



An  
Bord  
Pleanála

## Inspector's Report ABP-304053-19

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<b>Development</b>	Retain industrial building including 2 lean-to-structures, 1 weighbridge office, retain walls, rainwater harvesting tank. Permission for use of Warehouse 3 for Manufacture and storage of plastic.
<b>Location</b>	Killaloonty, Tuam, Co Galway.
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	198
<b>Applicant(s)</b>	Wheely Environmental Services Ltd.
<b>Type of Application</b>	Retention and Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Wheely Environmental Services Ltd.,
<b>Observer(s)</b>	Martin J. Moran Tuam Anglers Association Larkin Engineering Enterprise Ltd.
<b>Date of Site Inspection</b>	04/06/2019
<b>Inspector</b>	Gillian Kane

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## 1.0 Site Location and Description

- 1.1. The site is located at Tuam Business Park, off Weir Road in Tuam, Co Galway. It is located approximately 3km northwest of Tuam town centre. The business park contains a number of industrial/commercial premises. The appeal site is located at the rear of the estate and is accessed by the internal estate road which runs parallel to Weir Road. The road then forms a right-angle bend extending westwards along the southern banks of the Clare River, terminating at the subject site.
- 1.2. The site, which has a stated area of 1.4 ha, is bounded to the north by the Clare River. To the east there is an existing industrial premises (Larkin Engineering). To the south and west there are agricultural fields. The site contains 3 no. warehouse buildings, of concrete block construction with a metal cladding finish to the sides and roof. The area to the front has been concreted and car parking provided.
- 1.3. The site entrance is located to the east of the site, beside which there is ramped access to a weighbridge, with a weighbridge office located on its northern side. There are a limited number of car parking (6 no. spaces) close to the site entrance.
- 1.4. Outside the business park to the south, the Weir Road provides access to a number of single residential properties and more recently developed housing estates and some business properties closer to the town. To the north the predominant land use is agriculture.

## 2.0 Proposed Development

- 2.1.1. On the 4<sup>th</sup> January 2019 permission for the retention of existing retaining walls, the retention of the existing weighbridge office and rainwater harvesting tank and permission for the use of warehouse no. 3, and extension of the retaining walls.
- 2.1.2. The application was accompanied by the following:
  - Planning Report
  - Flood Risk Assessment
  - AA Screening Report
  - Traffic Impact Assessment

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 28<sup>th</sup> February 2019 the Planning Authority issued a notification of their intention to REFUSE permission and retention permission for the following reasons:

- 1 Having regard to the location of the subject site and the pattern of development in the vicinity and having regard to absence of information and the intensity of use, it is considered that the development for which development is sought would seriously injure the amenities of the area, including the existing neighbouring commercial premises, by reason of odour, litter and traffic and would represent an inappropriate form and scale of development at this location. The development for which retention is sought and the intensification of use with respect to the proposed manufacturing facility would therefore be contrary to the proper planning and sustainable development of the area.
- 2 The site of the proposed development is on a floodplain of the Clare River and is prone to flooding. The River forms part of the Lough Corrib SAC (site code 000297). Having regard to the flood risk assessment guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government in 2008 and notwithstanding the proposed flood management proposals, it is considered in the absence of full disclosure with respect to the amount of waste to be dealt with at the facility and the intensification of a waste management facility at this location would be inappropriate and pose an unacceptable risk of serious environmental pollution.
- 3 Based on the documentation submitted with the application, it is considered that a determination as to whether an environmental impact assessment report would have been required if an application for permission had been made in respect of the development concerned prior to the carrying out of the subject development, is required. In such circumstances and having regard to the fact that the present application seeks to retain the subject development, it is considered that pursuant to Section 34(12) of the Planning and Development Act 2000, as amended,

the Planning Authority is precluded from considering a grant of permission in this instance.

### 3.2. **Planning Authority Reports**

- 3.2.1. **Planning Report:** As a result of planning history two of the five buildings on site have been removed. Subject application does not address the Boards reasons for refusal (PL07.247650).

### 3.3. **Third Party Observations**

- 3.3.1. Three submissions received, raising issues similar to that raised by the Observers. This is addressed in section 6.3 below.

