



An
Bord
Pleanála

Inspector's Report ABP-306161-19

Question	Whether the use of an existing industrial site and buildings as a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is or is not development and is or is not exempted development
Location	TATA Steel Site, Tivoli, County Cork
Referral	
Referred by	Cork City Council
Owner/Occupier	Waste Recovery Services (Fermoy) Ltd.
Date of Inspection	24 th March, 2020
Inspector	Kevin Moore

1.0 Introduction

- 1.1 On 12th December 2019, Cork City Council made a submission to the Board, under section 5 of the Planning and Development Act, seeking confirmation that the use of an existing industrial site and buildings for a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development.
- 1.2 The question referred to the Board is understood to be asking the Board whether the use of an existing industrial site and buildings as a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is or is not development and is or is not exempted development.

2.0 Site Location / Description

- 2.1 The site relating to the referral is located within the Tivoli Industrial Estate, which is located between the River Lee and the N8 Cork to Dublin Road, and is on the east side of Cork City. The Cork to Cobh railway line is located to the north of the site and runs parallel with the N8. Access to the industrial estate is via the Silversprings Junction flyover on the N8.
- 2.2 The site contains a large building with an office annex that was formerly in use by TATA Steel with associated parking and marshalling yards. The site is bounded by the industrial estate access roads to the north and west and by the Port of Cork shipyards and warehouses to the south and east.

3.0 The Question

- 3.1 The question before the Board is:

Whether the use of an existing industrial site and buildings as a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is or is not development and is or is not exempted development.

4.0 The Referrer's Submission

4.1 The following is submitted from Cork City Council:

- In reference to the site's planning history, it is noted that neither of the parent permissions explicitly permitted a 'factory' or established the principle of the undertaking of 'industrial processes' on the site.
- It has not been established that the previous use of the site by Tata Steel has not been abandoned.
- The proposed use does not accord with the definition of 'Industrial Process' as set out in Article 5(1) of the Planning and Development Regulations.
- It is not clear whether the site will be used for the deposit of material explicitly excluded from exempted development provisions by section 3(2) of the Planning and Development Act.
- It has not been established that the proposed use is not a material change of use.
- In the absence of detail regarding the proposed use, specifically measures to be taken to limit off-site impacts and having regard to the location of the site relative to European sites and related watercourses and to the nature and scale of the development concerned, it is not possible to determine whether the proposed use will impact on the integrity of the Cork Harbour SPA and the Great Island Chanel SAC.

4.2 The submission concludes that the use as an RRRC and ancillary storage is development and is not exempted development.

4.3 Details submitted with the referral included copies of planning permissions associated with the site's planning history and a copy of a submission forming an application to Cork City Council from Waste Recovery Services (Fermoy) Ltd. seeking a declaration on the question to which the referral relates.

5.0 Response by Waste Recovery Services (Fermoy) Ltd.

The response may be synthesised as follows:

5.1 Introduction

- The new industrial use being considered consists of returning waste materials to the economy. The proposed use will consist of the processing of these materials to an 'end of waste status' material or product as well as an ancillary short term storage of materials on the site. The primary issues relate to the definition of 'Industrial' as it applies to the nature of both the permitted and proposed use.

5.2 The 1974 Permission and Explicit Use as a Factory for Industrial Processes

- The details of an application in 1974 are lacking when compared to today's applications. The 1974 application notes the site is at Tivoli Industrial Estate. The site includes a building of c.3,500m², is beyond what would have been required for a depot, and would have been used for steel fabrication.
- Having regard to Article 5(1) of the Planning and Development Regulations and the definitions of "industrial building" and "industrial process", steel fabrication complies with the definition of an "industrial process".

5.3 Abandonment of Tata Steel Use

- The TATA Steel site has been inactive for a number of years.
- Reference is made to Molloy & Others-v-The Minister for Justice which addresses the validity of a planning permission when a use has ceased for a period of time. The development has always been used for industrial purposes as granted by Ref. Nos. 73/4551 and 77/6677. There has been no material or structural alteration to the land or property which would render any original permission incapable of being implemented. Therefore, the industrial and ancillary uses permitted by the Council under these

planning permissions have not been lost or abandoned and remain in effect.

5.4 The Definition of 'Industrial Process'

- Waste materials will be used to produce recycled aggregate, solid recovery fuel (SRF), and biomass fuel. The production of these materials is consistent with the definition of an 'Industrial Process'.
- There is no detail in the Council's rationale for not considering the proposed use as an industrial process as the proposed processes will all result in the making of an article.

