for a factory for the manufacture of clothes, subject to conditions.

98/2292 – permission granted for retention of small fuel storage area to side of factory.

5.0 Policy Context

5.1. Development Plan

Wexford Town and Environs Plan 2009 2015 (as extended)

The site is zoned Industrial, Zoning Objective F, the purpose of which is “To provide for office, heavy and light industrial development”. Uses that are ‘P’, Permitted in this zone include Industrial, Light Industrial, Storage and Transport Depot, Restaurant, Park and ride and Civic/Amenity/Recycling. Uses which are ‘O’ ‘Open for Consideration’ include Offices and a Refuse Transfer Station. The latter use is Not Normally Permitted in every other zone and is not ‘P’ in any zone. It is further noted that ‘Medical and Related Consultants’ is either ‘P’ or ‘O’ in every zone except Industrial, Core Retail Area and Open Space.

There is a Masterplan Zoning for the Whitemill Estate (Zone 11) which sets out the characteristics of the estate, the infrastructure available and the likely future development, which includes new office development.

5.2. Natural Heritage Designations

Slaney River Valley cSAC – approx. 1km to east

Wexford Harbour and Slobs SPA – approx. 1km to east

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by John Spain Planning Consultants on behalf of the applicant. The main points raised may be summarised as follows:

- Industrial zoning - The site is zoned industrial but it is submitted that the proposed use is not in conflict with the zoning objective and would not prejudice the facilitation of new office, heavy and light industrial development at this location. The proposed use would represent only a minor use in the overall Objective F zone.
- Sui generis use – The proposed use is considered to be ‘sui generis’, as ‘Medical and Related Consultants’ use, (which is not defined in the Development Plan), does not include all types of medical related use. It is submitted that this use type relates to small scale medical uses such as doctors, dentists, consultants etc., but would not include more significant medical facilities such as hospitals, primary care centres and the proposed use.
- Precedent - Reference is made to a Board precedent 227701 (Kilkenny) wherein permission was granted for a similar use in a ‘General Business’ zone and the Inspector had accepted that renal dialysis use did not fall comfortably within any of the uses listed in the zoning matrix of the relevant development plan. It is claimed that on the basis of this decision, the board did not consider that the renal dialysis use fell within the ‘medical and related consultants’ use type.
- Compatible with existing uses - The P.A. did not conclude that the use would be incompatible with existing uses and it is submitted that the uses present in the estate are largely of a non-industrial nature. The comment regarding the sterilisation effect on industrial land is not substantiated. There is no Part 8 proposal for a waste transfer station on the adjoining Council Depot site. There is a variety of existing uses in the area including Lidl, Whitemill Medical Centre and McCauley Pharmacy, which provide precedent for medical use in the area. Each application should be assessed on its merits.

- National Renal Programme 2009 – seeks to increase the provision of renal clinics in order to reduce dependency on such facilities in hospitals. There is an identified urgent public health need for such a facility in Wexford as patients currently must travel to Waterford approx. 3 times a week for treatment. If permission is refused, the HSE would have to re-tender the project with consequent delays.
- Local policy – the Development Plan policies support the national initiative to move away from traditional hospital based care towards more community based care at a local level. The proposed development is in line with these policies.
- Planning benefits – The proposal, if permitted would provide 10 jobs, utilise a vacant site and improve the visual appearance of the site.
- Strategic location – the site is strategically located being an ‘edge of centre’ site which is accessed from one of the main access routes into town and a short distance from the N25.

6.2. Planning Authority Response

6.2.1 The P.A. responded on the 19th September, 2016. It is acknowledged that there is an identified and urgent need for such a facility, and that it has been engaging with various health care providers who have been tendering for this business for a number of years. It is further acknowledged that there is grave frustration for patients who are impacted by the tendering and planning process and the P.A. therefore requests that the board prioritises the determination of the appeal.

