

# Inspector's Report ABP-312084-21

Development Location	Use of existing vacant building as a pet crematorium for domestic animals. Unit 15 Ennis Enterprise Centre, Gort Road Industrial Estate, Ennis.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	21963
Applicant(s)	Aimee and Danny Keller
Type of Application	Permission
Planning Authority Decision	Grant with Conditions.
Type of Appeal	Third Party
Appellant(s)	Don Weldon
Observer(s)	None
Date of Site Inspection	21 <sup>st</sup> of January 2022.
Inspector	Adrian Ormsby

# Contents

1.0 Site	e Location and Description	4
2.0 Pro	posed Development	4
3.0 Pla	nning Authority Decision	5
3.1.	Decision	5
4.0 Pla	nning Authority Reports	5
4.1.	Planning Reports	5
4.2.	Other Technical Reports	6
4.3.	Prescribed Bodies	7
4.4.	Third Party Observations	7
5.0 Pla	nning History	7
6.0 Pol	licy Context	8
6.1.	Legislation and Ministerial Guidelines.	8
6.2.	Clare County Development Plan 2017-23	9
6.3.	Legislation and Licensing Regime1	0
6.4.	Natural Heritage Designations1	1
6.5.	EIA Screening 1	2
7.0 The	e Appeal1	3
7.1.	Grounds of Appeal1	3
7.2.	Applicant Response 1	4
7.3.	Planning Authority Response1	6
7.4.	Observations1	7
8.0 Ass	sessment1	7
8.1.	Introduction1	7

8.2.	Zoning and Principle of the Development	17
8.3.	The Proposed Development	19
8.4.	Environmental Concerns	20
8.5.	Traffic Implications	23
8.6.	Vexatious Nature of the Appeal	24
8.7.	Appropriate Assessment	24
9.0 Re	commendation	29
10.0	Reasons and Considerations	29
11.0	Conditions	30

# 1.0 Site Location and Description

- 1.1. The appeal site is located to the north of Ennis in County Clare within the Gort Road Business Park and accessed from the R458 Gort regional road. The application is c.2.7km from the centre of the town.
- 1.2. The site has a stated area of 0.005423 ha and is an existing building numbered 15 and with a stated floor area of 72.15 sq.m. At the time of inspection the building was unoccupied and appeared vacant. The building and site benefit from existing connections to public water supply and the public sewer.
- 1.3. The Gort Business Park includes a number of different uses including an Post Distribution Centre, a garden centre a civic amenity centre and other industrial/ manufacturing uses. The Ennis Educate Together National School is located c.50m to south east of the site and the Cois na hAbhna event centre is c. 90m to the east..

#### 2.0 **Proposed Development**

- 2.1. The proposed development comprises-
  - use of a vacant unit as a pet crematorium for domestic animals.
  - internal alterations and the provision of an domestic pet cremation machine
  - flue on the roof
- 2.2. The application is accompanied by the following reports-
  - An Air Screening Assessment- Verde Environmental Consultants
  - A Desk Based Environmental Assessment- Verde
  - Screening Report for Appropriate Assessment- Verde
  - Planning Support Statement

# 3.0 **Planning Authority Decision**

#### 3.1. Decision

The Planning Authority decided to grant permission on the 04/11/21 subject to 8 conditions generally of a standard nature and including-

- C.2-
  - (a) cremation of small domestic pets only and the max number in any one day shall not exceed 7.
  - (b) Only animal carcasses and packaging to prevent infectivity to be burnt. PVC is not included. Details of packaging to be agreed.
- C.3 Only one "Pet200" Cremation machine shall be installed.
- C.4 Carcass storage to be agreed. Ash and waste storage requirements.
- C.5 Operating times, members of the public shall visit by appointment only.
- C.6 Commissioning, certification, maintenance, servicing and batch records
- C.7 Noise Condition
- C.8 Car parking and set down area to be agreed.

# 4.0 **Planning Authority Reports**

#### 4.1. Planning Reports

The planners report (dated 03/11/21) reflects the decision of the Planning Authority. The following is noted from the report-

- The site is zoned light industrial
- Having regard to the nature and scale of the proposal and the nature of the receiving environment there is no real likelihood of significant effects on the environment. EIA can be excluded at preliminary examination stage.
- In various appeals to An Bord Pleanala it has been considered that the use of lands as pet crematorium in "industrial" in nature.

- A certificate of approval from the Department of Agriculture, Food and Marine to operate the crematorium maybe required. This is outside the remit of the subject application.
- It is estimated that 4 number parking spaces are required based on numbers employed and the nature of the development.
- The existing road network has sufficient capacity to cater for the development.
- Environmental issues that must be considered are noise and air pollution given the proximity of residential developments and schools.
- The operational issues associated with the activity are controlled under other statutory codes and established enforcement procedures.
- Concerns of the Environment Section in relation to an Air Pollution licence are outside the remit of the Planning Authority / this application and reference to section 34 (13) of the Act is made.
- The development would not give rise to noise emissions such that may be excessive for a light industrial process.
- In relation to Appropriate Assessment no negative impacts to air quality are predicted to arise during the operational phase of the development.