## 4.0 **Planning History**

- 4.1.1. **PL07.247650:** Planning was refused for the retention of existing industrial (waste recycling, recovery and transfer) buildings, completion of works of existing building and 5 no. roller shutter doors and extension of wall along southern boundary, for the following reasons:

1. Having regard to the location of the subject development and the pattern of development in the vicinity, and having regard to the nature and significant scale of the subject development, and the intensity of use, it is considered that the development for which retention is sought would seriously injure the amenities of the area, including existing neighbouring commercial premises, by reason of odour, litter and traffic, and would represent an inappropriate form and scale of development at this location. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is on a floodplain of the Clare River and is prone to flooding. The River forms part of the Lough Corrib Special Area of Conservation (Site Code 000297). Having regard to the "Flood Risk Management Guidelines for Planning Authorities", issued by the Department of the Environment, Heritage and Local Government in 2008, and notwithstanding the proposed flood management proposals, it is considered that the intensification and expansion of a waste management facility at this location would be

inappropriate and would pose an unacceptable risk of serious environmental pollution.

3. Having regard to the volumes of waste accepted at the subject site, based on the documentation submitted with the application and appeal, it is considered that a determination, as to whether an environmental impact assessment would have been required if an application for permission had been made in respect of the development concerned prior to the carrying out of the subject development, is required. In such circumstances, and having regard to the fact that the present application is seeking to retain the subject development, it is considered that, pursuant to Section 34 (12) of the Planning and Development Act 2000, as amended, the Board is precluded from considering a grant of planning permission in this instance.
4. Having regard to the operation of the facility other than solely as a materials recovery and management facility, the volumes of waste accepted at the site, which exceeds the permitted annual intake of 5,000 tonnes and the nature of the waste streams accepted, it is considered that the retention and completion of the development as proposed would materially contravene the provisions of the parent permission granted under An Bord Pleanála reference number PL07.205296 and would, therefore, be contrary to the proper planning and sustainable development of the area.

- 4.1.2. **PL07.205296** (Planning Authority reg. ref. 03/1053) : Planning permission granted for the retention of existing roller shutter door and surface water drainage discharge and change of use to a materials recovery and management facility including overnight parking of vehicles, office and administration associated with waste collection business on the site was granted.

## 5.0 Policy and Context

### 5.1. Tuam Local Area Plan 2018-2024

- 5.1.1. The subject site is zoned Industrial, which has the stated objective to “Promote the sustainable development of industrial and industrial related uses, including manufacturing, processing of materials, warehousing and distribution on suitable lands, with adequate services and facilities and a high level of access to the major road networks and public transport facilities. Adequate perimeter treatment and/or

screening will be required to ensure high quality interfaces with public spaces and any adjoining residential areas or other sensitive land uses, as appropriate”.

5.1.2. In relation to Waste Management, the LAP notes that the Connaught Waste Management Plan provides policy guidance on waste management in County Galway. Best practice in terms of waste management recommends that as much waste as possible is dealt with through reduction, reuse and recycling, with as little as possible remaining to be disposed of. The Council promotes environmental awareness measures, initiatives and campaigns in the local communities through involvement with various groups and organisations and through the implementation of the Green Schools programme - an international programme designed to encourage and acknowledge whole school action for the environment.

5.1.3. Policy on waste management is set out in section 3.6.6., of which the following policies are relevant:

**Policy WM 1 – Waste Management:** It is the policy of the Council to support waste reduction and sustainable waste management through prevention, reduction and recycling and by facilitating the provision of adequate waste infrastructure, such as bring banks, at locations that will not adversely affect residential amenity or environmental quality.

**Policy WM 2 – Waste Management Plan:** Support the implementation of the Connacht Ulster Waste Management Plan 2015-2021, Galway County Council's Litter Management Plan 2015-2018, the National Waste Prevention Programme, the EPA's National Hazardous Waste Management Plan 2014-2020 and any superseding versions of these plans over the lifetime of this Local Area Plan.

## 5.2. Natural Heritage Designations

5.2.1. The subject site immediately adjoins the Lough Corrib SAC (000297).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. An agent for the applicant has submitted a first party appeal against the decision of the Planning Authority to refuse permission. The appeal outlines the response to the reasons for refusal, which is summarised as follows:

- It is submitted that very little assessment of the proposed development was undertaken by the Planning Authority. The proposed development is substantially different to the previous application and has been significantly reduced in scale. No intensification of use is sought, from the permitted 5000 tonnes pa.