6.2.2 It is reiterated that the site is located in an industrial estate which has been the subject of considerable investment in infrastructure in recent years. It is pointed out that there are only three zones where the use, which is classified as ‘Medical and Related Consultancies’, is not permitted. These include open space, retail core area and industrial. The use is either permitted or open for consideration in all other zones. In response to the comments in the grounds of appeal regarding other non-industrial uses in the vicinity, it is stated that Lidl, the medical centre and the pharmacy are located within the Neighbourhood Centre zone and that the other uses, e.g. office, childcare etc. are uses which comply with the zoning objective.

- 6.2.3 It was stated that in industrial land-use zones, there is an expectation that the land would accommodate the types of uses that are not acceptable elsewhere and that the types of uses would require a greater land take, which requires low land costs. As a result, low land values can attract uses that are not permitted in the zone in order to reduce costs. It is imperative, therefore, that the P.A. seeks to protect this scarce resource to enable the location and expansion of such uses that require a higher tolerance for noise, air emissions etc. Failure to do so will result in the location of such uses in un-zoned and unserviced rural lands.
- 6.2.4 The renal dialysis unit is likely to require a clean environment and as such, it is expected that the development of uses such as a refuse transfer station could have a negative impact on the unit. Thus a grant of permission for the proposed use could restrict the use of surrounding industrial zoned lands.
- 6.2.5 It is re-iterated that the proposed development should be refused. However, should the board be minded to grant permission, it is requested that conditions relating to acoustic fencing on the boundaries, noise insulation, landscaping and planning contributions be included.

6.3 Observations

6.3.1 John Clifton

This submission reiterates the points made in the P.A. reports. Whilst the decision to provide a renal dialysis unit in Wexford is welcomed, it is considered imperative that the correct location is chosen. The observer believes that the proposed development would introduce a non-conforming use which would materially contravene the Development Plan. It is further believed that the Board is constrained by S37(2)(b) of the P&D Act 2000 (as amended) in respect of material contravention of the Act. Reference is also made to the 'Mandatory Requirements' set out in the HSE tender document, which accompanied the application, which it is believed rules out the location of the site as being suitable for a renal dialysis unit.

6.3.2 David Nevins

It is stated that the observer is part owner of the appeal property. The observation fully supports the first party grounds of appeal and reiterates the points made by the appellant. The observer has investigated the suggestion of a future proposal for a waste recycling facility at the Council depot site and enclosed a letter from the

Council dated 02/09/16 in which it is stated that council has no plans at present to develop such a facility.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Compliance with zoning objective
- Compatibility with existing uses in vicinity
- Impact on future potential of industrial estate

7.2. Compliance with zoning objective

7.2.1 The site is located on industrially zoned and serviced land, within an industrial estate which was established by the IDA. The Zoning Objective F reflects the nature of this location as it seeks to provide for new office, heavy and light industrial development. It is considered that the Zoning Matrix table for the zone is also consistent with the zoning objective in that the uses which are 'Permitted in Principle' are restricted to manufacturing, transport/storage, park and ride and civic amenity/recycling. The uses that are 'Open for Consideration' provide for more flexibility in that the range of uses is expanded to include office type uses, education and child care uses, home based economic activity, petrol stations, service garages/car sales, car parks and restaurants. It is also noted that a Refuse Transfer Station is open for consideration in this zone but is not listed for any other zone.

7.2.2 The list of 'Not Normally Permitted' uses includes 'Medical and related consultants'. This use is not defined, but is the only use type in the matrix which relates to medical type uses. The appellant makes the argument that a renal dialysis use should be viewed as being sui generis as it should not be considered alongside smaller medical type uses such as doctors' surgeries etc. Reference is made to a previous Board decision in Kilkenny (227701) in support of its argument, in which it is stated the Inspector had questioned whether a renal dialysis unit would fit comfortably within any of the medical related uses listed in the Kilkenny City DP. The appellant deduced from this that the Board did not consider that a renal dialysis unit falls within 'Medical and Related consultants' use. I consider this to be a rather tenuous argument. The Inspector had noted that this Plan had listed several medical related

uses including clinic/surgery as part of a private residence, medical and related consultants, medical consultancy, hospitals and nursing homes, and it was in this context that he had questioned which of these, if any, did the RDU fit comfortably within. This does not mean that all use type categories in other development plans which happen to be named as 'Medical and Related Consultants' exclude uses such as a renal dialysis unit. In any case, it is considered that it is a moot point in respect of the Kilkenny case, as the medical and related consultant use type was permitted in principle in the General Business Zone (a town centre location) in that instance.

