



An
Bord
Pleanála

Inspector's Report PL03.249086

Development	Widen existing entrance / exit road / gates to rear of facility.
Location	Smithstown Industrial Estate, Shannon, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	P17/436
Applicant(s)	Chemifloc Ltd.
Type of Application	Permission
Planning Authority Decision	GRANT with 3no. conditions.
Type of Appeal	First Party against condition
Appellant(s)	Chemifloc Ltd.
Observer(s)	None
Date of Site Inspection	29/11/17
Inspector	John Desmond

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	5
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations	7
6.0 The Appeal	7
6.1. Grounds of Appeal	7
6.2. Planning Authority Response.....	9
7.0 Assessment.....	10
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15

1.0 Site Location and Description

- 1.1. The application site is located within an existing industrial estate on the northern side of Shannon town, northeast of Shannon Airport. The site is situated on the western perimeter of the estate, bounded by the N19 to the northwest and a local road to the southwest and south, and by an internal industrial-estate access road and other industrial / commercial premises within the estate to the southeast, east and northeast. The roadside boundary is demarcated by timber fencing and traditional rural hedgerows.
- 1.2. There is an existing agricultural type entrance onto the local road to the southwest, indicated as 4.7m in width. The Chemifloc premises has its main entrance onto the internal road network to Smithstown Industrial Estate / Business Park, which accesses onto the local road c.225m east of the application site boundary at the nearest point.
- 1.3. The site measures almost 6.1ha (the area is stated as 5.21ha on the application form), inclusive of the entirety of the original enclosed area (from the OSI map, c.0.85ha) associated with the Chemifloc premises, located close to centre on the eastern boundary. The northern side of the site, that area (roughly) north of the centrally location pylon, measuring c.3ha, appears as fallow land, under rough grass not in active agricultural use. The vast majority of the southern portion of the site has been subject to considerable development, some of which appears completed but with others evidently not yet finished.
- 1.4. Most notable of the completed works (note: all areas are rough measurements based on the site layout plan) include:
 - i) a hardstanding area of almost 0.3ha contiguous with and largely open onto the southern boundary of original Chemifloc premises site (as indicated on OSI map), but otherwise enclosed by palisade fencing. The area is finished mostly in loose aggregate stone but with a concrete pan access route running southeast through the site. It is in use for car parking;
 - ii) a hardstanding area of more than 0.5ha southeast of and with access through area (i), finished in concrete, and accommodating the parking of trucks, (this area is surrounded by lighting on poles c.10m in height). This

- area is largely enclosed by palisade fencing to the northwest, northeast and southwest, but with a low barrier to area (iii) and open to area (iv);
- iii) a hardstanding area of 0.13ha south of area (ii), finished in loose aggregate stone, in use for storage of multiple materials and equipment;
 - iv) a hardstanding area of c.0.06ha (very rough estimate), to the west of area (i). This area is enclosed by palisade fencing to the northeast and southwest, but open onto areas (ii) and (v), finished in concrete pan, in use for storage and vehicular access at the time of inspection. The said area contains includes a warehouse of maybe 6m in height and c.100-sq.m floor plate;
 - v) A hardstanding area between the original west boundary of the Chemifloc site (as per OSI map) and the public road to the southwest; this area is estimated at c.0.105h (15m X 70m), is set out in compact aggregates. It has access into the original Chemifloc premises, to the public road and to the electricity substation;
 - vi) There is extensive hardstanding area, north of area (v), along the western and northern perimeter of the original Chemifloc boundary, which includes an electrical substation building. This area is open to area (v) and to the fallow lands to the north;
 - vii) There is an additional hardstanding area along the southwestern perimeter to areas (ii) and (v), but open to the small area of undeveloped lands, or lands used to accommodate mounded waste soil, to the southeast.

2.0 Proposed Development

- 2.1. The proposed development is described as the widening of an existing entrance / exit road / gates to rear of facility. The submitted drawings indicate significant additional development within the application site which is not referred to in the public notices or on the application form.

3.0 Planning Authority Decision

3.1. Decision

To **GRANT** permission subject to 3no. conditions. Condition no.2, the subject of this appeal, states as follows:

- (a) Permission is hereby granted to widen the existing entrance / exit road and gates to the rear of the existing Chemifloc plant only. This permission does not provide for additional truck parking or hard surfaced areas within the site.*
- (b) Use of the subject access shall be limited to emergency and / or maintenance traffic for the existing site substation only. It shall not be used to facilitate deliveries both to and from the Chemifloc Plant.*

Reason: Having regard to the nature and extent of the development as described in the public notices and having regard to capacity and width of the L3173 road, it is considered appropriate that the use of the access be restricted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer assessed the application on the basis that the proposed widening of the entrance was to serve the electricity substation only and recommended the permission be GRANTED subject to three conditions, including condition no.2 attaching to the permission. Annotation (not initialled) on the Planner's Report suggests that condition no.2 was to be replaced.

