



An
Bord
Pleanála

Inspector's Report

ABP-305044-19

Development	Construction of a storage/warehouse building and all associated site works.
Location	Ardcavan, Co. Wexford
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20190744
Applicant(s)	Kent Stainless (Wexford) Limited
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	S O'Maolmhuaidh
Observer(s)	None
Date of Site Inspection	5 th November 2019
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 5.7073 ha, comprises the Kent Stainless (Wexford) Ltd commercial / industrial complex and is located in Ardavan, Co. Wexford, north of Wexford Bridge and south of Castlebridge, where it occupies a position along the eastern side of the R741 Regional Road to the north of Ardavan Business Park. The units are set back from the public with an extensive landscaped area and access road to the front. Car parking is along the southern boundary of the site with an open yard area to the east and north.
- 1.2. Whilst the surrounding area is peripheral to Wexford town and retains a rural quality, it is characterised by a prevalence of piecemeal development along the approach road to the town which includes a multitude of residential and commercial properties, including several examples of car sales showrooms and the Ardavan Business Park immediately to the south of the site.
- 1.3. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Planning permission is sought for the erection of a storage / warehouse building (631 sqm) together with all associated and ancillary site works at a location to the rear of the established commercial / industrial units along the eastern boundary of the site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Wexford County Council issued a notification of decision to grant permission subject to 4 no conditions summarised as follows:
 - Condition No 1 - Compliance with plans and particulars submitted
 - Condition No 2 – Surface Water attenuation to be designed in accordance with SUDS Manual CIRIA C753; attenuation pond shall be of adequate size to accommodate additional storage requirements; maximum discharge shall

be in accordance with that granted under the current Foreshore License and no surface water shall be discharged onto the public road. Details to be agreed.

- Condition No 3 – Development Contribution
- Condition No 4 – Development Contribution

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** stated that the proposed development of a storage building in association with the existing well-established steel manufacturing plant is acceptable at this location and recommended that permission be granted subject to 4 no conditions. The notification of decision to grant permission issued by Wexford County Council reflects this recommendation

3.2.2. Other Technical Reports

- **Disability Access Officer** – Disability Access Certificate may be required. No stated objection.
- **Chief Fire Officer** - No stated objection.

3.3. Prescribed Bodies

3.3.1. There are no reports from any prescribed bodies recorded on the planning file.

3.4. Third Party Observations

3.4.1. There is one observation recorded on the planning file from S. O'Maolmhuaidh, No 5 Orchard Close, Ardavan (appellant in this case). The issues raised relate to surface water treatment and disposal, foul water treatment, possible improper use of foreshore license MS51/6/136 and noise and dust emission limits.

4.0 Planning History

4.1. There is no evidence of any previous appeal on this site. The following planning history has been made available with the appeal file:

- **20190743** – Wexford County Council granted permission in July 2019 for the erection of alterations to the existing west / south facades including alterations to the existing building entrance and proposed external signage together with all associated auxiliary site works
- **20170610** – Wexford County Council granted permission in June 2017 for the erection of a 163.5sqm finished goods storage together with all associated site works.
- **20170124** – Wexford County Council granted permission in March 2017 for the erection of a 423sqm polishing facility together with all associated site works. The applicant states that this building is similar to that now proposed but that it was never constructed *for various reasons*.
- **20110104** - Wexford County Council granted permission in March 2011 for the erection of a 631sqm advanced laser manufacturing facility incorporating manufacturing area and stores, together with all associated site works.

4.2. Reference is made to the following planning application at the appeal site:

- **20150940** – Wexford County Council granted permission in November 2015 for construction of a foul pumping station including a rising main which will discharge to the public sewer and an access road complete with footpaths and cycle paths on lands at the Ardavan Business Park to the south of this appeal site.

4.3. Reference is also made throughout this appeal to the following recent appeal at the Ardavan Business Park to the south that may be summarised as follows:

- **ABP-303203-18 (Reg Ref 20181317)** – Wexford County Council issued a notification of decision to grant permission for the erection of an industrial unit to include manufacturing area and office accommodation subject to 8 no generally standard conditions. This decision was appealed by a 2 no third parties. The Planning Inspector having considered the appeal recommended that permission be refused for the following reason:

Having regard to the surface water drainage proposals for the site, the Board is not satisfied that the proposed development would not give rise to an increased risk of residual downstream flooding. The

proposed development would, therefore, be prejudicial to public safety and be contrary to the proper planning and sustainable development of the area.