7.2.3 The Wexford Town Development Plan is very clear about its objectives for protecting industrially zoned and serviced lands for manufacturing and employment uses.

Although Masterplan Zone 11 acknowledges the gradual shift away from manufacturing towards office and storage uses in Whitemill Estate, it also states that there are many traditional industries which continue to invest in the area. It is also acknowledged that the adjoining residential areas represent a constraint. It therefore allows for some office development within Whitemill to reduce the impact on adjoining residential properties. It also identifies the need for local shopping to serve the residential areas to the east of Whitemill, which is directed to the area zoned as Neighbourhood Centre at the eastern extremity of the estate.

7.2.4 In the Wexford Town Development Plan, Medical and Related Consultants are 'Not Normally Permitted' in just three of the twelve land use zones, namely Industrial, Open Space and Core Retail Areas. However, the use is 'Permitted in Principle' in three other zones, namely Town Centre, Neighbourhood Centre and Mixed Use Residential zones, and is Open for Consideration in all other zones. The term 'Not normally permitted' is defined in the development plan as follows:-

"Development that is classified as not normally acceptable in a particular zone is one which will not be considered by the Council except in exceptional circumstances. This may be due to its perceived effect on existing and permitted uses, its incompatibility with the policies and objectives contained in the Plan or the fact that it may be inconsistent with the proper planning and sustainable development of the area."

7.2.5 Thus it is clear that the Development Plan seeks to direct medical related uses into the retail and mixed use zones outside of the core retail area and industrial areas.

The site of the appeal is centrally located within the industrial estate. The surrounding uses are generally consistent with the zoning objective as they are either permitted or open for consideration uses. It is considered that the proposed use would be non-conforming and would contravene the zoning objective. There do not appear to be any exceptional circumstances which would justify a departure from the clearly stated policy. Although it is accepted by all parties that there is a clearly identified and urgent need for such a facility in Wexford, it would appear that there are many locations where the facility could be accommodated which would be in accordance with the policy framework.

- 7.2.6 It is considered, therefore, that the proposed development would materially contravene the development plan. I do not, however, agree with the observation that the Board is bound by the terms of S37(2)(b) of the 2000 Act as the planning authority did not refuse permission expressly on these grounds. Notwithstanding this, the proposed use has been specifically excluded from this zone and has been directed to other more appropriate locations. It is considered that the development plan policy is very clear in this respect and that the pattern of development in the vicinity is generally consistent with the zoning objective.

7.3. Compatibility with existing uses in vicinity

- 7.3.1 The appellant contends that the site is located in a mixed use area and that the uses within the industrial estate are generally non-industrial. The grounds of appeal list several businesses in the area to substantiate this point. I note however, that the first three on the list, (Lidl, Whitemill Medical Centre and McCauley's Pharmacy), are not located within the industrial zone, but in the adjoining Neighbourhood Centre zone. The other businesses are office uses, warehouse uses and childcare/education uses. However, each of these is either open for consideration or permitted uses within the zone. The site is located in the heart of the industrial estate, well removed from the transitional zones on the perimeter. From my inspection of the site, I can confirm that most of the uses in the vicinity of the site are manufacturing or warehouse uses, apart from the accountant's office, school and crèche to the east and south.
- 7.3.2 The proposed development is one which has certain specific requirements, as indicated in the HSE tender document which accompanied the application. The

appellant's agent highlights certain requirements such as ease of access by patients, large floor plate, availability of car parking and existing infrastructure. However, the Mandatory Requirements in the HSE document also specify the following:

- The unit must not be in an isolated location.
- The unit must not be located in an industrial, or in the opinion of the HSE, otherwise unsuitable location.
- The unit must not be located close to any building which would generate a level of noise, pollution, odour or any other factor which in the opinion of the HSE would render it unsuitable for treating haemodialysis patients.
- The unit must be located in an area that is not close to units currently or potentially receiving goods by HGV.

