



An
Bord
Pleanála

1.

Inspector's Report ABP-307584-20

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| Development | Proposed Change of use of the existing equestrian events & conference centre to light industrial unit for dry foods processing & packaging. |
| Location | Wallslough, Co Kilkenny |
| Planning Authority | Kilkenny County Council |
| Planning Authority Reg. Ref. | 19954 |
| Applicant(s) | Virginia Health Foods Ltd |
| Type of Application | Planning Permission |
| Planning Authority Decision | Granted with conditions |
| Type of Appeal | Third Party |
| Appellant(s) | Wallslough Residents Group |
| Observer(s) | There are 15No. Observations |
| Date of Site Inspection | 1/12/2020. |
| Inspector | Caryn Coogan |

1.0 Site Location and Description

- 1.1. The subject site is 1.52Ha and it is the former Wallslough equestrian centre which is located approximately 4km north of Bennetsbridge village and south of Kilkenny City (6km to the south of the City). It is accessed off the LS6700 circa 450metres from the R700 (Kilkenny to Bennetsbridge Regional Road).
- 1.2. The site is accessed of a narrow secondary road, LS 67000.
- 1.3. The existing site includes a large commercial. building (3510sq.m) with a ridge height of 12metres. Along the road frontage is a number of thatched cottages/ holiday homes, however these are outside of the subject site boundary. There is a parking area adjoining the front building, which caters for circa 18No. cars, and to the west of the commercial building there is a large hardcore overflow carparking area which adjoins a sand arena also.
- 1.4. The site is bounded by a local road, L6700 to the west, by agricultural land to the south and east, and by 8No. holiday cottages and the L6700 to the north.
- 1.5. The site access is located along a bend in the L6700. The access is shared with holiday cottages granted under planning reference 97/396. There is an additional service access along the western site boundary which provides direct access to the hard standing / parking area west of the large commercial building.

2.0 Proposed Development

- 2.1. The proposal is for the change of use from an existing equestrian and events conference centre to a light industrial use for dry food processing and packaging. The application includes for:
 - Proposed internal changes and reconfiguration of internal building layout;
 - 4No. new pedestrian fire gates
 - 2No. new level loading dock new shutter roller doors
 - 2No. new flues
 - Reconfiguration of existing carpark to provide for 20No. spaces and 3No. disabled spaces

- Proposed retention of small side extension
- Proposed internal mezzanine (36sq.m.)

3.0 Planning Authority Decision

3.1. Decision

On the 19th of June 2020, Kilkenny Co. Co. granted planning permission for the proposed change of use subject to 12No. standard planning conditions.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

- The proposed development is located in a rural area, and it is not considered to be a small-scale farm enterprise and is therefore considered to be inappropriate to the location. It would set an undesirable precedent for agricultural buildings to change to light industrial use, served by poor roads.
- The carparking requirement is calculated at 40No. spaces, and there are 24No. on site spaces.
- The products are to be imported, and do not involve the use of local resources, therefore the development would be more appropriately located on zoned land. The proposal is contrary to the policies and objectives of the county development plan.
- A REFUSAL is recommended.

The Senior Planner overruled to the recommendation to refuse on the basis the location included a large, underutilised structure and given the permitted use as an equestrian centre it is reasonable to afford the applicant an opportunity to address the issues before making the final decision. Further information was requested that revealed the following additional technical issues:

- Traffic Survey was carried out in March 2020
- Monthly traffic indicated 21 containers, and 11 rigid trucks
- Truck movements from Dublin Port

- Operating Hours, 5 days per week, 8am to 6pm
- The unit is not open to the public
- An information evening was conducted on 28th of January 2020.

Permission be granted subject to conditions.

3.2.2. **Other Technical Reports**

Roads: Further Information to carry out a 24 hour seven-day traffic survey to include a detailed traffic count on the L6700. Provide origin and destination of deliveries, and hours of operations. Proposals to prevent surface water.

Environment – No objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water : No objections

3.4. **Third Party Observations**

There were 8No. submissions made expressing the following concerns:

- Heavy goods vehicles and traffic movements
- Residential amenity
- Impact of HGVs on damaged road
- Contrary to proper planning and development of the area
- The development should be located on appropriately zoned lands in Kilkenny City.
- Environmental, health and safety impacts – noise, fumes, wastewater and water supply.
- Alternative sites in Kilkenny city and Bennetsbridge.
- Junction at Regional road is very poor
- Light industrial use is unsuitable for a rural area

4.0 Planning History

Planning Reference 97/396

Permission granted to demolish existing sheds to construct 8No. holiday homes, and an equestrian facility. The permission was executed.

Planning reference 03/1467

Permission granted to modernise the existing equestrian facility and to allow the 3530sq.m. facility to be used for public events, public exhibition centre and a conference centre for trade and public exhibitions. Permission to construct an extension to the existing arena building, permission to use part of an outdoor field as a public display area and parking, retention of floodlighting, retention of signage, retention of a service access and a haybarn.

The permission specified 15No. equestrian events per annum with an average attendance of 320No. persons and a maximum attendance of 455. Also permitted were 8No. exhibition events of 1-3 days and 4No. 1-5 days exhibitions.