5.5 Use of Material Explicitly Excluded from Exempted Development Provisions

- The Council has queried whether section 3(2)(b)(iii) of the Planning and Development Act applies to the proposed use. This specifically references the 'deposit' of various materials and it infers the long-term storage of these materials at this location.
- The processes proposed are a resource recovery process. As with any industrial use, materials will be temporarily stored on site. They will be stored in accordance with a waste permit, where required. No material will be 'deposited' on site. All storage will be temporary in line with production of the recycled aggregate, SRF and biomass fuel.

5.6 Material Change of Use

- Reference is again made to the definitions of "industrial building" and "industrial process" in the Planning and Development Regulations.
- The proposed industrial use constitutes the processing of waste material into three new materials or 'articles'. Each of the articles resulting from the processing of the waste material adheres to the definition of an industrial process and, therefore, the use of the premises for manufacturing and ancillary storage falls within the definition of an industrial process.

- The permitted use of the site is also industrial and, therefore, the use of this existing industrial site and buildings for a RRRC and ancillary storage does not constitute a material change of use, is therefore not development, and consequently does not require planning permission.

5.7 The respondent concludes that, having regard to the planning history, the provisions of the Planning and Development Regulations, and the case law cited in its submission, that the use of the existing industrial site for the RRRC and ancillary storage is not development as it does not constitute a material change of use.

6.0 Statutory Provisions

6.1 Planning and Development Act 2000 (as amended)

Section 2(1)

In this Act, except where the context otherwise requires—

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*;

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3

3.—(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

(2) For the purposes of *subsection (1)* and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders’ waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

Section 177U

(9) In deciding upon a declaration or a referral under *section 5* of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

6.2 **Planning and Development Regulations, 2001 (as amended)**

PART 2 - Exempted Development

Article 5(1)

In this Part - ...

“industrial building” means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

“industrial process” means any process which is carried on in the course of trade or business, other than agriculture and which is –

- (a) for or incidental to the making of any article or part of an article, or
- (b) for or incidental to the making, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,

and for the purposes of this paragraph, “article” includes –

- (i) a vehicle, aircraft, ship or vessel, or
- (ii) a sound recording, film, broadcast, cable programme, publication and computer programme or other original database;

“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;

“repository” means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would – ...

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, ...

Article 10(1)

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Schedule 2

Part 1 Exempted Development – General

Column 1 Description of Development	Column 2 Conditions and Limitations
<i>Development for industrial purposes</i> CLASS 22 Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process	The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.

Part 4 Exempted Development – Classes of Use

CLASS 5

Use as a wholesale warehouse or as a repository.

7.0 Planning History

7.1 I note the following planning history relating to the site:

P.A. Reg. No. T.P. 4551

Permission was granted for the erection of a steel stock depot, offices, etc. at Tivoli Industrial Estate, subject to 4 conditions, on 26th February 1974.

P.A. Reg. No. T.P. 6677

Permission was granted for an additional covered area at the existing steel depot at Tivoli Industrial Estate on 24th March 1977.

8.0 Assessment

8.1 Introduction

8.1.1 Prior to assessing the question before the Board, I note that the level of information relating to the existing and proposed uses are somewhat limited. The lack of any comprehensive understanding of pertinent issues include:

- There is no clear understanding of what processes were undertaken in the original TATA Steel premises;
- There is lack of clarity on when TATA Steel ceased to operate on the site;
- There is no definitive information on the precise nature and extent of the proposed use – e.g. types and volumes of materials to be imported onto

- the site, the sources of the materials, the destination of the materials, the nature and extent of proposed 'processing', the handling, management and storage of materials, waste generation and waste management, etc.
- There are no details on the works necessary to allow the new use to function.

8.1.2 Notwithstanding the above, I consider that, based upon what is known, the Board remains in a position to address the question raised.

8.2 The Question of 'Development'

8.2.1 I have alluded above to the lack of details on necessary works to allow the proposed new use to function. Having regard to the existing condition of structures on this site, requirements for upgrading, and necessary improvements to allow the building to function to meet the needs of those occupying the site and to meet the needs of the proposed activities on the site, it is anticipated that "works" would be required on this site. Such acts of construction, alteration, repair, etc. would fall within the meaning of "works" defined in section 2(1) of the Planning and Development Act. Notwithstanding this observation, I acknowledge that the question before the Board relates to 'use'.

8.2.2 In accordance with section 3 of the Planning and Development Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land. With regard to the question of 'use', it is apparent that the proposed change of the TATA Steel site to a Resource Recovery and Recycling Centre constitutes a change of use to the activities at this site. The question of a 'material' change will be addressed later in this assessment.