#### Reason no. 1

- It is submitted that reason no. 1 does not have regard to the zoning objective for the site, the existing permitted facility and that no intensification of use is proposed.
- The subject application seeks to regularise all matters on the subject site, provide for the manufacture and storage of plastic pellets in warehouse 3 and minor works to boundaries as part of flood improvement works.
- The scale of development being sought is similar to that permitted under PL07.205296 – 5,000 tonnes. Materials and recyclables accepted in warehouses 1 and 2 will be processed in warehouse 3 where permission is also sought for plastic pellets to be manufactured.
- The approved Material Recovery and Waste Management Facility is appropriately located on industrially zoned lands. There is no adverse impact on adjoining lands from the subject facility.
- Warehouse 3 is a relatively small endeavour. Should the Board not consider plastic appropriate, the Board is requested to grant permission for its retention and use as additional processing space.
- The appellant queries the Planning Authority's reference to an "absence of information and intensity of use" within their planning report. The Board is directed to 3.2 of the Applicants planning report submitted with the application

where it is stated that no increase in tonnage is proposed. The 5000-tonne permitted limit will not be breached.

- Following a Court Order warehouse no.s 4 and 5 were removed and a reduction on the tonnages received in line with the parent permission. Some operations were moved to another WERS site. The Applicant is trying to regularise development on the site.
- The additional use proposed in warehouse no. 3 is the manufacture and storage of plastic pellets. This process will use existing machinery and materials, ensuring that there are no additional HGV deliveries. The proposed use is considered environmentally beneficial in terms of using plastic which may otherwise end up in landfill. There is no increased risk to the environment. It is hoped this process will set a benchmark for plastics recycling
- The claim of the Planning Authority that there may be an issue with odour, litter and traffic is unsubstantiated. Clean dry materials are processed, and do not create an odour. The Applicants Traffic and Transport Assessment found that the development has no significant impact on operational capacity on Weir Road or on the N17.

### **Second Reason for Refusal**

- The Board is referred to the submitted Flood Risk Assessment which highlights that the site is not located within the historical flood plain and it is inaccurate to state that the site is prone to flooding.
- The quantum and types of waste processed on site are as per the permitted application (PL07.205296). The provision of warehouse no. 3 does not increase flood risk elsewhere, providing only for a modest extension.
- The FRA identifies the site as being within Flood Zone A and recommends mitigation measures to minimise flood risk.
- The conclusion of the FRA is that as the development is an extension of an existing authorised development the focus of flood mitigation is to minimise risk to people, the environment and property. The proposed development incorporates appropriate flood defence measures to protect against the 1 in 100-

year flood level of 31.34mOD. The site can be considered justified in accordance with the Guidelines.

### **Third Reason for Refusal**

- It is submitted that this is not a valid reason for refusal. The application should have been returned to the Applicant if the Planning Authority could not consider it.
- The proposed development does not increase the quantum of materials on site.
- The proposed development clearly does not come within the parameters of requiring an EIA, however the applicant has prepared an EIA Screening report. The screening report concludes that the proposed project by reason of its scale, nature and location would not be considered to have significant effects on the environment and an EIA is not required.

### **Conclusion**

- The Board is requested to grant permission.

## **6.2. Planning Authority Response**

6.2.1. None on file

## **6.3. Observations**

### **6.3.1. Larkin Engineering:**

- Wish to object to the proposed retention of an illegal building. The issue commenced in 2004 when the subject applicant purchased the site with planning permission. Buildings were erected on either side of the permitted building (maps attached), the site was covered in concrete and a weighbridge was installed.
- A reed bed that was a condition of the recycling permit was removed, leaving the Clare River and Lough Corrib open to pollution.
- The Board previously refused permission on the site PL07.247650.
- Structures on the subject site were attached to Larkin Engineering buildings without permission. This has created a major fire hazard as there is no certified fire wall between the two buildings. The structure was removed but the fire hazard remains as litter has become lodged between the two structures. The wall has no

fire certification and has no planning permission. The County Council could be held accountable for dereliction of duty. There are no sprinkler systems on site.

- The application is for the retention of one building only. Other buildings on site do not have permission.
- The volumes of waste accepted at the site exceeds the licence. This was raised by the previous Planning Inspector. It was also noted by the Inspector that the different processes being carried out was in contravention of the parent permission.
- The site is in a flood plain for the Clare River and the majority of the site is at risk of flooding. The risk of a major environmental disaster is clear.
- All new buildings within the Business Park have the benefit of planning permission with the exception of the subject site. Each permission required a minimum space between buildings to fulfil fire safety standards.
- The development is not being carried out in accordance with the permission granted in terms of hours of operation and the use of the weigh bridge by all trucks.
- WERS staff and customers park on Larkin Engineering land due to the lack of parking on the WERS site.
- Litter from the WERS site causes problems for the Observers premises in terms of blocked gutters and impact on the Larkin's strict waste management policy. If retention permission is granted Larkin are liable to lose their environmental accreditation.
- Litter, debris and dust from the subject site regularly block Larkins rain water harvesting system, destroying the pumps, pipes and filters and making the system inoperable.
- The nature of the WERS business has caused an infestation of rodents and flies. The subject site is not suitable for such a business.
- The queuing and parking of traffic to the WERS facility causes obstruction of the Larkin building and serious disruption to the business.