5.0 Policy Context

5.1. Development Plan

Kilkenny County Development Plan 2014-2020

The site is located in a rural area and has no zoning.

4.6.4 Enterprise and Employment in Rural Areas

Rural areas have a vital contribution to make to the achievement of balanced regional development. This involves utilising and developing the economic resources of rural areas, particularly in agriculture and food, marine, tourism, forestry, renewable energy, enterprise and local services, while at the same time capitalising on and drawing strength from vibrant neighbouring urban areas. In this way rural and urban areas are seen as working in partnership, rather than competing with each other. Rural development has been dealt with in detail in Chapter 6 of this plan. Certain kinds of industry, especially those which involve natural resources and serve

rural communities may, at an appropriate scale, have a role to play in rural development.

6.1

The Council recognises the need to manage rural change and to guide development and will work to:

Maintain and enhance the existing rural community to ensure vibrant sustainable rural areas;

Improve the attractiveness of the built environment in rural towns and villages as places in which to work and live and as locations for industry, services and tourism investment;

Ensure that the rural environment will be respected and that development in rural areas will take place in a sustainable manner;

Promote a broad concept of rural development and not one based solely on agriculture or other dominant natural resource and encourage the sustainable development of resources in such sectors as agriculture, tourism including agri-tourism, forestry, farm diversification, and renewable energy resources.

6.2.3 Diversification

Farming has been diversifying into areas such as horticulture, forestry and agri-tourism. The Council will support the development of agriculturally related industries, which are environmentally sustainable and considered a suitable use, subject to the protection of heritage and amenities. In particular, the Council will encourage the conversion of redundant farm buildings of vernacular importance for appropriate owner-run enterprises. Further detail on economic development within rural areas is included in Chapter 4 Economic Development.

5.2 National Planning Policy

Project Ireland 2040 – the National Planning Framework was published in February 2018, states under National Policy Objective 20 *To enhance the competitiveness of rural areas by supporting innovation in rural economic development and enterprise through the sustainable diversification of the rural economy into new sectors and in particular those with a low or zero carbon output.*

5.2. Natural Heritage Designations

River Barrow and River Nore SAC is located 1.1km from the site.

Thomastown Quarry SAC is located 9.6km from the SAC

River Nore SPA is located 1.1km from the site.

5.3. EIA Screening

Having regard to the planning history of the site, the brownfield nature of the subject site, together with the scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development.

The need for environmental 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

The Wallslough Residents Group has taken this third-party appeal against Kilkenny Co. Co's decision to granted permission for the proposed development.

- Development Plan

The Planner's Report recommended a refusal on the basis it is contrary to the development plan policies, two reasons for refusal were recommended. The first was in respect of the proposed development been located in an unzoned rural area, and such development to be located on suitably zoned lands in strategic locations for Employment and Enterprise. The second was the fact the proposed development was not the type, or scale of industrial development permitted in a rural area and does not serve the local rural community.

The further information received was not considered to be significant and the third parties has no opportunity to comment on it.

The Reasons and Considerations in the decision refer to having regard to the history of the site for an equestrian centre, but did not include the unauthorised use of the premises for trade events. The permission in 2003 only allowed for events to take

place on the premises occasionally with very specific traffic management in place each day.

The applicant did not thoroughly investigate premises within Kilkenny City or Belview Port or the town which have suitably zoned lands and vacant premises. Cillin Hill in Kilkenny City was discounted and a single building in Purcellsinch. The further information did not raise this issue despite it been raised by the third party objections. There are a number of sites presented on appeal located in neighbouring towns. The scale and nature of the applicant's industrial business is not the type of business the development plan envisages or supports in rural areas. It will not serve the local community.

- Alternative Uses

The planning authority should have sought evidence of the owners efforts to find alternative end users before considering the proposed development.

- Precedent

The precedent will completely undermine the county development plan policies towards enterprise and employment. It will encourage owners of large premises in rural areas to seek industrial speculative developments.

- Light Industry

The proposed use is general industrial and not light industry as described by the applicant. The applicant never acted upon the planning permission for a conference and events centre granted under reference 03/1467, therefore that permission should be considered abandoned. The permitted use on the site is an equestrian centres with a pine furniture workshop granted under reference 97/396. The new proposed use of the premises is a major industrial complex.

- Traffic

Permission for conferences and events was granted retention under reference 03/1467 based on occasional use and manual traffic management at the junction of the R7000 and the LS6700. The current application, is based on not generating greater volumes of traffic that those anticipated at the time the permission was granted for the original equestrian centre. At the time the Senior Roads Engineer had strenuous objections to the equestrian centre on traffic grounds. The original

equestrian centre generated very low volumes of traffic, and aside from a number of unauthorised commercial events, there were no further conferences or events that took place after the permission was granted under Ref; 03/1467, so therefore the applicant's traffic analysis is therefore, flawed.

Traffic along the LS6700 has only been generated by houses, local farm activity, occasional visitors to the holiday homes or from the former equestrian centre. The net increase in traffic arising from the proposed development will, therefore be significantly greater than that suggested by the applicant.