#### 4.2. Other Technical Reports

- Fire Authority- no objections
- Environment Section- Further Information recommended as follows-
  - Applicant should engage directly with the EPA to establish of the proposal is a licensable activity under section 39 of the Waste Management Act 96.
  - The dispersion model of the Air Screening Report does not appear to have factored in local data such as terrain and surrounding land use/ structures and does not demonstrate the proposed structures will not have an unacceptable impact on the receiving environment including residential development and schools.

- Noise levels at the boundary of the facility so as not be a nuisance to sensitive receptors.
- Transportation & Roads Design Office
  - No comments

#### 4.3. **Prescribed Bodies**

• Irish Water- No objections

#### 4.4. Third Party Observations

Two submissions were received and are on file. The main issues raised can generally be summarised as follows-

- Proximity of the development to a school and a training centre
- Public health
- Visual amenity
- Cramped nature of the site
- Insufficient parking
- Poor public lighting
- Traffic safety concerns
- Potential for pest infestations
- Inappropriate, unsuitable and unnecessary use.

# 5.0 Planning History

This Site

• None evident

Site to southern boundary-

• 17634- provision of 20 car parking spaces, 1 no. bus parking space, access road / path to rear of site, enlarge entrance access, **Grant** 09/10/2017

# 6.0 Policy Context

#### 6.1. Legislation and Ministerial Guidelines.

- 6.1.1. Planning and Development Acts 2000 (as amended)
  - Section 34 (13)
    - A person shall not be entitled solely by reason of a permission under this section to carry out any development.
- 6.1.2. Planning and Development Regulations 2001 (as amended)-

Part 2 Exempted Development-

Article 5 'Interpretations for this Part' i.e. Interpretations for Exempted Development

- "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;
- "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;
- "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 altering, 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 program or other original database; 6.1.3. Development Management Guidelines for Planning Authorities (DEHLG, 2007) Section 7.8 <u>Conditions relating to other codes</u>-

> "It is inappropriate, however, in development management, to deal with matters which are the subject of other controls unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. The existence of a planning condition, or its omission, will not free a developer from his or her responsibilities under other codes and it is entirely wrong to use the development management process to attempt to force a developer to apply for other some licence, approval, consent, etc. At best, the imposition of conditions in relation to matters that are the subject of other controls is an undesirable duplication."

#### 6.2. Clare County Development Plan 2017-23

- 6.2.1. The Ennis settlement boundary is identified on Page 124, Volume 3a of the County Development Plan- Ennis Municipal District (Map No. PLP-18-0001-24) This also identifies the subject application site as zoned Light Industrial.
- 6.2.2. Chapter 19 of the CDP deals with Land Use and Zonings. It also details the indicative land use zoning matrix.
  - In terms of 'Light Industry' zoning the following is stated-

The use of land for light industry shall be taken to include uses where the primary activity is the manufacture of a physical product. The use for industry/manufacturing, incubator units, distribution, open storage, transport operating centres and the treatment/recovery of waste material is acceptable.

Processes carried out, or the machinery/plant installed on land zoned for Light Industry must be such that they could be carried out or installed without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Uses such as retail development or small/ medium office-based developments are not considered appropriate in areas zoned for light industry, save where it

is ancillary to the main use of the development. Large-scale office type development (>1000m2) such as call centres are open to consideration subject to compatibility with surrounding land uses.

6.2.3. Section 19.5.4 Uses not listed in the Indicative Zoning Matrix

Proposed land-uses which are not listed in the indicative land-use zoning matrix will be considered on a case-by-case basis having regard to the proper planning and sustainable development of the area and compliance with the relevant policies and objectives, standards and requirements as set out in this Clare County Development Plan 2017-2023, guidelines issued in accordance with Section 28 of the Planning and Development Act, 2000 (as amended) and guidance issued by other government bodies/ sections.

6.2.4. Section 1.5.2 of Volume 3a of the CDP deals with 'Lands for Employment-Generating Development' and states-

The aim during the lifetime of the Clare County Development Plan 2017-2023 is to continue to attract and support new business start ups to locate in the Plan area......

Many international businesses in the Plan area are located in the Gort Road Business Park (LI3). This site, which has been zoned for 'Light Industrial' use, is a long-established business location and the maintenance and upgrade of the premises located in the Business Park in the future will be supported by the Council.

#### 6.3. Legislation and Licensing Regime

- REGULATION (EC) No 1069/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)<sup>1</sup>
  - Article 8 Category 1 material-

<sup>&</sup>lt;sup>1</sup> <u>https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:300:0001:0033:EN:PDF</u>

Category 1 material shall comprise the following animal by-products: (a) entire bodies and all body parts, including hides and skins, of the following animals:

(iii) animals other than farmed and wild animals, including in particular pet animals, zoo animals and circus animals"

- The proposed development will be licensed by the Department of Agriculture under the EU (Animal By-Products) Regulations SI187/2014)<sup>2</sup>.
  - (6) The Minister may authorise the burning or burial on site or the disposal by other means of animal by-products in accordance with Articles 16(d) and 19(1)(b) and (2) of the Council Regulation and Article 15 of the Commission Regulation.
- Air Pollution Act, 1987<sup>3</sup>

. . . . .