- Foul odours emitted from the WERS facility has caused Larking staff to leave work. The odours include ammonia and methane which has caused headaches, burning eyes, nose and throats.
- The Board is requested to refuse permission for retention.

### 6.3.2. **Tuam Anglers Association**

- Wish to strongly object to the proposed development.
- The appeal makes reference to a permitted facility, but the Board refused permission for all buildings on site (PL07.247650).
- WERS have admitted (reg. ref. 16/274) that 32,125 tonnes of waste entered the facility over a 16-month period– far in excess of the permitted 5,000 tonnes pa.
- The reed bed system required by planning permission was removed.
- Planning Authority reg. ref. 03/1053 prohibits trucks using the site on a bank holidays and Sundays. The Observers have film evidence of trucks accessing the site on bank holiday Monday 18/03/2019.
- The appellants assertion that the facility is operated within the parameters of the parent permission is rejected. The site does not have permission for use as a waste transfer facility, as submitted by the Appellant on page 4 of their appeal.
- The subject site is in a flood plain and adjoining an SAC. The Applicant has admitted that the site floods but did not provide the required details. The whole site floods, regardless of the number of buildings on it.
- No permission exists for buildings 1,2 or 3 as they were refused permission by the Board. The Appellants submission (section 2.2.2) is incorrect.
- The Board is requested to refuse permission.

### 6.3.3. **Martin J. Moran**

- The Observers field to the south of the subject site floods three to four times a year. The field has been drained by a ditch between the two sites. This was blocked by a 21m long wall along the southern boundary of the WERS site.
- The Observer objects to the extension of this wall.

- Should the Board grant permission, the original ditch must be restored to a depth of 4foot below the field level.
- Operations on the subject site have continued despite the refusal of permission.

## 7.0 **Assessment**

7.1. I consider that the main issues that arise for determination by the Board in respect to this appeal relate to the following:

- Planning History
- Flood Risk
- Environmental Impact Assessment
- Appropriate Assessment.

### 7.2. **Planning History**

7.2.1. The nature and extent of the development on the site has been raised by each of the parties to this appeal. The applicant states that they wish to regularise the situation on site, the Observers state that unauthorised development continues to occur on site. For ease of reference, the planning history and the substantive issues are summarised.

7.2.2. In 2004 the Board granted permission for the change of use of an existing warehouse (building no.s 1 and 2) to use as a materials recovery and management facility (PL07.205296). Issues of note from that permission are that it related to a single building, permitted the processing of 5,000 tonnes pa only, required a reed-bed system to address discharge of water, required all material to be processed and stored indoors and restricted hours of operation to between 0800 and 2000 Monday to Saturday only.

7.2.3. In 2017, the Board refused permission (PL07.247650) for the retention of the existing waste recycling recovery and transfer facility. The Inspector assessing the application noted that the development on site bore no resemblance to what had been granted permission previously. She noted the existence of 4 no. warehouse type buildings, a weigh bridge office, weighbridge, loading bay, shed etc. She also noted that the Applicant admitted that the 5000tonne permitted materials had been

significantly exceeded, with up to 22,000 tonnes being accepted at the facility. She further noted that condition no. 4 of the parent permission was breached as municipal solid waste was being accepted at the site and that the applicant acknowledged that condition no.s 7 (hours of operation), condition no. 6 (storage of materials outside), condition no. 11 (parking of vehicles) were breached. The Inspector considered that a significant intensification of use had occurred on site and that the nature of the use was in contravention of the parent permission. Other substantive issues were raised by the Inspector and ultimately the Board refused permission for reasons relating to the scale and nature of use, that an EIA determination was required and flooding.