In response to the further information, the applicant advised there would be a monthly incoming traffic volume of 21 x 10ft x 40ft containers and 11 10-tonne rigid trucks per month. No evidence was provided to support the basis for the estimation. The volume of HGV traffic is only half the actual total number of traffic movements, and has the potential to be doubled with expansion. A Traffic Impact Assessment was not carried out in order to make an informed decision on the potential impact. The 24 hour/ 7day survey is not reflective of the actual traffic as it was carried out during lockdown restrictions in March 2020.

- Traffic Routes

The main truck movements will be off the M9 motorway (90%) with 10% coming from Rosslare. The applicant has processing plants in Newbridge and Naas, and these are closer to Dublin port, and the current proposal does not comply with the 'Green Ethos'. The alternative sites in Bennetsbridge and Kilkenny city have a more direct and higher standard of access to and from the motorway.

There are 45No. children under 18 years of age living along the road, and they use school buses, and their safety is a priority. Condition No. 4 of the permission is unenforceable, as it seeks to require all vehicles to access the site via a dangerous and substandard road junction.

- Access

Sightlines are below average, and the drawings do not show sightlines distances. There are no details how the trucks will manoeuvre in and out of the entrance.

- Pedestrian / Cyclist Vehicle Safety

The traffic arising from the development will affect other road users, including the local residents out walking, cycle and running clubs, residents. In addition Wallslough lake is a local attraction located opposite the subject site, it is a natural wildlife feature, and the HVG will be approaching the entrance to it from a blind bend.

- Wastewater

Applicant was requested to provide details of wastewater treatment. It is not confirmed if the system granted under planning reference 97/396 was actually installed. No confirmation was provided on the suitability of the existing system to cater for the proposed change of use, instead a condition was attached to conform same.

- Water Supply

The existing facility is on the public mains. The applicant has stated if there is a problem with the water mains, then a bore hole can be provided, yet there is no assessment of the supply.

- Ecology

The application was not accompanied by an Appropriate Assessment Screening. The existing wastewater treatment system is located close to a lake which is upstream of the River Nore (SAC) only 1km from the site. Potential adverse impacts on the SAC cannot be ruled out.

- Other

The residents are also concerned about the noise from factory production and traffic, odours from coking and baking.

6.2. Applicant Response

The response to each item raised in the appeal has been addressed under a number of headings by the applicant's consultants. I will summarise the response under the same headings.

6.2.1 ***The applicant has not undertaken any meaningful research of industrial, enterprise and employment or business park zoned lands as an alternative for the proposal.***

The applicant's response is the scale and nature of the development proposed is appropriate to the site. The planning authority did not require the applicant to search for alternative sites and premises because it considered that was not necessary. There is no requirement under the current county development plan to carry out alternative sites studies.

It is acknowledged that conventional industrial land uses will often choose to be or directed towards existing industrial or enterprise parks, e.g. warehouses, distribution, factories, manufacturing etc. However, in specific cases certain types of light industry are more appropriately located in rural areas especially if amenity impact will be negligible on neighbouring properties. The necessary supporting infrastructure is already established on the site.

The surrounding vicinity has a historical connection spanning many years with milling grains for the production of naturally produced foods, eg Bennetsbridge. The proposed new use (dry foods processing and packaging) is suited to the subject site, and is consistent with the development plan policies for enterprise and employment in rural areas.

The landscaping and the upkeep of the site is very important for the brand Virginia Health Foods Ltd. In addition there is adequate carparking, three phase power, high electrical spec, self contained waste water system, floodlighting, water supply, space for trucks loading/ unloading, proximity to the M9, minimal structural works to be carried out. Many available buildings are not large or have insufficient height to cater for the proposed development.

Development Plan Policy

Section 4.6.4 is relevant stating rural areas have a vital contribution to make to achieve a balanced regional development. This involves utilising and developing the economic resources of the rural areas.

6.2.2 *The proposal is not accurate in referencing 'light industrial' use and is a 'major industrial complex'*

The applicant's response is that the proposal accords with 'light industrial' land use definition as per Planning and Development Regulations 2001-2020

An important consideration is whether the proposed development will result in any detriment to the area due to noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. The proposal will not result in any detriment and can be referred to as light industrial.

On foot of Planning reference 03/1467, numerous events and conferences took place on the site after the permission was granted. There were 15no. equestrian events per annum, 8No. exhibitions and 4No. home events over 1 to 5 days. The applicant fully implemented the permission, and the appellants are incorrect with their facts in this regard. The events ran from 1998 to 2013, however the financial recession impacted significantly on the events sector.

6.2.3 *The proposal represents a traffic safety concern*

The proposed net increase in traffic will be less than the existing permitted development on site.

A financial contribution towards enhancements to the L6700 was conditioned as part of planning references 97/396 and 03/1467, and the works were delivered by Kilkenny Co. Co. The local road network will provide safe and satisfactory access to the site and is fully supported by the Roads Department of Kilkenny Co. Co.

6.2.4 *Wastewater details are insufficient*

The new development will have a maximum of 20No. employees, the loading rate will only be 1,200 litres per day, plus 50 people under the holiday home loading will require 7,500 litres capacity per day.

There is ample capacity on site to cater for the wastewater requirements of the proposal.

6.2.4 The proposal seeks to use a limited amount of water from the public mains. Irish Water have no objections to the proposed development.