• Air Pollution Act, 1987, (Licensing of Industrial Plant) Regulations, 1988<sup>4</sup>.

#### 6.4. Natural Heritage Designations

The site is located-

- c.250 m east of the Lower River Shannon SAC (002165),
- c.380m south west of the Ballyallia Lake SAC (000014),
- c. 1.4km south of the Ballyallia Lough SPA (004041)
- c. 4.2 km south west of Toonagh Estate SAC (002247)
- c. 5.2 km north of the River Shannon and River Fergus Estuaries SPA (004077).

<sup>&</sup>lt;sup>2</sup> <u>https://www.irishstatutebook.ie/eli/2014/si/187/made/en/pdf</u>

<sup>&</sup>lt;sup>3</sup> <u>https://www.irishstatutebook.ie/eli/1987/act/6/enacted/en/html</u>

<sup>&</sup>lt;sup>4</sup> <u>https://www.irishstatutebook.ie/eli/1988/si/266/made/en/print</u>

#### 6.5. EIA Screening

- 6.5.1. An Environmental Impact Assessment Screening is included in the Planning Support Statement submitted with the application. It details the proposal is for cremation of domestic animals at a rate of 50/kg/hr and is significantly below the 100 tonnes/day threshold specified in the regulations. It is considered there is no real likelihood of significant effects on the environment and the need for EIA can be excluded and a screening determination is not required.
- 6.5.2. The Planning and Development Regulations 2001 (as amended) provides that EIA is required for the following classes of development:
  - Class (10) of Schedule 5 Part 1-
    - Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC<sup>5</sup> under heading D9, of non-hazardous waste with a capacity exceeding 100 tonnes per day.
  - Class (10) (b) (iv) of Schedule 5 Part 2 of
    - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

(In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)

- 6.5.3. Having considered the above I am satisfied the proposed materials for cremation do not fall within the definition of non-hazardous waste as defined in the directive and as such the proposal is not a Part 1 class 10 development.
- 6.5.4. The site is not located within a 'business district' but is within the 'built up area' as defined by the Regulations. In this regard the site has a stated area of 0.005423 ha and is well below the applicable threshold of 10 ha.
- 6.5.5. The site is an existing urban development located on light industrial zoned lands.The proposed use to an existing building will not have an adverse impact in environmental terms on surrounding land uses. I note the site is not designated for

<sup>&</sup>lt;sup>5</sup> <u>https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31991L0156&from=EN</u>

the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site (as discussed below in section 8.7). There is no hydrological connection present such as would give rise to significant impact on nearby water courses. The proposed development would not give rise to waste, pollution or nuisances that would be unexpected on industrial zoned lands. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Clare County Council, upon which its effects would be marginal. The proposal is licensable under other codes.

6.5.6. I consider that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that upon 'Preliminary Examination', an 'Environmental Impact Assessment Report' for the proposed development is not necessary in this instance.

#### 7.0 The Appeal

#### 7.1. Grounds of Appeal

One third party appeal has been received from Don Weldon of 28 Ros na Ri, Commons Road, Navan, Co. Meath. The appeal has been prepared on his behalf by RW Nowlan & Associates. The grounds of appeal can be summarised as follows-

- The concerns relate to implications of the proposal in terms of environmental impact, incompatibility of land uses and traffic implications of the proposed development.
- Clare Co Co's planner's report identified some shortcomings with the application documentation. It is considered necessary for these to be reexamined by ABP.
- It is not accepted that the Air Screening Report had had adequate regard for the location of the unit within a terrace structure.
- The proposal in close proximity to the Ennis Educate Together National School and the Cois na hAbhna cultural centre. It is unsuitable and not appropriate.

- The Environment Section of the Council were not satisfied with the submitted information and recommended further information be sought. The Planners assessment of this is not robust enough to alleviate concerns in relation to the environmental impact of the use at this location.
- The proposal to collect and dispose of ash is considered completely unrealistic and there will be residue ash collected on site that is not transferred to the collection tray.
- An assessment of traffic implications has not been submitted.
- Parking at the unit is ad hoc in nature with no formal parking spaces designated to each unit. Removal of abandoned cars is considered unrealistic as it is not in the control of the applicant.
- It remains in doubt if the proposal can accommodate the parking requirements of condition 8 and visitors may have to move dead animals through the industrial estate.
- It is likely the proposal would generate a minimum 18 car based movements per day or 108 per week. This does not account for service and other vehicles.
- A traffic management strategy should be submitted.