The Board having considered the appeal granted permission subject to 8 no conditions. The following 3 no conditions are of note:

Condition No 2

The use of the proposed development shall be limited to 'light industrial building' as defined by Article 5(1) of the Planning and Development Regulations, 2001, as amended.

Reason: *In the interest of clarity.*

Condition No 3

The developer shall design the surface water attenuation in accordance with SUDS Manual CIRIA C753. The attenuation pond shall be of adequate size to accommodate the additional storage requirements from the proposed development. This shall be carried out and demonstrated on site prior to the commencement of the development. The maximum discharge shall also be in accordance with that granted under the current Foreshore Licence referred to as part of this application. The development shall be carried out in accordance with the agreed attenuation scheme and no surface water shall be discharged onto the public road.

Reason: *In the interests of public health and traffic safety.*

Condition No 4

a) *During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:-*

- i. *An Leq, one hour value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.*

- ii. *An Leq, 15 minute value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.*

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- b) *All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics – Description and Measurement of Environmental Noise.*

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

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative Plan for the area is the **Wexford Town & Environs Development Plan 2009-15 (extended to 2019)**. The site is located in Policy area **Zone 1 Ardcahan or Knottstown / Graanagam**. The site is zoned '**Commercial / Mixed-Use (C1)**' where the zoning objective is *to make provision for commercial & mixed uses*. In accordance with the Zoning Matrix Table included with Map No. 21: '*Master Plan Zones*' it can be confirmed that the development of '*general industrial uses*' would '*not normally be acceptable*' within this land use zoning although '*light industry*' is '*open for consideration*'.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site. The following Natura 2000 sites are located in the vicinity of the proposed development site:
 - The Slaney River Valley Special Area of Conservation (Site Code: 000781), located to the west, south and east of the site. Approximately 1.1km at the closest point to the east
 - The Wexford Harbour and Slobs Special Protection Area (Site Code: 004076), located to the west, south and east of the site. Approximately 0.5km at the closest point to the south.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development comprising a new storage / warehouse building (631 sqm) in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The third party appeal has been prepared and submitted by S. O'Maolmhuaidh, No 5 Orchard Close, Ardavan. The issues raised may be summarised as follows:
- **Discharge of surface water were not permitted by foreshore licence MS51/136** - The developer proposes to discharge surface water from the site using the existing foreshore license. The foreshore license states in Clause 5 that final effluent only can be discharged from the site. It also states that it shall not be used for "any other purposes whatsoever". Therefore, the license cannot be used for surface water discharges. Surface water cannot be discharged using this foreshore licence
 - **Possible inappropriate use of foreshore license and no discharge license in force** – A discharge licence is also required in circumstances where a foreshore license is sought. No discharge license has issued by the Local Authority for the foreshore license in this case. Further a foreshore license cannot be reassigned to a new owner. The license for the existing foreshore licence is ABS Technology Ltd. Kent Stainless (Wexford Ltd) was established in 2000. A new foreshore license is required as the landowner has changed.
 - **Surface Water Treatment & Disposal** – There is no evidence of a proposed hydrocarbon operator to cater for the surface water form the paved areas. A suitable operator is required. There are no design details for hydrocarbon separator or surface water attenuation system.