6.2.5 *The application was not accompanied by an AA Screening report*

There is a report attached for the Board's consideration.

There is no direct pathway to watercourses that could act as potential vectors for impact on Natura 2000 sites. Having taken into consideration the effluent discharge from the proposed development, the distance between the proposed site and

designated sites, lack of hydrological link, it is concluded the proposal would not give rise to any significant effects to designated sites. A NIS is not required.

Furthermore, there is no direct open water linkage between the River Nore Natura 200 site and Wallslough lake. The proposal will not result in any changes to the current regime in terms of water quality or quantity.

6.2.6 Responses to other concerns raised in the third party appeal area summarised as follows:

- The planning conditions attached to the permission can safeguard against any potential amenity impacts arising in terms of noise or odour. There was a report commissioned in response to the appeal on the issue and it was found that there are limited number of deliveries, and the loading/ unloading area is enclosed, creating neutral noise emissions that will not result in any adverse impact.
- Odours will be controlled and adverse impacts is not expected form the development.
- The general appearance of the site is kept and maintained to a very high standard. An additional landscaping plan can be provided however the site has an attractive rural setting.

Accompanying the submission is An Appropriate Assessment Screening, Hydrological and Hydrogeological Qualitative Risk Assessment, Traffic Report, Odour Risk Assessment.

6.3. **Planning Authority Response**

The structure on the site is underutilised. The planning history is relevant because there is a permitted and established diversification at the premises. It is considered the proposal would not undermine the development plan, permissions allowed for 8No. holiday homes, a joinery manufacturing business, and equestrian arena, and events centre and a conference facility.

The level of traffic and associated traffic movements are documented on the file and have been assessed by the roads design section of Kilkenny Co. Co.

A screening exercise was carried out by the planning authority, and there will no significant impact on any Natura 2000 site.

6.4 **Appellant's Response to Applicant's Response**

There were no new issues raised in the submission. In order to avoid undue repetition, I will briefly summarise the salient points raised in the submission:

- The equestrian events referenced in the response are not dated. There is no evidence of the construction trade or health promotion events listed for 2004 and 2005 save for brochures, the photographs submitted are not dated. The statement that events ran for 15 years is false although some residents do recall equestrian events up until 2009. Events earlier than 2004 were in breach of planning permission as 03/1467 was only permitted in April 2004. The permitted use under reference 03/1467 was abandoned, and Dublin Co. Co. Vs Tallaght Block Company.
- The investigation of alternative sites in Kilkenny city by the applicant appears to be an exercise to support the location at Wallslough.
- It is not the role of the planning authority to be seen promoting the proposal there is an expectation as an environmentally conscious health food producer or a 'green' company image. While there is no development plan requirements to investigate alternative sites, there is an expectation that industrial development would be located in industrial areas. A current case with the Board is cited 308123, whereby Kilkenny Co. Co. refused the development of an expanding rural enterprise because it should be located on industrial zoned lands.
- The proposal is not a general industrial use. The submitted odour and noise reports do not allow for future expansion of the business nor do they take into account the applicant's existing business. There has been no equestrian traffic on the local road since 2009, and no events on the premises since 2005.
- The Traffic Report submitted on appeal claims that the proposal will have a net positive impact. The baseline for the traffic impact study is flawed especially since the counts were taken during the first lockdown restrictions in

March 2020. There have been no alignment improvements to the local road or the junction with the regional road. The permitted use of the R700 junction is for infrequent events not the volume of daily traffic currently proposed. It is acknowledged by the applicant that the parking provision on site is inadequate, and overflow will take place onto the rear service yard.

- No account has been taken in the Appropriate Assessment Screening report of potential for groundwater contamination, and seepage via the underlying aquifer to indirectly to the River Nore SAC. There was no mention of petrol and oil interceptors, or impact of additional traffic on the permeable surfaces, and percolative capacities were not tested.

6.5 Observations

The Observations received contain the same concerns as the third party appeal. A brief summary of the submissions is as follows:

The 15No. Observers are:

Liam and Brigid Barton

Mark and Mary Hennessy

Bill Keogh

Cyril Egan

Maeve Power

Aidan and Leigh Anne Kelly

Kate and Pat Millea

Ollie Millea

William and Mary Grace

Aurellia Glynn

Catherine Millea

Neil and Betty Lahart

Kathleen OSullivan

Martin and Mia Phelan

Niamh and Ger Walsh

- The proposed development will not have a less impact on the receiving environment. There have been no activity on the site since 2013, a fact the applicant acknowledges in the appeal response. Therefore, how could the new development proposal have a less impact on the receiving environment when nothing has happened on the site for over seven years.
- The Planning report recommended refusal of the development which was overruled. The proposed development is in direct conflict with the county development plan. It would significantly harm the residential and visual amenities of the local residents with additional health and safety concerns. The Senior Planner did not address the contravention to the development plan which requires such developments to be located on appropriately zoned industrial areas in towns and villages. The proposed development is an international industrial food manufacturing facility and is completely inappropriate in this area and entirely contrary to the Kilkenny County Development Plan 2014.
- The proposal is a change of use and an intensification of use of the site, and it is incredible an alternative site was not envisaged as suitable, e.g. a site in Ballyhale close to the M9. If the use is permitted it will lead to the industrialisation of a largely rural area and conflict with the development plan. There have been many houses built in the area since 2003 with over 50 school going children living along the road.
- The junction of LS6700 and R700 is dangerous. The local road is unsuitable for the traffic associated with the proposed development, it is narrow, poorly aligned and the proposed entrance to the site is deficient in sightlines. A newspaper article is cited expressing concerns over the 90 houses along the road. There will be commercial trucks along the road.
- Bill Keogh's farm is located close to a bend on the road. High volumes of traffic and trucks will make it difficult for him to use his entrance and walk out of the grandmothers house. Photos of an articulated truck are submitted to demonstrate the concern that the road infrastructure is not suitable.