7.3.3 The appellant considers that an edge of centre site in Wexford town is the preferred location for reasons of accessibility and ease of parking. I would agree that the site's location is easily accessible by car due to the excellent road infrastructure and services in Whitemill Estate, and it is close to the N25 and within 5 minutes' drive time of the town centre. However, the location in the middle of an industrial estate means that it is in an industrial area, is surrounded by uses which are likely to generate noise/odour emissions and HGV traffic movements which could render the site unsuitable for use as a renal dialysis unit. It is also relatively isolated from other non-industrial uses, such as shops, community uses etc. It is considered that whilst the dialysis unit itself is unlikely to give rise to any direct adverse impacts on the adjoining uses, it does use existing industrial floor space for non-industrial purposes and could constrain new uses, or expansion of existing uses, nearby, due to the need for a clean environment free, from undue HGV traffic. It is considered, therefore, that the proposed use would be incompatible with the role and function of the industrial estate.

7.4. Impact on future potential of industrial estate

7.4.1 The Planning Authority considered that the proposed use could compromise the use of the depot site to the immediate west as a waste transfer station. The appellant has pointed out that there is no Part 8 for such a development, and one of the observers, (part owner), stated that the Council had advised him that the local authority did not

have any intention of developing the site for this purpose at his time. I note from the Land Use Matrix that the Refuse Transfer Station is Not Normally Permitted in every zone except for Industrial, where it is open for consideration. Given that the depot site is owned and operated by the County Council, there is a reasonable prospect that part of the site could be used as a means of delivering some of the authority's functions, which include waste management. Thus I would share the P.A.'s concerns that the proposed development could potentially restrict the future use of this site.

7.4.2 It is noted that the Wexford Town Development Plan views industrial lands as a valuable resource. At 4.5 (Economic Development chapter) it is stated that

“the promotion of economic activity with the town can only be undertaken if there is sufficient land ready to accommodate it. There are a number of existing Industrial Estates in the Town, and the Plan should aim to provide for sufficient land in the vicinity of these industrial estates to accommodate the consolidation of existing industry and the development of new industry during the Plan period”.

Industrial zoned and serviced lands with easy access to good transport networks (N25) is an important resource, which is in need of protection. It is considered that the proposed development, which is neither an industrial use nor one that is open for consideration in the zone, would introduce a non-conforming use which would potentially restrict the future development of sites in the vicinity, which are zoned for industrial use, and would create a precedent. As such, the proposed development would undermine the role and function of the industrial estate and would be contrary to the proper planning and sustainable development of the area.

7.5 Appropriate Assessment

7.5.1 The site is located approximately 1km from two Natura 2000 sites, namely, Slaney River Valley cSAC, (approx. 1km to east), and Wexford Harbour and Slobs SPA, (approx. 1km to east). Given the distances involved, and as the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

- 8.1.** It is recommended that planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the location of the site on industrially zoned and serviced lands within an established industrial estate, which is served by good transport networks, it is considered that the proposed development of a renal dialysis unit would result in a non-industrial use of the site, which is not normally permitted in this industrial zone, would result in the loss of valuable industrial floor space and would, by reason of its specific locational requirements for a clean environment, restrict the future use and expansion of adjacent sites within the industrial estate. The proposed development would, therefore, materially contravene the provisions of the Wexford Town Development Plan 2009-2015 (as extended), would create an undesirable precedent for further similar development, would undermine the role and function of the industrial estate and would be contrary to the proper planning and sustainable development of the area.

Mary Kennelly
Planning Inspector

9th December 2016