#### 7.2. Applicant Response

The applicants have responded to the grounds of appeal. Relevant submissions can be summarised as follows-

- The concerns of the appellants were not set out in detail in their original submission.
- There is a strong case for this appeal to be dismissed/not considered further under section 138 (1) (b) (i) of the Act and the applicant is concerned why someone from Navan is objecting to a development in Ennis. It is questioned if the applicant is a bone-fide person living at the address provided. The appellants address is registered under folio MH37058F to Michael Weldon and Dawn McCarthy. Screenshots from land registry are submitted. These

people are registered to vote at this address and screenshots from the registry of voters is submitted. A search for the appellant at this address came up empty. A social media search shows that Dawn Weldon appears to be significantly involved in the running of Pawprints Crematorium, Eamon Duggan Industrial Estate, Athboy, Cloneens, Trim, Co. Meath, C15 C592. It is requested that the Board should be fully satisfied that this is a valid appeal.

- The applicants disagree with the appellants contention in relation to the incompatibility of the proposed use. The proposal constitutes a light industrial process as defined in article 5 (1) of the P&D Regulations. This was also the opinion of ABP in relation to other crematoriums PL74.234947 and 308487. The subject unit is located on appropriately zoned lands.
- The Educate Together school and Cois na hAbhainn music centre have been in place for a long number of years.
- Unit 15 is the most suitable unit to accommodate the proposal in Ennis and its environs. It is currently vacant and available for use.
- There will be no negative impacts in terms of air emissions, noise and visual impact. There is no conflict of land uses.
- In relation to the issues raised about environmental impact a response is included from Verde Environmental Consultants which details-
  - The cremation of pets is not a specified waste activity listed in the 3<sup>rd</sup> and 4<sup>th</sup> schedule to the Waste Management Act 1996. No pet crematorium in Ireland is licensed by the EPA.
  - An application for regulation will be to the Department of Agriculture, Food and Marine.
  - The operation of the plant requires an Air Emissions Licence under section 30 of the Air Pollution Act 1987 (Licensing of Industrial Plant) Regulations 1998.
  - It is the stated position of the EPA that air emissions from pet crematoria are regarded as negligible, as indicated in section 6.4.3 of the EPA's Informative Inventory Report 2021.

- The submitted Air Quality Screening Assessment details the maximum predicted Ground Level Concentrations of all modelled parameters are within the 5% threshold for significant impact stated in the 2020 EPA Air Dispersion Guidance Note AG4 and therefore does not require further detailed assessment.
- The nearest noise sensitive receptor is Ennis Educate Together National School approximately 80m from the boundary of the site. The measured sound pressure level adjacent to the cremator is 57 db(A) the distance corrected predicted noise at the nearest noise sensitive location is 33dB. The operation of the plant will not exceed those included in condition 7.
- Residual waste from the process will be separated, collected, stored and disposed of in compliance with Animal By-product regulation and the appropriate Waste Management Regulation.
- The applicants have submitted a revised site layout showing the requirements of Condition 8 of the Planning Authority's grant of permission.
- Abandoned cars have been removed. Photos are supplied.
- Visitors required to park away from the entrance and move dead animals through the estate is unfounded. The applicant will be collecting animal remains mainly from Veterinary Clinics with the majority of ashes returned to these practises. Visitors to the site will be by appointment only.
- Traffic numbers will be modest in comparison to the previous use of the site. The maximum number of return trips is estimated to be 4 trips with an estimate of 2-3 appointments per week.
- There is a need for the proposal and a list of veterinary clinics supporting the application has been submitted.

#### 7.3. Planning Authority Response

A response to the appeal has been received from the Planning Authority on the 30/12/21 which can be summarised as follows-

- The proposal is acceptable at this location
- The facility does not require an air emissions licence.
- Subject to compliance with the conditions imposed the proposed development will not seriously injure the amenities of the area or property in the vicinity and would not be prejudicial to public health.
- The Minister for Agriculture has the responsibility and the power under European and national legislation to ensure that the activity proposed on the site would not impinge on human or animal health or agricultural activity.

#### 7.4. Observations

None

#### 8.0 Assessment

#### 8.1. Introduction

- 8.1.1. I have examined the application details and all other documentation on file, including the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the main issues for assessment are as follows-
  - Zoning, Principle and Compatibility of the Development
  - Environmental Concerns
  - Traffic Implications
  - Vexatious Nature of the Appeal
  - Appropriate Assessment

#### 8.2. Zoning and Principle of the Development

8.2.1. The site is located on lands zoned 'Light Industrial' as per Volume 3a of the Clare County Development Plan 2017-2023 - Ennis Municipal District (Map No. PLP-18-0001-24). Chapter 19 deals with Land Use and Zonings. The indicative land use zoning matrix is set out in Volume 1 Appendix 2 of the CDP does not provide for uses such as Pet Crematoriums.