- Numerous suitable buildings in Kilkenny and neighbouring counties, the proposed rural location is not justifiable.
- During organised events, the local residents could tailor their movements on the L6700. The current proposals envisages 84 HGVs per month entering and leaving the facility. This will impact on the movement of his livestock on a daily basis.
- Why is the water usage not detailed, and high volumes of water is not available during summer months, there will be insufficient water for their livestock during summer shortages.
- Does the development require a Licence from the EPA
- Groundwater has an underlying vulnerable aquifer, therefore there will be an impact on drinking wells in the area and the SACs. There is a karst landscape and untreated water could reach the adjoining lake and pollute the River Nore. Wallslough Lake is fed from an artisan well which comes to the surface at this location.
- Noise – given the proposed development will introduce significant levels of traffic into a tranquil rural area, there will be an increase of noise pollution by approximately 72%. In addition, the two ovens may work 24hours per day to make the business feasible bringing noise and odour concerns to the fore.
- Odour – The proposed development will be carrying out oven baking on an industrial scale. There will be emissions from cooking process off some of their products
- Precedent, PL10.218533 and PI10.219036 refusals of industrial type developments in rural areas.
- The truck figures supplied do not refer to supplying retailers, waste disposal trucks, gas lorries etc. It would appear the south west access will be used for deliveries.
- The use of the AA route planner would show traffic will use the south western access through Grovine to the M9 motorway

- The puraflo system installed was only provided for domestic effluent. Any underground leaks would not be apparent at surface level, and may give rise to an ongoing pollution issue. There are 20 employees, and associated waste from the site.
- The proposed change of use from an equestrian centre to an industrial use is unacceptable in a rural location. It will set in motion and irreversible transformation of the rural community into an established industrial landuse without the necessary road or services infrastructure. This will have a creep effect that the business will gradually increase or may be modified where greater inputs and outputs are required leading to greater traffic volumes and emissions and impacts on the rural residents of the area
- Kilkenny's' Co. Co. Executive and Senior Executive Planner recommended refusal of the propose development, and the Board should do the same.

7.0 **Assessment**

7.1. ***Introduction***

Wallslough equestrian and conference centre is an established commercial site since 1997, which is located on a 1.52Ha site 6km south of Kilkenny City, and includes a large commercial building (3530sq.m.), parking and 8No. holiday homes, and number of equestrian facilities such as a sand arena, and parking. The site has two entrances off the local road, the main entrance is beside the holiday homes along the northern site boundary, and the service entrance is along the western site boundary. The application site relates only to the existing equestrian and conference centre site which is currently vacant, and not the holiday home site along the northern site boundary.

The permitted use of the site is as an equestrian centre (granted under planning reference 97/0396) and a conference centre (granted under planning reference 03/1467). An indigenous health food company has approached the landowner to lease the premises, and this is the subject of the current appeal. Planning permission was granted by Kilkenny Co. Co. for the change of use, but there is strong local opposition from residents in the area to the proposal, which includes one

large group forming the third party appellant and 15No. individual observations on appeal.

I intend to examine this appeal under the following headings:

- Compliance with current Development Plan Policy
- National Planning Policy
- Alternative Sites
- Potential Impacts
- Traffic
- Other Issues Arising
- Appropriate Assessment

Kilkenny County Development Plan 2014-2020

Chapter 4 of the County Kilkenny Development Plan 2014 -2020 addresses the issue of *Economic Development* which is relevant to the current proposal. Chapter 6 deals with *Rural Development* with an overall aim to manage rural change and guide development to ensure vibrant and sustainable rural areas whilst conserving and sustainably managing our environment and heritage.

The Plan seeks to position County Kilkenny to avail of the economic upturn, and the proposed development represents a re-location from its current facilities in Co. Kildare to Co. Kilkenny, generating twenty new jobs, which in my opinion, is in line within the underlying economic objectives of the development plan.

The proposed development is not governed by certain objectives in the plan. It is located in a rural area, therefore general rural development plan policies apply. However, most of the current rural development plan policies relate to rural housing and rural resource based enterprise. Therefore the compliance of the proposed development in the broader context of the development plan policies must be considered as there is no specific objective relating to non-rural commercial activities locating in rural areas. I am mindful of the fact, the existing premises has been established for a considerable length of time at Wallslough, and predates a good

number of a rural dwellings in the general area. The premises is a brownfield site, currently vacant for a considerable period of time, and is currently contributing nothing to the economic development of the area, despite the large floor area and existing on site physical infrastructure.