8.3 The Question of Exempted Development

8.3.1 The Site History

I note that there are two previous planning applications relating to this site as follows:

P.A. Reg. No. T.P. 4551: Permission was granted for the erection of a steel stock depot, offices, etc. at Tivoli Industrial Estate, subject to 4 conditions, on 26th February 1974.

P.A. Reg. No. T.P. 6677: Permission was granted for an additional covered area at the existing steel depot at Tivoli Industrial Estate on 24th March 1977.

It is reasonable to assume that the first permission constitutes the parent permission for this site and that the latter relates to an extension of that permitted development.

The Order relating to P.A. Reg. No. T.P. 4551 describes the development as:

Erection of steel stock depot, offices etc at Tivoli Industrial Estate.

In accordance with plans and particulars submitted on 27th December, 1973.

I note that no plans and particulars relating to that application are available. However, I acknowledge the description of the development that was permitted. It is apparent that the key components of the development included a 'steel stock depot' and 'offices'. It may be reasonable to assume that the depot constituted the principle development and the offices were an ancillary and integral part of the functioning of the new development as a steel stock depot.

It is anticipated that the permitted development was a depot that accommodated steel stock. I consider it reasonable to determine that 'stock' would constitute an accumulated supply of a particular item, product, material, etc. Examples of definitions of 'depot' include:

"a place where large quantities of goods are stored" (Oxford English Dictionary)

"a place where large amounts of raw materials, equipment, arms, or other supplies are kept until they are needed" (Collins English Dictionary)

"a building where supplies or vehicles, especially buses, are kept" (Cambridge Dictionary)

"a place for storing goods or motor vehicles" (Merriam-Webster)

Having regard to the permission that was issued under Planning Permission T.P. 4551 and to an understanding of what constitutes a 'depot', it is reasonable to conclude that the parent permission for the development on this site permitted the erection of a development where steel stock was to be stored. It may also be reasonable to assume that Planning Permission T.P. 6677 permitted an extension of this depot, being a storage facility for steel stock.

Finally, I note the definition of a "repository" as set out in Article 5 of the Planning and Development Regulations as follows:

"repository" means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage

It could reasonably be argued that the permitted structure on this site, comprising a depot that functioned as a store for steel, constitutes a "repository".

8.3.2 Change of Use

Article 10(1) of the Planning and Development Regulations states:

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

It is acknowledged that *Part 4 Exempted Development – Classes of Use* of the Regulations includes:

CLASS 5 Use as a wholesale warehouse or as a repository.

Having regard to earlier considerations, it could be reasonable to determine that the industrial use proposed would be inconsistent with the storage use associated with the depot permitted under Planning Permission T.P. 4551, if such permitted use is considered a 'repository'. It is noted that there are no provisions within Part 4 for a change of use from a 'repository' to an industrial use. The nature and extent of the proposed use could not be construed as exempted development under Article 10, having regard to the proposed use being inconsistent with the use specified in the planning permissions on this site which related to a depot.

8.3.3 What Constitutes an ‘Industrial Building’ and ‘Industrial Process’

It has been ascertained that the site was permitted to be used by TATA Steel as a depot that stored steel stock. While no plans or particulars are available in relation to the permitted development, I am assuming for the purposes of this assessment that the depot comprised a structure and an associated site curtilage, based on what remains on this site. I again note that Planning Permission T.P. 6677 permitted an additional covered area, which implies that the depot had an established covered area for steel stock storage.

In accordance with the Planning and Development Regulations, “industrial building” means:

a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process.

Thus, an industrial building is inherently associated with an ‘industrial process’.

In accordance with the Planning and Development Regulations, “industrial process” means:

any process which is carried on in the course of trade or business, other than agriculture and which is –

- (c) for or incidental to the making of any article or part of an article, or*
- (d) for or incidental to the making, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, “article” includes –*
 - (iii) a vehicle, aircraft, ship or vessel, or*
 - (iv) a sound recording, film, broadcast, cable programme, publication and computer programme or other original database.*

From this definition, a 'process' carried on in the course of trade or business may be seen to include making, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article. While a 'depot' in this instance, which comprises a store of steel stock, may reasonably be understood to have been 'incidental' to the making, repair, etc. of an article of steel, it cannot reasonably be understood to include the 'process' that comprises the making, repair, etc., of such an article of steel. The 'process' for example could conceivably have taken place elsewhere, with the steel stock then being delivered to the depot for storage before being transported onwards for distribution.