- 8.2.2. Section 19.5.4 deals with land-uses which are not listed in the indicative land-use zoning matrix. Such proposals will be considered on a case-by-case basis having regard to the proper planning and sustainable development of the area and compliance with the relevant policies and objectives, standards and requirements as set out in Development Plan.
- 8.2.3. In relation to Light Industrial Zoning, the CDP details that the processes carried out, or the machinery/plant installed on land zoned for Light Industry must be such that they could be carried out or installed without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
- 8.2.4. The appellant considers the proposed use of the subject unit is not compatible with the surrounding uses. The appellant refers to the sites location within an industrial estate and the proximity of the Ennis Educate Together National School and a cultural centre on adjoining and nearby lands.
- 8.2.5. The applicants argue the proposed development constitutes a 'Light Industrial' process as defined in the Planning and Development Regulations 2001 as amended. They refer to the 'opinion of the Board' under PL74.234947 and ABP-308487-20.
- 8.2.6. Clare County Council's Planning Report also refers to the two above appeals and determines that for their assessment purposes the proposed development is an Industrial use. The report then refers to the definition of 'light industrial building' as per the Planning and Development Regulations 2001 (as amended). They determined the overriding considerations for compliance with the zoning objective to pertain to noise vibration, smell, fumes, smoke, soot, ash, dust or grit.
- 8.2.7. I have reviewed both the appeals discussed above. In PL74.234947 I note the Inspector stated-

"In this instance, although it is undoubtedly a commercial enterprise and a service, I consider the use to be primarily industrial in nature as, unlike human crematoria, it is a purely functional facility where the process of cremation or incineration is the sole function and there is no service element for the public."

In ABP-308487-20 the Inspector stated-

*"I consider the proposed development to constitute an industrial use in a rural area".* 

The Board decided to refuse both applications for differing reasons including 308487 for being an "*inappropriate form of development at this rural location which is inadequately serviced in term of transportation and water services infrastructure.*"

- 8.2.8. The interpretation as detailed in Article 5 of the Planning and Development Regulations is specifically for the provisions of Part 2 'Exempted Development' of the same Regs. In this context I am not wholly convinced the interpretation of *"light industrial building"* as per the Regs can be relied on in this instance. That is to say I do not consider the proposed use could be carried on or installed in any *"residential area"* without detriment to the amenity of that area by way of the reasons as listed in the Regulations.
- 8.2.9. As the use is not identified in the zoning matrix it is appropriate to consider section 19.5.4 of the CDP. This details that non-listed uses will be considered on a case-by-case basis. The zoning objective for 'Light Industrial' lands details that the processes carried out, or the machinery/plant installed on such lands must be such that they could be carried out or installed without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
- 8.2.10. In this context I consider the nature of the proposed pet crematorium and the extent of the listed reasons would not be to the detriment of the amenity one could reasonably expect on Light Industrial zoned lands. I am satisfied the nature and extent of the proposed development is consistent in principle, and compatible with, the Light Industrial zoning of the site.

#### 8.3. The Proposed Development

- 8.3.1. The application proposes the use of an existing building for the purposes of a pet cremation. There are no changes proposed to the external fabric of the building save for the installation of flue which will extend 4.139m from the existing valley of the building to provide clearance over the existing butterfly style roof. The addition of the flue will have a minimal visual impact on the area.
- 8.3.2. The proposal provides for the installation of a PET200 pet cremation machine inside the existing building. The supporting documentation submitted with the application

details it can provide for the cremation of up to 8 house pets per day. Additional equipment for the machine includes a hydraulic lift table, de-ashing tools and a pet cremulator. The details include a declaration regarding compliance with the Animal By-Products Regulations (EU) No. 142/2011 and sound level measurements for the machine.

- 8.3.3. The Planning Support Statement submitted with the application details handling and cremation procedures. Dead pets are to be collected in a specialised vehicle from a veterinary clinics or the owners home. More than one pet may be collected at a time. Pets will be stored in a holding area with cremation as soon as possible after arrival. Remains will not be allowed to accumulate. Pets will be cremated individually with remains reduced to ash in a Cremulator before transfer to an urn. The urn will be collected by appointment or returned to the veterinary practise or the owners home. The proposed hours of operation are Monday to Friday from 9am to 5pm and Saturday from 9am to 1pm. The application form Page 11, Q 5 details two people are to be employed. Q6 details the collection and return service operated by the applicant with 5 trips estimated per day.
- 8.3.4. The proposed development, as granted, would be able to operate between 9am and 5pm, five days a week and 9pm-1pm on Saturdays. I calculate that the proposed development would have the potential to perform c. 44 cremations per week. Notwithstanding the weekly capacity of the incinerator, the applicant indicate in section 3.2 of the Planning Support Statement an intention to operate on a less intense scale of 5-7 cremations per day. I do not consider the proposed or potential level of activity to be a significant intervention at this site located on Light Industrial zoned lands.

#### 8.4. Environmental Concerns

- 8.4.1. The appellant concerns in this regard appear to generally relate to the report of Clare County Council's Environment Section in which they recommended further information be sought in relation to-
  - engagement with the EPA and if the development is a licensable activity under section 39 the Waste Management Act 1996,
  - inadequate modelling in the submitted Air Screening Report and

• the impact of noise from the proposed development.