3.2.2. Other Technical Reports:

Health and Safety Authority – No objection and no comments specific to the development proposal (19/06/17).

Road Design – No objection subject to 2no. standard type conditions (25/07/17).

Area Engineer – Recommends that the access be limited to emergency and maintenance access to the permitted ESB substation, will Chemifloc access to be via the industrial estate.

4.0 Planning History

The relevant recent planning history within the site includes:

P16/447 – Permission **GRANTED** (11/07/16; subject to three standard conditions) to Chemifloc Ltd for an ESB substation / switch room on lands at Smithstown Industrial Estate, within the current application site but excluding the boundary to the Chemifloc premises.

5.0 Policy Context

5.1. Development Plan

Clare County Development Plan 2017-2023

Shannon town is defined as a link gateway (second tier settlement) in the county settlement hierarchy.

Objective CDP6.3 - *It is an objective of Clare County Council: [inter alia] a) To protect and promote Shannon as a primary location for industry, manufacturing, warehousing, distribution, and transport operating centres, and facilitate, where required, the adaptation of industrial areas to other employment generators;*

Objective CDP8.8 – *It is an objective of the development plan: To implement the requirements and recommendations contained in DMURS in the assessment of development proposals, the preparation of design schemes and their implementation in the development of streets, roads and public realm improvement schemes in the county.*

Shannon Town and Environs LAP 2012-2018 (separate from CCDP Vol.3b Shannon Municipal District)

Land use zoning objective – Light industry

I3 (site development briefs and zoning objectives for the industrial and enterprise zoned lands) – *'The plan therefore designates Smithstown for light industry uses only and proposals for site redevelopment and new uses shall be considered in the context of this objective. [...] The Plan provides for some expansion of Smithstown in terms of greenfield light industry development on both the east and west sides of the*

existing estate. It is also an objective to facilitate the upgrade and enhancement of the quality of the streetscapes and general environmental quality throughout Smithstown.'

5.2. Natural Heritage Designations

Lower River Shannon SAC 002165 within 1.64km of the application site at the nearest distance to the south.

River Shannon and River Fergus Estuaries SPA 004077 within c.1.7km of the application site at the nearest distance to the south.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal submitted by Chemifloc Ltd., c/o Stephen Dowds Associates Town Planning Consultants

Nature of appeal:

- The appeal is against condition no. 2 of the permission;

Purpose of proposed development

- The decision ties the development to the substation, which is accommodated by the existing entrance which is perfectly adequate for its needs and the proposal was not necessitated by it.
- The proposal was for the purpose of rearranging the traffic management of the existing Chemifloc Ltd facility.
- Chemifloc Ltd is a major supplier to Irish Water and operates a fleet of contract trucks to pull company owned tankers delivering its products nationwide (20 movements per day 5 days per week).
- Access / egress is currently onto Smithstown Road, via the internal road network within Smithstown Industrial Estate, which is mostly complete and occupied and which can be very congested with considerable traffic volumes.

- Chemifloc constitutes a significant proportion of the traffic.
- The entrance / exit to the L3173 was intended to allow a one-way traffic system into and out of the Chemifloc facility, and it would in the long term provide access for the future development of these industrial zoned lands.

Grounds of appeal

- Condition 2(b) entirely negates the benefit of the permission as the proposal was never intended to serve the substation / switchroom but to allow a rearrangement of the traffic movements into and out of the existing facility.
- Submits that the condition arose from concern raised in the AE report following communications with the Fire Officer who noted the entrance formed part of the application for the substation (and concurrent fire certificate) and advise that the entrance would be useful in event of an emergency.
- The entrance pre-dates the substation application.
- The AE concern that the use of the proposed access for traffic other than emergency / maintenance traffic would impact negatively on the traffic characteristics of the L3173, do not stand up to scrutiny.
- The design of the road is good and its condition excellent, almost identical to the Old Shannon Road serving the entire Industrial Estate, but much quieter.
- Full required sightlines (120m) will be provided and there is no conflict with any junction or access.
- No issues arise in terms of direct access to a national road or in directing industrial traffic towards more sensitive areas.
- It is not envisaged that traffic will travel in the direction of the N19 due to the limited access to / from the L3173 (left in / left out), but the quality of the said junction is excellent in terms of acceleration and deceleration lane and a central median prevents right turn movements.
- There was no objection from the Roads Design Section.
- P03/1934 - outline permission granted for a development on this site with access off the same road and in the same location (details of the permission

and the site layout plan attached as appendix D to the appeal), subject to condition no.2 omitting a proposed entrance to and unit facing onto the N19. It is hard to see why an entrance in the permitted location would not now be acceptable.