- 7.2.4. In the subject application, the planning history is addressed. The agent for the applicant states that subject to a court order on 2017, warehouse no.s 4 and 5 were removed and that warehouse no.s 1 and 2 were deemed 'compliant'. There is no information of how warehouse no. 3 was addressed in the court order. Section 3.2 of the applicants planning report for this current application states that following the removal, operations at the plant were significantly reduced and are now "in line with the permitted development". The applicant notes throughout the submitted documentation that the 5000tonne limit is being adhered to.
- 7.2.5. I note the applicant did not respond to the allegation of unauthorised development and breach of permission raised by the Observers. Of a particular concern is the removal of the reed-bed, which formed part of the permission approved by the Board. I note that in the previous appeal, the applicant stated that the reed-bed was decommissioned as all foul effluent from the facility is now discharged to the Tuam WWTP. Documentation submitted with that application suggested that a flood defence wall for which permission to retain was being sought, was being "built as a mitigation measure to replace the reed bed that was removed". The Inspector considered that the reed bed was removed to make way for unauthorised development and without the benefit of planning permission.
- 7.2.6. Regarding the proposed development for the manufacture and storage of plastic in warehouse no. 3, the Board will note that a detailed explanation of the proposed development can be found only in the AA Screening report, and not in the planning report where it would usually be expected to be found. The AA screening report states that the proposed development in warehouse 3 will be the acceptance and

processing of hard plastic which will be fed in to an extrusion plant, melted and agitated and then extruded into plastic pellets while being cooled by water from the rain-water harvesting tank (part of this application for retention). Once the product is cooled it will be transported by conveyor belt to the bagging plant also within shed 3 where it will be filled into 1 tonne bags for shipment to the customer. The Board will note that this description exactly matches the nature and extent of development that was stated in the previously refused application (PL07.247650) to be occurring in shed 3 at the time. (Section 3.1, page 9 of the AA screening report submitted with PL07.247650).

- 7.2.7. Given that the Board refused permission for the retention of this development in 2017, I see no reason why it is suggested as a “proposed activity” in 2019. It is clear was occurring in 2017 and no evidence that such activity has ceased has been put forward. Further, I can see no reason why the Boards decision to refuse permission in 2017 should be overturned in 2019 when no change in circumstance or policy has occurred in the intervening time period. The Boards decision that this activity (amongst others) was contrary to the proper planning and sustainable development of the area (reason no.1 of the Boards Order refers) remains and should be applied to the subject development.

### 7.3. **Flood Risk**

- 7.3.1. Noting that flood risk formed part of the Board previous reason for refusal, a Flood Risk Assessment Report was submitted with the subject application. The report is a review of the site-specific FRA undertaken for the application made in 2016/ 2017. The report states that as per the designation of the Flood Risk Guidelines, the uses on site namely buildings for warehousing and waste treatment, fall within the Vulnerability Class of ‘less vulnerable development’. According to the report the site is within Flood Zone A (western section) and Flood Zone B (eastern section of the site) as per the Western CFRAM maps and the SFRA for Tuam.
- 7.3.2. The report states that a review was undertaken of justification test undertaken for the previous application in 2016. The proposed development meets Test Criteria 1 due to its location on industrially zoned lands and being a less vulnerable development. The report states that Test Criteria 2 is met as a site-specific FRA was previously carried out, that as the development is existing there is no alternative in a lower-risk

areas and appropriate mitigation measures have been addressed. The report repeats the risks identified in the site-specific FRA as being a risk of ground floor office flooding. The risk is reduced by the installation of a removal flood gate and having main offices on the third floor. The Board will note that the installation of the removable flood gate has not been confirmed by the applicant. The proposed mitigation measure against the mobilisation of contaminants to the adjoining waterbody is the proposed reinforced concrete wall around the northern, western and southern boundaries of the site. The proposed wall has an overall height of 31.64mOD which is noted by the site-specific FRA to be the 1-in-100-year event flood level, including climate change allowance and incorporating freeboard. The final mitigation measure is that as the site does not drain to the River Clare there can be no inundation of the site via drainage pipes.

7.3.3. The report states that the site-specific FRA remains valid for the currently proposed development and that the proposed development meets the justification test criteria. The report concludes that notwithstanding that the site is within Flood Risk A, as the development is an extension to an existing authorised development, the focus must be in minimising flood risk to people, the environment and the property by means of flood defence and preventing mobilisation of contaminants from the site. Therefore, the proposed development can be considered justified in accordance with the Guidelines.

7.3.4. Two items from the previous planning inspectors report remain germane to the currently proposed development. The first is that the applicant argued in that appeal that the proposed development did not require a justification test and the second is her assessment that the parent permission pre-dated the Guidelines and it was questionable whether permission would have been granted had the Guidelines been in place.