The appellants argue that the Planning Reports assessment of these requirements were not robust enough to alleviate environmental impact concerns. Other concerns highlighted include disposal of residue ash and on site waste management.

- 8.4.2. The Planning Authority report addressed the matters raised by their Environment Section as follows-
  - The facility is a non-scheduled activity (Air Pollution Act 1987, EPA Act 1992 as amended, Waste Management Act 1996 as amended) and does not require an air emissions licence.
  - An air pollution licence would be outside the remit of the Planning Authority / this application and reference is made to Section 34 (13) of the Act.
  - The proposed development will be located in an existing industrial estate and is surrounded by a number of existing structures of varying heights and dimensions. The limited amount of emissions, the model of incinerator proposed and the control of activity under other statutory codes with separate enforcement powers are noted. The proposal will not generate hazardous or toxic air emissions.
  - Given the context of the site, existing ambient noise generated in the area the location of noise sensitive locations the proposal would not give rise to noise emissions that would be considered excessive for a light industrial process.

The Planning Authorities conditions also set a number of measures to protect amenities and public health in the area including conditions

- 2 (materials to be burnt),
- 4 (storage of dead animals and waste management),
- 5 (operating hours) and
- 7 (noise levels)
- 8.4.3. The appellants first concern relates *Engagement with the EPA*. I note section 7.8. of the Development Management Guidelines 2007 deals with Conditions relating to other Codes This section details it is inappropriate to deal with matters which are the subject of other controls in Development Management. Accordingly, I agree with the

Planning Reports assertion that to require the applicant to engage with the EPA would be outside the remit of the Planning Authority.

- 8.4.4. The second concern of the Environment Section relates to the applicants submitted Air Screening Report and limitations in its dispersion model relating to the existing built environment.
- 8.4.5. The applicants response to the appeal details the operation of the plant requires an Air Emissions Licence under section 30 of the Air Pollution Act 1987 (Licensing of Industrial Plant) Regulations 1998.
- 8.4.6. The applicants submitted an Air Screening Assessment with the application to evaluate the impact of air emissions from the facility on public health. The assessment concludes that maximum predicted 'Ground Level Concentrations' resulting from atmospheric emissions of all modelled parameters are within the 5% threshold for significant impact stated in the EPA Air Dispersion Guidance Note AG4<sup>6</sup> and therefore does not require further detailed assessment.
- 8.4.7. Notwithstanding the submitted Air Screening Assessment the proposed development is considered industrial in nature and is located on land zoned Light Industrial. The proposed development, capacity of the cremator and proposed operating hours will lead to a relatively small scale operation in the context of the Industrial estate. Emissions from the development are licensable under other codes. Accordingly I am satisfied the proposal will not adversely impact on the amenities of the area.
- 8.4.8. The appellants third concern related to the absence of a noise assessment and the receiving environment. The response to the appeal details the Ennis Educate Together National School to be 80m from the site and the proposal would comply with the condition of the Planning Authority. I note the school appears to be c. 50m from the site. I do not consider this discrepancy would have a material bearing on this assessment given the existing industrial nature of the site and its Light Industrial zoning. I am satisfied noise impacts can be adequately managed by condition.
- 8.4.9. Conclusion

<sup>&</sup>lt;sup>6</sup> https://www.epa.ie/publications/compliance--enforcement/air/air-guidance-notes/EPA-Air-Dispersion-Modelling-Guidance-Note-(AG4)-2020.pdf

I have considered the above and in particular, the existing building on site and adjoining uses, the nature and scale of the development proposed, the sites Light Industrial zoning and the separation distances to adjoining land uses. I consider the environmental concerns identified by the appellants have been reasonably addressed. Subject to conditions the proposed development will not have significant environmental impacts that would adversely impact the amenities of the area.

#### 8.5. Traffic Implications

- 8.5.1. The appellant raises a number of traffic related concerns including car parking, abandoned cars and movements to and from the site. This includes people having to transport dead animals by foot through the estate.
- 8.5.2. Condition 8 of the Planning Authority's grant of permission requires four car parking spaces and a dedicated set down area for carcass transportation to be agreed prior to commencement of development. The Planning Authority do not consider the proposed development would result in such volumes of traffic that would result in a traffic hazard.
- 8.5.3. The applicants have submitted details of proposals to address condition 8 of the grant of permission. Four car parking spaces and one designated set down area are identified. Abandoned cars have been removed from the area. The applicants intention is to collect animal remains mainly from veterinary clinics with the majority of pet ashes retuned to the clinics. Visitors are to be permitted by appointment only for collection of their pets ashes. The applicants response to the appeal estimates a maximum of 4 return trips per day with 2-3 customer appointments per week. Q6 of the applicant form details the collection and return service with 5 trips estimated per day. I don't consider the discrepancy will have a material bearing on the assessment.
- 8.5.4. The application site is located within an existing industrial estate which is well served by existing road infrastructure. Having considered the size, scale and nature of the proposed development include trips proposed, I am satisfied the development will not have a significant impact on traffic volumes to the site, the industrial estate or the general area and will not endanger public safety.
- 8.5.5. I note the applicants proposals in the response to the appeal to address car parking and condition 8 of the Planning Authority's grant of permission. The Planners

Authority have estimated a requirement for four spaces based on the number of employees (as per application form) and the nature of the development. They also requires a dedicated set down area for a carcass transportation vehicle.