- The applicant accepts part (a) of the permission restricting the permission to the entrance only and not covering any additional parking which had never been part of the application.
- The 'truck parking' area was developed in response to EPA licensing requirements to address firefighting, and the company was required to provide a bunded area to contain water discharged from the premises in the event of a firefighting event before its eventual managed discharge to the foul drainage network.
- The applicant accepts that this application does not regularise it, but submits that it may be exempt under Article 7(1) and Schedule 2, Part 1, Classes 21 and 22 of the Planning and Development Regulations 2001, as amended.

6.2. Planning Authority Response

The main points of the Planning Authority's response may be summarised as follows:

- The description of the proposed development on the public notices was limited.
- Permission reg.ref.16/447 for substation and switch room indicated 'existing gravel service road' and existing entrance, and on inspection a narrow gravel road leads to the substation.
- No change of use of entrance from service entrance was sought.
- The existing road between the entrance and Chemifloc is not of a size and standard to facilitate traffic associated with the overall development.
- Neither the upgrade of the service road, nor rearrangements of traffic movements associated with the existing use and wider site were included in the application.

- The issues raised in the appeal are not permissible under the application, as sought, based on the development description and drawings.
- Condition no.2 is therefore necessary.

7.0 Assessment

This is a first party appeal against the attaching of condition no.2 (specifically 2(b) limiting the use of the entrance to emergency use and for maintenance traffic to the substation) of the Council's decision to grant permission for widening of an existing entrance / exit road / gates to rear of facility, onto a local road.

As this is an appeal under S.139 of the Planning and Development Act, 2000, as amended, relating only to a condition, the Board may, at its discretion, determine the application de novo or limit its considerations to that of the condition.

The main issues arising in this case may be addressed under the following headings:

- 7.1 Nature and extent of development proposed
- 7.2 Policy / principle
- 7.3 Road design and traffic safety issues
- 7.4 Appropriate Assessment

7.1. Nature and extent of development

7.1.1. The application is for the widening of the existing entrance, road and gates to the rear of the existing facility. The said access, originally an agricultural access, was permitted to provide access to an electricity substation (reg.ref.P16/447) in July 2016.

7.1.2. The intended purpose of the works proposed in the application under appeal is not stated in the development description, nor is it explained in text on the application form or in a cover letter, but can be determined from the site layout drawings (no.16/54). This shows HGV traffic using the entrance to access / egress a HGV parking area (area (ii) in my site description), with access through to the entire Chemifloc premises and the internal road network of the industrial estate. The appellant confirmed on appeal that the proposed development was to accommodate

the rearranging of traffic management for the existing Chemifloc Ltd facility, to allow for a one-way traffic system into and out of the facility. This is contradicted by the drawings which show two-way HGV traffic. The appellant submits that the attaching of condition no.2(b) entirely negates the benefit of the permission.

- 7.1.3. The Council's planning officer assessed the application on the basis that the proposed development was to serve the existing substation only, as did the Council's Road Design Section and its Area Engineer. In response to the appeal, the Planning Authority submitted that the description of the proposed development was limited and that no change of use of the entrance from a service entrance (associated with the substation) was sought.
- 7.1.4. The requirements regarding development description are set out under article 18 Regulations, 2001, as amended. The newspaper notice must state (d) *a brief description of the nature and extent of the development, including a reference to a number of specifics (detailed in (i)-(v)) where appropriate.* Within the context of the application site and existing operation at this facility, I consider the intended rearranging of HGV traffic (and possibly other traffic – this is not clear), to be facilitated by the proposed development, to constitute a material element of the proposed development and that it should therefore been included in the development description to properly alert the public of the nature and extent of the proposed development. The development description and the details on file concerning the rearranging of traffic management are inadequate.
- 7.1.5. The site layout drawing (no.16/54) shows very extensive development, including a HGV parking (area (ii) c.0.5ha) and car parking (area (i) 0.3ha, in situ since c.2006) and other hardstanding areas in active use for storage and other operations, all of which are connected to the proposed development. The site plan does not show the full extent of relevant development on the site, including the hardstanding areas (compact aggregate stone) and buildings on site. The access road has already been widened to c.15m (the proposed width is 6.5m) almost up to the public road. There is also at least one recently constructed significant building (outside the original Chemifloc boundary as shown on OSI map) not shown on plan. The evidence would suggest that there has been a significant intensification of operations associated with this industrial premises, accommodated by significant expansion of its footprint. The

implications of the intended purpose of the proposed development may therefore be significant.