The applicant, Virginia Health Foods Limited, produces and markets to the mainstream and health food retailers in Ireland and Europe. The end products include linseed and seed/berry blends, crunchy seeds, granolas, gluten free porridge, and snack foods. The raw materials are sourced from around the world. Currently, the company operates out of facilities in Naas and Newbridge (which will be combined under the current proposal), and Carrigaline, Co. Cork. The proposed development in Kilkenny is to streamline the production processes and storage arrangements by amalgamating the two existing sites in Naas and Newbridge into one. There is a need for a floor area of 3250sq.m. for the facility and the rents are high for such facilities in the Greater Dublin area making it unfeasible to remain in Kildare. The site at Wallslough was chosen for its feasibility, size and the fact it lends authenticity and provenance values to the products the company produces.

According to the planning application, the general process in the proposed facility, involves the seeds and grains been dry milled, then transferred, weighed, mixed, formed and baked. The finished products are then packaged, pelleted and transferred off the site. Honey is used to combine the product and the only wet area is the utensil wetdown area.

Section 6.2.3 of the County Development Plan addresses diversification in rural areas. It states that farming has been diversifying into areas such as horticulture, forestry and agritourism. The equestrian centre to a conference centre was form of diversification to ensure the continued use of the premises, unfortunately with the downturn of the economy that second use did become not strongly establish, with only a small number of events taking place on the premises. I consider the current proposal to be a diversification from an equestrian and conference centre to a light industrial building producing dry foods products.

It has been argued by the appellants that proposed development is contrary to the development plan because the proposed industrial use is located on unzoned lands in a rural area which would be contrary to development plan policy on 'Strategic Locations for Enterprise and Employment' which identifies Kilkenny City and Environs and Belview Port as nationally and regionally important strategic locations for enterprise and employment along with the four district towns, Callan, Castlecomer, Graigue-managh and Thomastown. It is also stated the proposed light industrial use will not serve the local rural community and is therefore contrary to policy on Enterprise and Employment. In response to this argument, Section 4.6.4 of Kilkenny County Development Plan 2014 is quoted:

Rural areas have a vital contribution to make to the achievement of balanced regional development. This involves utilising and developing the economic resources of rural areas, particularly in agriculture and food, marine, tourism, forestry, renewable energy, enterprise and local services, while at the same time capitalising on and drawing strength from vibrant neighbouring urban areas. In this way rural and urban areas are seen as working in partnership, rather than competing with each other.

The fact the premises is established over twenty years, and considering the planning history and uses associated with the site, there is support for the proposed food production industry within the existing arena area under the above policy. It is acknowledged that it would be preferable for industrial developments to be located on industrial zoned lands in populated areas. However, it is my opinion, the planning authority were correct in granting this exceptional case, because it represents a sustainable form of development as the physical infrastructure to cater for the development is in situ, and the potential impacts as discussed below are considered to be minimal.

Given the unique nature of the site and associated permitted uses, I consider there is no clear planning policy regarding sites such as the subject site at Wallslough. The planning authority through its development plan policies encourages employment and economic activity in the County of Kilkenny, therefore, it is in the interest of

sustainable planning, the planning authority had permitted the change of use of the existing large vacant premises for the better good of the County. Although it is a rural location, it cannot be described as a remote location, as it is strategically close to Kilkenny City and the M9 motorway. Therefore, I consider granting the proposed change of use is an acceptable arrangement and an appropriate use at the location, and in keeping with the fundamental key issue of the Plan as cited under Section 2.5 of the Plan, *'The key issues to be addressed in this Plan are the economic recovery, positioning of the county to avail of any economic upturn.* The proposal is the relocation of an indigenous health food industry from Co. Kildare to Co. Kilkenny which is in accordance with a key issue of the Plan.

National Planning Policy

Project Ireland 2040 – the National Planning Framework was published in February 2018, states under National Policy Objective 20 *To enhance the competitiveness of rural areas by supporting innovation in rural economic development and enterprise through the sustainable diversification of the rural economy into new sectors and in particular those with a low or zero carbon output.* The proposed production is a low carbon business, and the fact the premises exists and does not require major construction works helps reduce the overall carbon footprint generated by the proposed development.

Alternative Sites

This issue has been raised at length by the third parties. The third parties consider the planning authority failed to make the applicant exhaust all potential sites on appropriately zoned lands in nearby towns and villages before choosing a site in a rural area with no industrial planning permission and serviced by a rural road network. I note from the file, this issue was raised at a pre-planning meeting between the applicant and senior officials of the planning office. It is not financially viable to stay in the Greater Dublin Area given the scale of the building required to accommodate the proposed development. The pleasant surroundings and landscaped site fits with the company's healthy ethos.

There is no development plan requirement for the applicant to investigate alternative sites. The potential impacts associated with the proposal are minimal compared to

the vast majority of light industrial and general industrial uses which are more appropriately located on industrial lands. I do not consider a precedent for future industrial facilities to locate in rural areas has been established under the current proposal because this is a brownfield site, vacant for a considerable length of time, and the proposed use is not a conventional industrial use. In addition, I do not consider the proposal will lead to speculative industrial developments in rural areas as submitted by the third party appeal. There are not many uses would require such a large commercial unit. In addition, given the permitted use of the facility and associated planning history, this makes the subject site exceptional, and should not be compared to the greenfield sites in rural areas cited by the observers on appeal, i.e. the examples given of industrial units in rural which were refused by An Bord Pleanála. There are existing offices with a large reception area, wheelchair accessible toilets, parking and a staff kitchen, which is not provided for in a lot of existing industrial type buildings in urban areas.