8.5.6. Having considered the site's existing context, the nature and scale of the proposed development as well as the submitted parking proposal, the provision of 4 car parking spaces and one dedicated set down area is not considered necessary to facilitate the development. The proposed parking layout would create periods of conflict between the set down area and the proposed parking spaces. In my opinion, it is more appropriate that one of the dedicated parking spaces for employees could also serve as the dedicated set down area. Should the Board decide to grant permission it is recommended a condition be applied to provide for four car parking spaces one of which should serve as a dedicated staff/carcass transportation parking space.

#### 8.6. Vexatious Nature of the Appeal

8.6.1. The applicant's content that the third party appeal is vexatious and should be dismissed by the Board. They have submitted evidence to support this opinion. Having reviewed the information submitted it is questionable why a person living in Navan would appeal the application. However, the appellant has raised matter clearly related to the proper planning and sustainable development of the area and as such it is appropriate that the appeal is given its due consideration.

#### 8.7. Appropriate Assessment

#### 8.7.1. Introduction

a) A screening report for Appropriate Assessment prepared by Verde Environmental Consultants was submitted with the application. The report concludes that no potential impact pathways were identified connecting the project site to any relevant European Site occurring within the wider surrounding area. It details that there will be no potential for the project to combine with other projects occurring in the vicinity to result in likely significant cumulative negative effects to European Sites. The report details the project will not alone or in-combination with other plans or projects have a significant effect on any European Site in view of their Conservation Objectives.

b) The Planning Authority have carried out a Screening Report for Appropriate Assessment & Determination dated 03/11/21. In the determination section they describe how the proposal may affect European Sites- "The proposed development will not result in any surface water emissions during the construction phase or operation phase or aerial emissions that may have the potential to result in negative impacts to air quality at and surrounding the subject site. Given the absence of any functional impact pathways between the project site and the surrounding European Sites thee will be no potential for the project, either alone or in combination with other plans or projects to result in negative impacts to European Sites."

#### 8.7.2. Stage 1 Screening

a) The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on European sites. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on such European Sites.

#### 8.7.3. The Proposed Development and Receiving Environment

- a) The proposed development is for the use of a vacant building as a pet crematorium for domestic animals. It will involve internal alterations and insertion of a flue to the roof. A domestic pet cremation machine will be installed internally.
- b) The site is an existing industrial building located within an industrial estate.
- c) The site is not located within or adjoining a designated European site.

#### 8.7.4. European Sites

- a) Given the location of the site, and the nature and scale of the proposed development, I consider the designated site as set out in Table 1 below to be within the zone of influence of the subject site.
- b) I am satisfied that other European sites proximate to the appeal site (including those identified in section 6.5 above) can be 'screened out' on the basis that significant impacts on such European sites can be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway from the appeal site to European Sites.

Site and code1029 Freshwater Pearl Mussel Margaritiferac. 24Lower1029 Freshwater Pearl Mussel Margaritiferac. 24River1095 Sea Lamprey Petromyzon marinusto theShannon1096 Brook Lamprey Lampetra planeriwestSAC1099 River Lamprey Lampetra fluviatilis1106 Atlantic Salmon Salmo salar (only in fresh water)(002165)1110 Sandbanks which are slightly covered by sea water all the time1130 Estuaries1140 Mudflats and sandflats not covered by seawater at low tide	
River1095 Sea Lamprey Petromyzon marinusto thShannon1096 Brook Lamprey Lampetra planeriwesSAC1099 River Lamprey Lampetra fluviatilis1106 Atlantic Salmon Salmo salar (only in fresh water)(002165)1110 Sandbanks which are slightly covered by sea water all the time1130 Estuaries1140 Mudflats and sandflats not covered by seawater at low tide	ie
1150 *Coastal lagoons1160 Large shallow inlets and bays1170 Reefs1220 Perennial vegetation of stony banks1230 Vegetated sea cliffs of the Atlantic and Baltic coasts1310 Salicornia and other annuals colonizing mud and sand1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)1349 Bottlenose Dolphin Tursiops truncatus1355 Otter Lutra1410 Mediterranean salt meadows (Juncetalia maritimi)3260 Water courses of plain to montane levels with the Ranunculionfluitantis and Callitricho-Batrachion vegetation6410 Molinia meadows on calcareous, peaty or clayey-silt-laden soils(Molinion caeruleae)91E0 *Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)	
	0m to north
	.4km
Lough SPA A051 Gadwall Anas strepera to th	
(004041) A052 Teal Anas crecca nort	h
A053 Mallard Anas platyrhynchos	
A056 Shoveler Anas clypeata	
A125 Coot Fulica atra	
A156 Black-tailed Godwit Limosa	