6.1.2. The appeal was accompanied by the following:

- Department of Agriculture Fisheries & Food General Guidance Notes & Foreshore FAQs
- Copy of Foreshore License

6.2. Applicant Response

6.2.1. The first party response to the appeal has been prepared and submitted by Ian Doyle, Planning Consultant and may be summarised as follows:

- The subject site is suitably zoned to accommodate the development proposed and is located in an area characterised by similar development. The proposed development while minor in nature will greatly improve onsite operations allowing for improvements, upgrades and additional workspace to facilitate Kent Stainless taking on a new contract worth €21m. these upgrades will result in direct employment of 35 people.
- The foul pumping station permitted (Reg Ref 20150940 refers) will serve Kent Stainless and adjoining site eventually connecting all associated foul waste to the town treatment system. It is stated that the applicant has an “agreement in principle” from Irish Water in place for same.
- Condition No 2 (Surface Water) sought that the maximum discharge be in accordance with that granted under the current Foreshore License with details to be agreed. Report on the Disposal of Storm Water from Proposed Development attached. As Kent Stainless and Ardavan Business Park both have separate attenuation arrangements (as detailed by drawings permitted by ABP-302509-18) the proposed attenuation pond has been designed to cater for the development and associated hard standing area only.
- The appellant is a regular objector to developments in the vicinity of Orchard Lane. The Board is referred to ABP-303203-18 which permitted attenuation with final discharge to foreshore and concluded that:

... the Board was satisfied that the proposed development would not give rise to an increased risk of residual downstream flooding.
- The grounds of appeal are not applicable to legislative control under the Planning and Development Acts or Regulations and the Board are

respectfully requested to dismiss them as much. Paragraph 7.8.2 of the Inspectors report associated with ABP-303203-18 states the following:

With regards to any requirements for the applicant to obtain a foreshore and / or discharge license, it is my opinion that such matters are subject to other regulatory control / legislative provisions and thus are not pertinent to consideration of the subject appeal.

- Kent Stainless, Ardavan Business Park and the adjoining lands (ABP-303203-18) are all within the ownership of the applicant. Contrary to the claims of the appellant, the Foreshore License has not changed ownership.
- The Foreshore License is governed by the 1933 Foreshore Act and not the Planning & Development Acts.
- A discharge license issued by Wexford County Council is in place for Ardavan Business Park to the foreshore.
- No works to date carried out by the applicant have resulted in or contributed to flooding on Orchard Lane in the general area. All surface water associated with the subject site, and Ardavan Business Park is appropriately attenuated with minimal final discharge to foreshore.

6.2.2. The response was accompanied by a Report on Disposal of Storm Water from Proposed Development at Ardavan, prepared by John Creed & Associates, Civil and Structural Engineers.

6.3. **Planning Authority Response**

6.3.1. No submission recorded on the appeal file.

6.4. **Observations**

6.4.1. There are no observations recorded on the appeal file.

6.5. **Further Responses**

6.5.1. The response from the first party was cross circulated to relevant parties. To this end a further response from the appellant; S. O'Maolmhuaidh, No 5 Orchard Close, Ardavan has been submitted. Additional comments are summarised as follows:

- Kent Stainless have no legal basis for using the foreshore license issued to ABS Technology. A new foreshore license is required as the licence has changed.
- The discharge license permits the discharge of effluent only.
- If the development proceeds, then the rate of discharge flow through the outfall will increase. Therefore, the assimilative capacity of the waters will have to be reassessed on the basis of the increased flows. This has not been done.
- Based on the map provided with the Foreshore License the outfall pipe is located in the Wexford Harbour and Slobs SPA. The proposal to discharge surface water will affect the SPA.
- The outfall is in a location with shallow waters with little dilution and dispersal due to the considerable distance to open waters.

7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Surface Water
- Other Issues

8.0 Principle

8.1. Permission is sought for the construction of a storage / warehouse building (631 sqm) together with all associated and ancillary site works at a location to the rear of the established industrial premises of Kent Stainless (Wexford) Ltd. It is stated that the storage unit is important in terms of improvement to the overall onsite operations and will facilitate the removal of storage areas within the main manufacturing and polishing facility allowing for improvements, upgrades and additional workspace to facilitate Kent Stainless taking on a new contract.