Potential Impact

The permitted use on the site is for an equestrian centre and later a conference centre. The third-party appellant has tried to establish a case of an abandonment of use. It also states that then conference use was barely used. Therefore, the baseline land use would appear to be 'no use' according to the appellants. The proposed change use is to a 'light industrial' use, which will be included within the entire building. The production of natural, wholesome seed, nut and oat bars, in addition to natural breakfast products is not a general industrial use, it is considered to be a light industrial use. The main structure on the site is located a significant separation distance from the adjoining dwellings. It is not overlooking or directly impacting on existing residential properties, apart from the holiday homes owned by the same landowner. The large building is setback into the site along the eastern site boundary, with a carparking area acting as buffer area to the L6700. I note from my inspection, Wallslough has experienced significant development pressure for one-off housing, particularly south of the site. However, these dwellings have significant separation distance from the subject site. The subject site and the large commercial structure on the site are all screened from the surrounding area by mature landscaping. The structure is discreetly positioned on the landscape. The Board should note the closest dwellings to the proposed development are eight

holiday homes on the contiguous site to the north, owned and operated by the same landowner as the equestrian centre. The residential amenity of the eight holiday homes needs to be maintained to ensure their continued commercial success and rental. Therefore, it is in the interests of the landowner to ensure the proposed change of use will not result in any negative loss of amenity such as noise, odours or pollution.

- **Odour:** The packaging process will be odourless as the product being packaged is dry foods. The proposed development includes two commercial ovens with extract flues, and it is the flues which the third parties are considered to be a cause of odour into the area. It is proposed to include two roof mounted extract fans connected to the extract chimney flues from the two ovens. Following the cooking process by steam, steam is released via a still flue with no noticeable odour. As part of the appeal submission, the Odour Risk Factor Score deemed a score of 17 which is a 'low-medium' impact risk and will require low level odour control. The process is non-greasy therefore filtration is deemed unnecessary. Adverse odour impacts are not expected.
- **Noise:** Baseline noise levels were conducted by the applicant on the 30th and 31st of July 2020 using a Bruel & Kjaer Type Sound Level Meter. There were 3 No. receptors chosen which are representative of nearest dwellings. Data sheets have been provided by the applicant for the extract chimney stacks and potential traffic. There are also fans for the chiller cold rooms. There was noise modelling carried out, and the associated industrial noise emissions will be neutral and not result in adverse impact. Given the projected level of traffic per month, a worst case scenario will be two deliveries per day, into and out of the site and unloading at a reverse docking bay directly into the building. This represents neutral noise impacts and will not result in any adverse impact.

In my opinion, the potential impacts of the proposed development on the surrounding area and environment have been greatly exaggerated by the third parties without any technical data to substantiate their claims. Given that this is a rural area, a dairy farm or beef farm would have a great material impact on the surrounding area and environment compared to the proposed change of use.

Traffic

According to the planning application the following vehicular movements are estimated per month (this does not include service vehicles such as postman, refuse trucks, couriers, etc)

Cars- 620 based on 20 employees within a car sharing scheme.

Rigid Trucks – 21

Lorries – 21.

The third-party appeal has reverted to the previous planning permissions relating to the subject site, reference 97/393 and 03/1467, citing the Roads Report which was concerned about the junction of the local road serving the site, LS6700 and the R700. In addition, it is submitted the traffic survey was carried out during the lockdown of March 2020, and is not reflective of the true traffic levels, and the traffic analysis does not take into the consideration the expansion of the business. I note from the observations on file from the residents of the area, the traffic safety and volumes is one of the main concerns associated with the development proposal.

I refer to the Roads Design Office report on file dated 17th of February 2020.

Whereby further information was requested regarding a traffic and speed survey, a breakdown of deliveries on a daily basis including vehicle type is to be provided, and hours of operation. There was no objection to the proposed development on traffic grounds.

Vehicular and pedestrian access to the site is via the L6700 to the north of the site along a bend, where there are maximum sightlines along the road, and this access also serves the 8No. holiday homes. The main access was granted under the original permission 97/396, and there is an additional service access onto the L6700 along the western boundary of the site.

The equestrian centre on site estimated 50No. cars per day, in addition to equestrian events between October and February creating an additional 50No. cars, 25No. horse boxes and 15No. HGVs once a week. To accommodate the additional traffic generated on the road the applicant/ landowner had to make a financial contribution of €100,000 to Kilkenny Co. Co as one of the conditions attached to 97/396.

Furthermore, under planning reference 03/1467 there was a total of 1626 monthly trips envisaged and a further financial contribution of €47,656 was payable to the local authority for the enhancement to the local roads.

Having examined the traffic presented on appeal and in the planning application documentation, the proposed development will represent a net decrease in traffic along the local road compared to the permitted use on the subject site, and there has been significant financial development contributions paid in support of local road improvement works which has benefitted the residents also.