7.3.5. In their appeal submission for the current application, the appellant states that the FRA finds that the site is not within a historical floodplain and queries why such a statement as made in the report of the Planning Authority. Notwithstanding that the Board has already determined that the site is on a floodplain of the River Clare and is prone to flooding, I draw the Boards attention to page 3 of the FRA where is clearly states that historical OS maps show the western end of the site as being 'liable to flood' and page 4 of the FRA which clearly states that the site is shown on

pFRA maps and the Tuam Flood Risk Review as being within the zone of the 1-in-100-year flood events.

- 7.3.6. The central argument of the appellant that as the development is existing and authorised, the focus must be on flood mitigation. I reject this argument entirely. First, it has not been definitively demonstrated that all development on site is authorised – see the concern raised regarding the uses in shed 3 in section 7.2 above and the allegation that the required reed-bed system has been removed without the benefit of planning permission and / or an assessment. Secondly the Board has already refused permission, following a similar appeal made for expansion of the facility on the grounds of it being an extension to an existing facility. Thirdly the alternative of ‘do-nothing’ does not appear to have been considered by the applicant. Permission has been already been refused for expansion and intensification. Nothing has been presented that would justify a reversal of that decision. It is recommended that the Applicant, at this stage, concentrate on the required flood mitigation measures necessary for the development permitted under PL07.205296.
- 7.3.7. I note the concern of the Observer regarding consequent impacts on adjoining fields from the applicant’s flood-defence measures. Noting that the review of the site-specific FRA does not address this concern, without evidence to the contrary, it is considered that the proposed extension of the existing wall could seriously and significantly exacerbate the alleged damage.
- 7.3.8. I find no reason or evidence to overturn the decision of the Board under PL07.247650 regarding flood risk.

#### 7.4. **EIA**

- 7.4.1. The EIA Directive 2014/52/EU came into effect on the 16th of May 2017. In accordance with the advice on administrative provisions in advance of transposition contained in Circular Letter PL1/2017, the application must comply with the requirements of the Directive 2014/52/EU.
- 7.4.2. The Board will note that for the purposes of the EIA Directive the term ‘waste disposal’ is interpreted to include ‘recovery’ (Interpretation of definitions of project categories of Annex I and II of the EIA Directive). The subject proposal therefore must be assessed against Class 11(b) of Schedule 5 of the Planning and

Development Regulations 2001, which sets the threshold for installations for the disposal of waste at “an annual intake greater than 25,000 tonnes”. As the proposed development consists of an extension to an existing development, Class 13(a) is also relevant. Class 13 refers to any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would: (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and (ii) result in an increase in size greater than 25%, or an amount equal to 50% of the appropriate threshold, whichever is the greater.

- 7.4.3. The application was not accompanied by an EIAR. The applicant submits that the subject development is a sub-threshold waste facility and an EIA Screening report was submitted with the application. The report provides details of other projects in the area and concludes that there will be no likely significant effects on the environment. Assessed against the use of natural resources, the production of waste, pollution and nuisances, the risk of major accidents and / or disasters, and the risk to human health, the proposed development is found to have insignificant or no risk. The report finds that the natural environment can absorb the proposed development, and that characteristics of potential impacts are insignificant. The conclusion of the report is that the proposed development, by reason of its nature, scale and location would not be likely to have significant effects on the environment and therefore an EIA is not required.
- 7.4.4. As noted above, I do not accept the findings of the FRA , nor am I satisfied that the true scale and extent of development has been presented to the Board for assessment. Further, the proximity of the subject site to the Lough Corrib SAC must be addressed. Therefore, it is considered that there is a significant and realistic doubt as to the likelihood of significant effects on the environment and the subject proposal requires a Screening Determination. The Board will note that an application for the retention of development cannot be considered where a screening determination is required.

## 7.5. **Appropriate Assessment**

- 7.5.1. The northern boundary of the subject site immediately adjoins the boundary of the Lough Corrib SAC (000297).