In the context of the above considerations, I consider that it is reasonable to determine that the depot constituted a building and associated curtilage that was permitted to store steel stock and was conceivably incidental to processing of steel but that this depot was not permitted to undertake any 'process' in the form of making, repairing, etc. of any articles of steel. Thus, whilst it was 'incidental', no 'industrial process' was permitted to be carried on. Therefore, it would appear reasonable to conclude that the TATA Steel building was not an "industrial building" in accordance with the definition set out in the Planning and Development Regulations because it was not permitted to be used for the carrying on of any industrial process at that site.

Having regard to the above, in the context of the intended Owner/Occupier's reliance on the proposed Resource Recovery and Recycling Centre being a new industrial use, it would be reasonable to determine that the change of use of the site and existing structure from a depot to a Resource Recovery and Recycling Centre, which facilitates an industrial process, would constitute a material change of use.

8.3.4 Abandonment of Use

The planning authority has submitted that it has not been established that the previous use of the site by TATA Steel has not been abandoned. The proposed operator of the Resource Recovery and Recycling Centre acknowledges that the TATA Steel site has been inactive for a number of years. From my site inspection I consider that it is reasonable to ascertain that the building on this site and much of its curtilage appears not to have been in active use for a number of years.

Notwithstanding the above, I submit that the available information on when the site ceased to be used by TATA Steel is inconclusive. It would not be reasonable, based on what is known at this time from this referral file, to make a determination on whether the TATA Steel use of the site has or has not been abandoned.

8.3.5 The Resource Recovery and Recycling Centre Use

At the beginning of this assessment the deficiencies in information on the proposed facility for this site were acknowledged. From what is known, I note from the intended operator of the Resource Recovery and Recycling Centre that the new industrial use would consist of returning waste materials to the economy. The Centre is intended to use waste materials to produce recycled aggregate, solid recovered fuel (SRF), and biomass fuel. It is intended that the materials would be temporarily stored on the site, in accordance with a waste permit where required, and that materials would not be 'deposited' on the site.

I note the Waste Management Act 1996, as amended, and the definitions set out under section 4 of that Act. Section 4(1)(b) includes the following:

“ disposal ” —

(a) means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy, and

(b) without prejudice to the generality of paragraph (a), includes the disposal operations listed in the Third Schedule ,

and “ waste disposal activity ” shall be construed accordingly;

“ recovery ” —

(a) means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy, and

(b) without prejudice to the generality of paragraph (a), includes the recovery operations listed in the Fourth Schedule ,

and “ waste recovery activity ’ shall be construed accordingly;

“ waste ” means any substance or object which the holder discards or intends or is required to discard

The Third Schedule of the Waste Management Act includes the following as a ‘Disposal Operation’:

THIRD SCHEDULE

Disposal Operations

D 12 Permanent storage (e.g. emplacement of containers in a mine, etc.)

The Fourth Schedule of the Waste Management Act includes the following as ‘Waste Recovery Activities’:

FOURTH SCHEDULE

Recovery Operations

1) R1 Use principally as a fuel or other means to generate energy.

From what is understood from the prospective operator, it is reasonable to assume that waste materials would be transported to the site and that recycled aggregate, solid recovered fuel, and biomass fuel would be produced from this waste at this site. The operator understands that this operation would return these waste materials to the economy. It is further understood from the operator that the materials would be temporarily stored on the site and that a waste permit may be required.

Given that it is intended that products would be produced on this site from waste materials that would serve a useful purpose and that the end products would principally be used as fuel, it could reasonably be determined that the intended activity for this site could constitute 'recovery'.

Given that the proposed activity could not be deemed a waste disposal activity, that it could not be construed as permanent storage of any waste, and that it does not relate to any of the disposal operations set out in Third Schedule of the Waste Management Act, it may be reasonable to determine that the proposed activity for the site would not constitute 'disposal'.

I again note section 3 of the Planning and Development Act and, in particular, subsection (2)(b)(iii) wherein it is stated:

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection— ...

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

I am satisfied to conclude from what is known about the proposed activity on this site that this activity would not constitute the deposit of industrial waste, builders' waste, rubbish or debris in accordance with the meaning of section 3 of the Act. It appears evident that waste materials are intended to be temporarily stored, that products produced may also be intended to be temporarily stored, and that waste will not be 'deposited' on this site.

Finally, I note the intended uses, activities and processes associated with the proposed facility. An understanding of these matters brings further clarification on how the change of use of the TATA Steel depot to a Resource Recovery and Recycling Centre would be 'material'.