#### 8.7.5. Test of Likely Significant Effects

- a. The project is not directly connected to or necessary to the management of any European site. The proposed development is examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- b. Based on the source-pathway-receptor model and having regard to the existing brownfield and serviced nature of the site, the nature of the proposed development to an existing building, the scale of works proposed, the distance to identified European sites and having regard to the NIS carried out for the County Development Plan including the identified conditions underpinning European Site integrity and implications for this site, the following are considered for examination in terms of likely significant effects on European sites-
  - Water quality
  - Air quality
  - Appropriate levels of disturbance

#### 8.7.6. Potential Effects

#### Wastewater-

- a) Volume 3a of the CDP, Section 1.14.5 details that the northern Ennis area is served by a treatment plant at Clonroadmore and the southern part and Clarecastle is served by a treatment plant at Clareabbey. The existing wastewater treatment plant at Clonroadmore has recently been upgraded from 17,000PE to 31,500PE.
- b) The site currently benefits from existing connections to the public sewer. The proposed development would give rise to an insignificant increase (if any) on the loading at the Wastewater Treatment Plant, which has sufficient capacity to facilitate the development.

c) I am satisfied that wastewater from the proposed development will not have a significant effect and would not adversely affect the integrity of the identified European sites.

#### Surface Water and Water Quality

- a) The site currently benefits from existing connections to public drainage. The development proposes no significant amendments to the existing buildings.
- b) I am satisfied that surface water from the proposed development will not have a significant effect and would not adversely affect the integrity of the identified European sites.

#### Air Quality

- a) Burning of Category 1 animal by-products will be subject to regulation and licensing from the Department of Agriculture, Food and Marine. The operation of the plant will require an Air Emissions Licence under section 30 of the Air Pollution Act 1987 (Licensing of Industrial Plant) Regulations 1998.
- b) The level of emission proposed to the air and distances to European Sites are such that any such emission would be minimal and would be sufficiently diluted and dispersed. I am satisfied that air emissions from the proposed development will not have a significant effect and would not adversely affect the integrity of the identified European sites.

#### Appropriate levels of disturbance

a) Concerns in this regard relate to noise. The application is located within an existing industrial estate where surrounding environmental noise is evident.
The operation of the development as proposed and the distance from European Sites would have an insignificant effect on European Sites.

#### 8.7.7. In-combination Impacts

- a) The subject application should be considered as part of the wider development of Ennis as part of the County Development Plan. The Plan was also subject to AA by the Local Authority.
- b) I do not consider there to be any other specific recent planning applications in the immediate area that could have in-combination effects with the proposed development on the identified European Site.

#### 8.7.8. Conclusion

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) would not be likely to have a significant effect on the following European Sites-

- Lower River Shannon SAC (002165)
- Ballyallia Lake SAC (000014)
- Ballyallia Lough SPA (004041)
- or any other European sites, in light of those sites' Conservation Objectives', and a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not therefore required.

In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Sites.

#### 9.0 Recommendation

9.1. I recommend that permission is granted subject to the following conditions-

#### 10.0 Reasons and Considerations

10.1. Having regard to the Light Industrial zoning objective of the site as set out in the Clare County Development Plan 2017-2023, the existing and general pattern of development in the area and the nature and scale of the proposed development, and subject to compliance with the conditions set out below, the proposed development, would constitute an acceptable use, would not seriously injure the amenities of the area or of properties in the vicinity and would be acceptable in terms of traffic and road safety and would not be prejudicial to public health. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

# 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 10th day of September, 2021 and by the further plans and particulars received by An Bord Pleanála on the 05<sup>th</sup> day of January, 2022 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

(a) four number car parking spaces shall be provided to serve the development, one of which shall be reserved for the carcass transportation parking vehicle.

Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of orderly development and traffic safety.

3. A plan containing details for the storage of animal carcasses and the management of waste within the development, including the provision of facilities for carcass storage, waste separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the storage of carcasses and waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate storage of animal carcasses and management of waste in the interest of protecting the environment.

- 4. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:-
  - An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
  - (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

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

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

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

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

6.

 a) Commissioning of the pet cremation unit shall be undertaken after installation and duly certified to indicate the unit is operating to specification, based on the specified batch throughput. This certification shall be submitted to the Planning Authority within 14 days of its completion.

- b) If during ongoing operations, the operational temperature and time requirements are not in accordance with the operating specification, no processing shall be undertaken until appropriate measures are taken to restore the operating temperature.
- c) Annual service and certification of equipment, and independent calibration shall be undertaken, and records of same retained for inspection by the Planning Authority, if required.
- d) Records of batch throughput shall be maintained and shall be sufficient to demonstrate the operation of the unit complies with this batch throughput machine specification submitted with the application
  Reason: In the interests of orderly development.

Adrian Ormsby Planning Inspector

15<sup>th</sup> of February 2022