## **Applicants AA Screening Report**

- 7.5.2. An AA screening report was submitted with the application. The Board will note that while the report has been updated to reflect the proposed development, the assessment is based on the site visits undertaken in 2016 for the previous application (PL07.247650).
- 7.5.3. The report notes the location of the Lough Corrib SAC adjoining the subject site and two further Natura 2000 sites: (Levally Lough SAC 0000295 and Shrulle Turlough SAC 000525) are located 10.6 km and 13.2 km respectively from the site. There are no hydrological connections between the subject site and these European sites and accordingly they are not brought forward for further assessment.
- 7.5.4. The Screening report provides details of the proposed development on site, stating that the site accepts dry recyclables. The proposed development in warehouse 3 will be the acceptance and processing of hard plastic which will be fed in to an extrusion plant, melted and agitated and then extruded into plastic pellets while being cooled by water from the rain-water harvesting tank (part of this application for retention). Once the product is cooled it will be transported by conveyor belt to the bagging plant also within shed 3 where it will be filled into 1 tonne bags for shipment to the customer.
- 7.5.5. The report notes that although an agricultural drainage channel runs to along the western boundary of the site, no outfall pipes from the site discharge to the drain or the adjoining Clare River. All waste water and stormwater from the site is directed to the public foul sewer. Surface water is stored in the 65,000l rainwater tank sought to be retained and is re-used in the process sought to be run in shed 3. Surface water run-off (which may include traffic-generated pollutants) is collected in a system of drainage gullies and diverted through a class-1 full retention silt trap and hydrocarbon / diesel interceptor before being discharged to the foul sewer network for treatment at the Tuam WWTP.
- 7.5.6. The board will note that the AA screening report submitted with the current application and that previously refused (PL07.247650) are largely similar. The reports differ at section 2.3 where the waste management processes at the site are described. The current screening report refers to the acceptance of mixed dry recyclables only. In the previously refused application, the screening report refers to

four types of waste accepted at the site: mixed dry recyclables, plastic, C&D waste and municipal solid waste. The Board will note that the description of the plastic waste accepted matches exactly that referred to the subject application for development in shed 3, as noted in section 7.2 above.

- 7.5.7. The Screening report notes that no species or habitats of qualifying interest to the Lough Corrib SAC were recorded during the site visits in 2016. A brief description of the Lough Corrib SAC and the qualifying interest for which it is designated is presented. The report notes that site specific conservation objectives for the SAC were published in April 2017. The report states that these objectives and the accompanying maps were used to screen out “a number of these qualifying interests” but does list which ones. No direct habitat loss will occur.
- 7.5.8. The potential risks to the SAC of wind-blown deposition of refuse to the adjoining River Clare is not anticipated due to measures such as staff inspection, covering of vehicles and tipping etc indoors. Risk from contaminated surface water is not anticipated due to the fact that no disposal to the water course occurs. Contaminated water will not percolate to the groundwater due to the impermeable surface on site and measures for fuel spills. The proposed flood defence measures will ensure that there is no risk to the sensitive receptors.
- 7.5.9. Of the qualifying interest species, Otter has been recorded 1km upstream. As no bankside activities are proposed, as the river is shielded by the existing berm and as operations occur during the day, the proposed development will not negatively impact the species.
- 7.5.10. The report addresses the cumulative and in-combination effects of the proposed development. The projects assessed are the N17 Tuam By-pass and seven permissions projects within 2km of the WERS facility. The report concludes that none of these projects or plans, by their nature and scale had the potential to act cumulatively and or in combination with the proposed development. The report concludes that there are not likely to be any significant effects on the Lough Corrib SAC as a result of the proposed development.

### **Assessment**

- 7.5.11. I concur with the finding of the Screening report regarding the screening out of other designated sites based on the lack of a hydrological connection.

7.5.12. The NPWS describe Lough Corrib as being the second largest lake in Ireland, with an area of approximately 18,240 ha (the entire site is 20,556 ha). The lake can be divided into two parts: a relatively shallow basin, underlain by Carboniferous limestone, in the south, and a larger, deeper basin, underlain by more acidic granite, schists, shales and sandstones to the north. The surrounding lands to the south and east are mostly pastoral farmland, while bog and heath predominate to the west and north. A number of rivers are included within the cSAC as they are important for Atlantic Salmon. Of relevance to the subject appeal is the River Clare which runs immediately to the north of the subject site and forms the northern boundary of the site. In addition to the rivers and lake basin, adjoining areas of conservation interest, including raised bog, woodland, grassland and limestone pavement, have been incorporated into the site.