7.1.6. I could find no evidence of planning permission having been granted for these recent developments. The applicant's explanation that the HGV parking area was provided as a bunded area to accommodate storage of firefighting water runoff in the event of a fire onsite in compliance with EPA licensing requirements would not appear credible (and would not negate any obligation for planning permission). The matter of whether or not the said existing development is authorised or unauthorised is a function of the Planning Authority.

7.1.7. Having regard to the foregoing, I consider the Planning Authority's decision to limit the permission by condition no.2 is justified.

7.2. Policy / principle

7.2.1. The principle of using the existing entrance for a purpose other than agricultural entrance was accepted under PL26/447, whereby the Planning authority granted permission for an ESB substation / switchroom on this site, which is now in situ.

7.2.2. The Planning Authority raised no issue with the principle of widened entrance and access road in terms of the local policy context. The site is zoned for industrial uses within the Shannon Town and Environs LAP 2012-2018 and it is an objective (CDP6.3) of the Clare County Development Plan 2017-2023 *To protect and promote Shannon as a primary location for industry, manufacturing, warehousing, distribution, and transport operating centres, and facilitate, where required, the adaptation of industrial areas to other employment generators.*

7.2.3. I could find no policy pertaining to new entrances other than onto National Roads (primary and secondary), which is not relevant to the proposed widening of an existing entrance onto a local road (L3173). It is an objective (CDP8.8) of the County Development Plan to implement the DMURS in, *inter alia*, its assessment of development proposals.

7.2.4. The applicant submits that outline permission was granted (reg.ref.P03/1934) - for a development on this site with access off the same road and in the same location (details of the permission and the site layout plan attached as appendix D to the appeal).

- 7.2.5. The Planning Authority has no issue, in principle, with the provision of a widened entrance at this location.
- 7.2.6. Road design and traffic safety issues
- 7.2.7. The Design Manual for Urban Roads and Streets are the mandatory road design standards applicable in this location. The design requirements are relatively low given the low place context value of the site (business / industrial park and transitional) and the low movement function. The principle of provision of an entrance onto the local road would be acceptable under the DMURS.
- 7.2.8. The local road is designed to traditional DMRB standards and there is nothing to indicate that the proposed entrance is not designed to that standard. It provides much longer sightlines (120m indicated) than would apply to the 60kph zone (59m) under DMURS (s.4.4.4)), but as the network is not to DMURS standards the lower sight distance may not be appropriate in the current context. There are no obvious conflicts with any junction or access.
- 7.2.9. The AE voiced concern that the use of the proposed access for traffic other than emergency / maintenance traffic would impact negatively on the traffic characteristics of the L3173. This is disputed by the applicant on the basis that the design of the local road and its condition is good. The A.E.'s position is not explained, although one might surmise that the issue is most likely that traffic speeds are higher than the limit posted in this location due to the DMRB road design. There is nothing in the reports on file to indicate that the Planning Authority considered the requirements of DMURS in its assessment of the application.
- 7.2.10. Possible ways of resolving the apparent conflict (with the existing characteristics of the local road) are provided for under DMURS. It provides for retrofitting design features indicative of a transitional zone (s.3.3.4). The provision of a footpath (and possibly a cycle lane) along the roadside boundary of the site to connect to the existing path to the southeast (c.240m) would also be appropriate design elements in the context. These works would all be required outside the red line boundary of the application site and they would therefore have to be addressed by way of a special development contribution as the said works would fall outside the boundary of the site. As no such works were considered by the Planning Authority, no condition was proposed by the Planning Authority.

7.2.11. Given the restrictions on use of the entrance imposed by condition no.2(b), limiting it to use as a service / maintenance entrance associated with the electricity substation, no alterations to the existing local road would be necessary.

7.3. Appropriate Assessment

7.3.1. Having regard to the nature and scale of the proposed development and the distance (c.1.6km) to the nearest 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.

8.0 Recommendation

Having regard to the nature of condition no.2 the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 (as amended) to **RETAIN** Condition 2 for the reasons and considers hereunder.

9.0 Reasons and Considerations

- 1 The use of the proposed access for the rerouting of traffic associated with the Chemifloc Ltd operations would be a material departure from the proposed development as described in the public notices, application and documents submitted with the application. In the absence of the provision of relevant information relating to the full extent and nature of traffic using the proposed widened access, and in the absence of demonstrable compliance with the requirements of the Design Manual for Urban Roads and Streets (2013) being the appropriate road design standard within the site context, the use of the proposed access for the rerouting of traffic associated with the Chemifloc Ltd site would have implications for the safe operation of the public road network that have not been appropriately resolved in the application.

John Desmond
Senior Planning Inspector

18th December 2017