8.3.6 Impact on the Integrity of the Cork Harbour Special Protection Area and the Great Island Chanel Special Area of Conservation

I note that the planning authority has submitted that it is not possible to determine whether the proposed use will impact on the integrity of the Cork Harbour SPA and the Great Island Chanel SAC. It is suggested that this arises in the absence of detail regarding the proposed use, namely measures to be taken to limit off-site impacts, regard to the location of the site relative to European sites and related watercourses, and having regard to the nature and scale of the development concerned.

I note the following provisions from the Planning and Development Regulations 2001, as amended:

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(b) *if the carrying out of such development would – ...*

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, ...

The Board will note that Part 1 of Schedule 2 of the Regulations, in relation to *Development for industrial purposes*, includes the following:

Column 1	Column 2
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Description of Development	Conditions and Limitations
<p><i>Development for industrial purposes</i></p> <p>CLASS 22 Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process</p>	<p>The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.</p>

It is evident from the details provided by the prospective operator that storage would be associated with the new industrial use. While I have observed that the curtilage of the site is visible from the roads flanking this site, I first note that this industrial estate road is subject to controlled access at the entrance to the estate from the public road network in the form of security. I further note that there is an existing building on this site which is proposed to be utilised for the activities associated with the Resource Recovery and Recycling Centre, potentially inclusive of storage. Acknowledging these observations, I consider that there is potential that materials and products stored externally on the site associated with the new use could be visible from the road network in the vicinity of this site. Given that storage would be an integral part of the intended development for industrial purposes, due regard may reasonably be had to Article 6(1) and Article 9(1)(b)(viiB) of the Planning and Development Regulations.

In undertaking a screening for Appropriate Assessment, I note the following:

- The proposed development would not be located within, or in the vicinity of, any European site.
- The nearest European site would be Cork Harbour Special Protection Area (SPA). The nearest section of this SPA would be some distance to the east at Dunkettle, separated by most of Tivoli Industrial Estate and the Glashaboy River. Another part of the SPA would be distant to the south-

east at Mahon, separated by the Tivoli Industrial Estate and the River Lee. This SPA is designated for a range of wintering birds and there is no evidence that the industrial lands forming the site are used by any of the wintering water birds making up the Special Conservation Interest of this SPA.

- The nearest parts of the Great Island Channel Special Area of Conservation (SAC) would be even more distant, being close to Fota Island and near Glounthaune, separated by significant urban development and infrastructure and lying beyond the above referenced SPA. The Great Island SAC is designated for the protection of Mudflats and sandflats not covered by seawater at low tide and for Atlantic salt meadows. None of these occur on the proposed site.
- The proposed development, being physically separated from the designated SPA and SAC, could potentially have indirect effects on the Natura 2000 sites due to a hydrological link via the River Lee to the south of the Tivoli Industrial Estate.
- The proposed Resource Recovery and Recycling Centre would be located within an industrial estate. This industrial estate would be fully serviced and the proposed development would utilise established structures on this site.

Having regard to the localised nature of the potential effects of the proposed industrial development on this site, to the utilisation of established structures within a serviced industrial estate, and to the significant separation distances and extensive urban fabric between the proposed site and Natura 2000 sites in the wider area, it is reasonable to conclude that, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on any designated European Site. The proposed development of a Resource Recovery and

Recycling Centre would not require an appropriate assessment because it would not be likely to have a significant effect on the integrity of a European site.

9.0 CONCLUSION AND RECOMMENDATION

WHEREAS a question has arisen as to whether the change of use of an existing industrial site and buildings to use as a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is or is not development and is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Cork City Council on the 12th day of December, 2019:

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

- (a) sections 2 and 3 of the Planning and Development Act 2000 (as amended),
- (b) articles 5-11 of the Planning and Development Regulations 2001 (as amended), with particular reference to articles 5(1) and 10(1),
- (c) Part 4 of Schedule 2 *Exempted Development – Classes of Use* of the Regulations,
- (d) The planning history of the site, and
- (e) the submissions of the parties to the referral,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the change of use of a steel stock depot to a Resource Recovery and Recycling Centre constitutes 'development' for the purposes of the Planning and Development Act, and
- (b) the change of use constitutes a material change:

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the change of use of an existing industrial site and buildings to use as a Resource Recovery and Recycling Centre (RRRC) and ancillary storage constitutes development and development that is not exempted development.

Kevin Moore
Senior Planning Inspector
2nd April 2020