- 8.2. The operative Plan for the area is the Wexford Town & Environs Development Plan 2009-15 (extended to 2019). The site is located on lands zoned 'Commercial / Mixed-Use (C1)' where the zoning objective is to make provision for commercial & mixed uses' and where light industry' is 'open for consideration'. As documented the proposed development will facilitate the expansion of a long established industrial business and will facilitate expansion and support a major employer in Wexford Town while generating additional employment. Overall I consider the proposed development to be ancillary to the established use on the site and therefore consider the proposed development to be acceptable at this location.
- 8.3. Reference is made throughout this appeal to a recent appeal at the Ardcavan Business Park to the south of this appeal site where the Board granted permission for the erection of an industrial unit (ABP-303203-18 (Reg Ref 20181317) refers). Condition No 2 of that decision required that the *use of the proposed development be limited to 'light industrial building' as defined by Article 5(1) of the Planning and Development Regulations, 2001, as amended*. In this regard the Board will be aware that "*light industrial building*" means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;. Light industrial as defined is compatible with the established uses on site. It is therefore recommended that should the Board be minded to grant permission that a similar condition be attached.
- 8.4. While I note the applicants statement that as this is a storage building, being built within an existing commercial development there will be no additional noise factors to mitigate against it is recommended that an operational noise condition similar to No 4 attached to ABP-303203-18 (Reg Ref 20181317) (Ardcavan Business Park) be attached. The full wording of this condition is set out in Section 4.0 Planning History above.

9.0 **Surface Water**

- 9.1. There will be no additional loading to the existing wastewater disposal system from the storage building. It is stated that surface water is not simply discharged to sea

via foreshore license as suggested by the appellant but will be attenuated on site in an open pond and limited to the maximum “greenfield” discharge rate required by the Council. In addition, appropriate filtration through the use of oil / fuel interceptors are also proposed. A silt trap has not been proposed as the attenuation pond will function in this regard.

- 9.2. Condition No 2 (Surface Water) of the notification of decision to grant permission issued by Wexford County Council required that the maximum discharge be in accordance with that granted under the current Foreshore License with details to be agreed. It is noted that this condition is the same wording as Condition No 3 as attached by the Board to ABP-303203-18 (Reg Ref 20181317) (Ardcavan Business Park). The full wording of this condition is set out in Section 4.0 Planning History above.
- 9.3. In this regard the first party response to the appeal was accompanied by a Report on Disposal of Storm Water from Proposed Development at Ardcavan, prepared by John Creed & Associates, Civil and Structural Engineers. Section 3 of the report states as follows:

It is proposed to attenuate the storm water generated in the 1 in 100 year storm in the same attenuation system as the 1 in 30 year storm. Accordingly, it is proposed to provide storm water attenuation for the development in an open pond with capacity of 96.1m³ and the outlet for same fitted with flow control device to limit the flow to a conservative 1.0m³.

..... attenuated flow shall discharge to the existing sump and pump chamber which in turn will discharge attenuated water to sea under the parameters of the existing foreshore license.

- 9.4. Kent Stainless and Ardcavan Business Park both have separate attenuation arrangements the proposed attenuation pond has been designed to cater for the development and associated hard standing area only.
- 9.5. There is a foreshore license in place serving Kent Stainless and Ardcavan Business Park. It is stated that this foreshore license was granted in 1988 and has been subject to ongoing review most recently in September 2018. It is further stated that Kent Stainless, Ardcavan Business Park and the adjoining lands are all within the ownership of the applicant and that contrary to the claims of the appellant, *the*

Foreshore License has not changed ownership. It is submitted that the Foreshore License is governed by the 1933 Foreshore Act and not the Planning & Development Acts. It is noted by the appellant that there is a discharge license issued by Wexford County Council in place for Ardcahan Business Park to the foreshore.

- 9.6. Having regard to the information available on file I am satisfied that the attenuation, treatment and discharge of surface water is acceptable and that this the development will not contribute to or exacerbate the risk of water pollution as a result of same. Should the Board be minded to grant permission it is recommended a condition be attached similar to Condition No 3 (Surface Water) as attached by the Board to ABP-303203-18 (Reg Ref 20181317) and which is the same as Condition No 2 (Surface Water) of the notification of decision to grant permission issued by Wexford County Council.
- 9.7. With regard to any requirement for the applicant to obtain a foreshore and / or discharge licence, it is my opinion that such matters are subject to other regulatory control / legislative provisions and thus are not pertinent to consideration of the subject appeal.