The site has been vacant for a considerable length of time, and the appellants submitted the vacant use of the site should be the baseline for considering traffic impacts, i.e. an abandoned use.

I note the appeal submissions are concerned the traffic count was taken during the covid restrictions in March 2020. This count came on foot of a further information request by the planning authority. The anticipated traffic volumes per month are based on an estimate for another similar factory in Cork, in Carrigaline, owned by Virginia Health foods also. The projected daily traffic to the site, is not a large volume of traffic or heavy-duty vehicles, with a maximum of two per day considered to be the worst-case scenario.

The applicant is satisfied to accept a condition similar to that imposed by the local authority (Condition No. 4) to restrict access to the site from the R700 only. There is no basis to the claims that the local road is extremely substandard as the road is in excellent specification condition, the local authority has carried out significant enhancements from the R700 junction to the access to the subject site.

Other Issues

A large wastewater treatment system was granted permission on site under the original planning permission, P396/97. The system is a septic tank and percolation area, with a 10,000 gallon capacity pre-cast septic tank and a Bord Na Mona Puraflo system capable of treating 12 cubic metres of wastewater per day, which was designed to cater for 350No. persons. The proposed change of use will have 20No. employees, therefore the proposed loading on the wastewater treatment system is greatly reduced. Combined with the holiday homes on the adjoining site which are

connected to the treatment system, there is a combined loading of 8700 litres per day which is 27.5 % less loading requirement than the original design.

The general area has a highly vulnerable underlying aquifer. The only potential discharge to the ground is a leak from a car or leakage from a washwater tank or treated domestic sewage following percolation. There is a risk of infiltration of contaminated water into the underlying limestone due to the presence of gravelly overburden and the percolation area. However, there is a low risk of pollution impact due to the significant dilution of the wastewater. There is no direct link arising from the development on the River Nore SPA/ SAC.

The proposed development is served by the public mains however there also is a bored well on site.

The alleged unauthorised use of the premises pre the granting of the 2003 planning permission is not relevant to the current case, and beyond the remit of the Board.

7.6 *Appropriate Assessment*

The River Barrow and River Nore SAC (Site 2061) is located 1.1km from the proposed site. The nearest surface water receptor is the River Nore located 1.1km northeast of the development. Wallslough Lake is located beside the subject site to the north across the L6700 route. It is believed Wallslough Lake was excavated around an existing spring. There is no evidence of open drainage inflow or outflow from the lake. Surface water from the site, roofs and hard standing areas, is collected and discharged via onsite soakaways, there is no runoff onto the road. There is no evidence of an open water hydrological link between the site and Wallslough Lake.

There could be an upward hydraulic gradient local to the lake, which would result in an indirect pathway within the aquifer from the site to the lake and the R. Nore. However there is a low risk of pollution impact due to the significant dilution of the wastewater via the treatment plant.

There is no direct hydrological pathway or ecological stepping stone to the SAC from the subject site.

The Thomastown Quarry SAC (Site 2252) is in an upland area 8.7Km from the proposed development. There is no direct or indirect hydrological link or ecological stepping stone to the SAC.

The River Nore SPA (Site 4233) is 1.1km from the proposed development. There is no direct hydrological pathway or ecological stepping stone to the SPA from the subject site.

On the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on any Natura 2000 designated sites.

8.0 Recommendation

- 8.1. The proposed development represents an appropriate use of an existing brownfield site and of existing resources. It does not require the construction of a purpose-built facility and represents the reuse of an existing vacant facility which is in line with the national objective to support innovation in rural economic development and enterprise through the sustainable diversification of the rural economy into new sectors and in particular those with a low or zero carbon output.

9.0 Reasons and Considerations

Having regard to the provisions of the Kilkenny County Development Plan 2014-2020 and the National Planning Framework, the permitted use on the site as an equestrian and conference centre, and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed change of use would be acceptable in terms of the traffic safety, public health and the existing amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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| 1. | <p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 26th day of May 2021 and by the further plans and particulars received by An Bord Pleanála on the 12th of August 2020 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.</p> <p>Reason: In the interest of clarity</p> |
| 2. | <p>All staff and delivery/ transfer traffic associated with the proposed development shall access the site via the Regional road (R700) only. Clear signage in this regard shall be provided and submitted to the planning authority for its written agreement prior to the commencement of the development.</p> <p>Reason: In the interest of traffic safety</p> |
| 3. | <p>All goods, including raw materials, manufactured goods, packaging, crates etc. shall be stored or displayed only within the enclosed building.</p> <p>Reason: In the interest of visual amenity</p> |
| 4. | <p>All surface water generated by the proposed development shall be collected and disposed of within the site to the surface water draining system. It shall not be discharged to the adjoining properties or the public roadway.</p> |

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| | Reason: In the interest of orderly development. |
| 5. | <p>The operating hours of the proposed units shall be from 08:00 hours to 20:00 hours Monday to Saturday only.</p> <p>Reason: To protect the amenities of the area.</p> |
| 6. | <p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p> |
| 7. | <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> |

Caryn Coogan
Planning Inspector

25th of January 2021