7.5.13. Qualifying interests for the site are as follows:

- [3110] Oligotrophic Waters containing very few minerals
- [3130] Oligotrophic to Mesotrophic Standing Waters
- [3140] Hard Water Lakes
- [3260] Floating River Vegetation
- [6210] Orchid-rich Calcareous Grassland\*
- [6410] *Molinia* Meadows
- [7110] Raised Bog (Active)\*
- [7120] Degraded Raised Bog
- [7150] Rhynchosporion Vegetation
- [7210] *Cladium* Fens\*
- [7220] Petrifying Springs\*
- [7230] Alkaline Fens
- [8240] Limestone Pavement\*
- [91A0] Old Oak Woodlands
- [91D0] Bog Woodland\*
- [1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)
- [1092] White-clawed Crayfish (*Austropotamobius pallipes*)
- [1095] Sea Lamprey (*Petromyzon marinus*)
- [1096] Brook Lamprey (*Lampetra planeri*)

- [1106] Atlantic Salmon (*Salmo salar*)
- [1303] Lesser Horseshoe Bat (*Rhinolophus hipposideros*)
- [1355] Otter (*Lutra lutra*)
- [1393] Slender Green Feather-moss (*Drepanocladus vernicosus*)
- [1833] Slender Naiad (*Najas flexilis*)

7.5.14. The main threats to the quality of this site are from water polluting activities resulting from intensification of agricultural activities on the eastern side of the lake, uncontrolled discharge of sewage which is causing localised eutrophication of the lake, and housing and boating development, which is causing the loss of native lakeshore vegetation.

7.5.15. The SAC has site specific conservation objectives. The maps accompanying the document do not show the River Clare or the immediate location of the WERS site as being within the location of any the designated habitats and species. The conservation objectives for the site that relate to water quality and therefore ones which any risk from the subject site to the River Clare could impact are as follows:

- To restore the favourable conservation condition of Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) in Lough Corrib SAC
- To restore the favourable conservation condition of Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoëto-Nanojuncetea* in Lough Corrib SAC,
- To restore the favourable conservation condition of Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp. in Lough Corrib SAC,
- To maintain the favourable conservation condition of Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation in Lough Corrib SAC,
- To maintain the favourable conservation condition of Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (\* important orchid sites) in Lough Corrib SAC
- To restore the favourable conservation condition of Freshwater Pearl Mussel in Lough Corrib SAC
- To maintain the favourable conservation condition of White-clawed Crayfish in Lough Corrib SAC,

- To restore the favourable conservation condition of Sea Lamprey in Lough Corrib SAC,
- To maintain the favourable conservation condition of Brook Lamprey in Lough Corrib SAC,
- To maintain the favourable conservation condition of Atlantic Salmon in Lough Corrib SAC,
- To maintain the favourable conservation condition of Otter in Lough Corrib SAC,

7.5.16. The conclusion of ‘no significant effect’ of the applicants AA screening report was predicated on the proposed flood-defence measures being implemented. Noting my concerns regarding the flood risk posed by the proposed development and my recommendation that such measures form part of an overall decision to refuse permission, it is considered that, in the absence of an NIS, likely significant effects on the adjoining Clare River cannot be ruled out on the basis of objective scientific information. It is considered that on the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Lough Corrib SAC, in view of the site’s Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

7.5.17. The Board will note that this did not form part of the Planning Authority’s reasons for refusal and therefore may be considered a ‘new issue’.

## 8.0 Conclusion

8.1.1. I can find no reason or evidence to deviate from the decision of the Board in 2017 under PL07.247650

## 9.0 Recommendation

9.1.1. I recommend permission be REFUSED for the following reasons:

- 1 Having regard to the location of the subject development and the pattern of development in the vicinity, and having regard to the nature and scale of the subject development, it is considered that the development for which retention is sought would seriously injure the amenities of the area, including existing

neighbouring commercial premises, and would represent an inappropriate form and scale of development at this location. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is on a floodplain of the Clare River and is prone to flooding. The River forms part of the Lough Corrib Special Area of Conservation (site code 000297). Having regard to the Flood Risk Management Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in 2008, and notwithstanding the proposed flood management proposals, it is considered that the expansion of a waste management facility at this location would be inappropriate and would pose an unacceptable risk of serious environmental pollution.
3. Having regard to the nature, scale and extent of development and based on the documentation submitted with the application and appeal, it is considered that a determination, as to whether an environmental impact assessment would have been required if an application for permission had been made in respect of the development concerned prior to the carrying out of the subject development, is required. In such circumstances, and having regard to the fact that the present application is seeking to retain the subject development, it is considered that, pursuant to Section 34 (12) of the Planning and Development Act 2000, as amended, the Board is precluded from considering a grant of planning permission in this instance.
4. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 000297 Lough Corrib SAC, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

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Gillian Kane  
Senior Planning Inspector

08 July 2019