10.0 Other Issues

10.1. Appropriate Assessment

- 10.1.1. From a review of the available mapping (including the website of the National Parks and Wildlife Service) it is apparent that whilst the project site is not located within any Natura 2000 designation, there are a number of protected sites within the wider area, including the Slaney River Valley Special Area of Conservation (Site Code: 000781) and the Wexford Harbour and Slobbs Special Protection Area (Site Code: 004076), approximately 500m south of the site.
- 10.1.2. Having regard to the location of the project outside of any Natura 2000 designation, and the separation distances involved, it is clear that the project will not directly impact on the integrity of any European Site (such as by way of habitat loss or reduction).
- 10.1.3. However, by employing the source / pathway / receptor model of risk assessment consideration needs to be given to the discharge of surface water from the project to

the existing sump and pump chamber on site which in turn discharges to the sea at a location to the east of the appeal site and a point that is within the Slaney River Valley Special Area of Conservation (Site Code: 000781) and the Wexford Harbour and Slobs Special Protection Area (Site Code: 004076).

10.1.4. As stated previously there is no additional foul sewerage generated as a result of this project. Further there is no evidence of new or additional water usage (and associated disposal) proposed in the new storage unit (plans and drawings submitted refer). It is stated that surface water will be attenuated on site in an open pond and limited to a discharge rate of one litre per second which is lower than the maximum “greenfield” discharge rate required by the Council. In addition, appropriate filtration through the use of oil / fuel interceptors are proposed. A silt trap has not been proposed as the attenuation pond will function in this regards.

10.1.5. Having reviewed the available information, and following consideration of the ‘source-pathway-receptor’ model, I am satisfied given the nature and scale of the development proposed, the site location outside of any Natura 2000 designation, the separation distances involved between the site and nearby designations, and the surface water drainage arrangements proposed whereby runoff from the development will be attenuated and limited to a maximum ‘greenfield’ discharge rate (in addition to the inclusion of oil / fuel interceptors), the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 sites.

10.1.6. Accordingly, it is reasonable to conclude, having regard to the nature and scale of the proposed development comprising a new storage / warehouse building (631 sqm) in a serviced urban area and its distance 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.

10.2. **Development Contributions** – Wexford County Council has adopted a Development Contribution scheme; Wexford County Council Planning Authority Area Development Contribution Scheme 2018, under Section 48 of the Planning and Development Act 2000 (as amended). I have considered the sections entitled “Exemptions” and “Incentives (Discounting / Credit)”. The proposed development

does not fall under the exemptions / incentives listed in this scheme. Accordingly, it is recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

11.0 Recommendation

11.1. It is recommended that permission be **granted** subject to the reasons and considerations set out below.

12.0 Reasons and Considerations

12.1.1. Having regard to the zoning of the site, the nature and scale of the proposed development, and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. Reason: In the interest of clarity.
2.	The use of the proposed development shall be limited to 'light industrial building' as defined by Article 5(1) of the Planning and Development

	<p>Regulations, 2001, as amended.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The developer shall design the surface water attenuation in accordance with SUDS Manual CIRIA C753. The attenuation pond shall be of adequate size to accommodate the additional storage requirements from the proposed development. This shall be carried out and demonstrated on site prior to the commencement of the development. The maximum discharge shall also be in accordance with that granted under the current Foreshore Licence referred to as part of this application. The development shall be carried out in accordance with the agreed attenuation scheme and no surface water shall be discharged onto the public road.</p> <p>Reason: In the interests of public health and traffic safety</p>
4.	<p>(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:-</p> <p>(i) An Leq, one hour value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.</p> <p>(ii) An Leq, 15 minute value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.</p> <p>At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.</p> <p>(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics – Description and Measurement of Environmental Noise.</p> <p>Reason: To protect the residential amenities of property in the vicinity of the site.</p>
5.	<p>Comprehensive details of the proposed public lighting system to serve the development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed lighting</p>

	<p>system shall be fully implemented and operational before the proposed development is made available for occupation.</p> <p>Reason: In the interest of public safety and visual amenity</p>
6.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Mary Crowley

Senior Planning Inspector

28th November 2019