An Taisce
The National Trust for Ireland

20191211-ABP-19668

An Bord Pleanála
64 Marlborough Street
Dublin 1

11th December 2019

P.A. Ref.: **19/668**
App: **JHOK**
For: **A seven-year planning permission for a Continental Cheese manufacturing plant. The development will include a part single storey and part two storey production building approximately 14 metres high with intakes, processing plant and equipment, packing, stores, dispatch, offices, laboratories, utilities and personnel facilities; a 10 bay milk intake and cream dispatch building approximately 11 metres high and associated plant and equipment with office, milk testing and personnel facilities; storage silos up to 28 metres high for milk, whey and water; pipe and service bridges, salt silos and brine mixing; sprinkler storage tank and pumphouse; waste water treatment plant comprising balancing, waste water treatment and sludge drying and a truck wash; waste recovery compound and store and a monitoring building. Site development works will include earthworks; security fencing; traffic barriers; a new entrance; internal roads and paved areas; car, truck and bicycle parking; drains and services; connection to existing water main and foul drain in the Park and a treated wastewater outfall pipeline from the on site wastewater treatment plant to the existing Irish Water outfall within the Waterford City Wastewater Treatment Plant at Gorteens; attenuation ponds; fire water retention pond; site lighting; signage and landscaping. The Application also seeks retention of and alterations to the existing construction compound, which will be removed on completion of the works. The development consists of an activity for which an Industrial Emissions Licence is required. An Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS) will be submitted to the Planning Authority with the application**
Site: **IDA Ireland, Belview Science and Technology Park, Gorteens, Slieverue, Co. Kilkenny**

To Whom It May Concern,

In accordance with the provisions of Section 37(1) of the Planning and Development Act, 2000 (as amended), An Taisce wishes to appeal the decision on 14/11/2019 of Kilkenny County Council to grant permission for the above application. It is noted the closing date for an appeal is 11/12/2019.

1. The need to assess impacts of the milk supply

There is an inextricable relationship between the proposed cheese plant and its supply of milk, as the plant cannot survive without a constant milk input. This is clearly acknowledged in the application including in the Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS), both of which include the impacts of milk production in their discussions of the indirect impacts of the proposal.

Therefore, in order to carry out the Appropriate Assessment in accordance with the Habitats Directive and to meet the information provision requirements of the Environmental Impact Assessment Directive, and meet required national emissions reduction targets, the milk supply inputs for the proposed cheese plant must be fully assessed.

2. Environmental impacts of bovine agriculture and dairy production

The adverse environmental impacts of bovine agriculture are well documented, including impacts in relation to greenhouse gas (GHG) generation, nitrate impact on soil and water quality, biodiversity loss, and ammonia air pollution. As such, it crucial that these impacts in relation to the milk supply for the proposed cheese plant are thoroughly assessed in line with the requirements of the EIA and Habitats Directives.

It should be noted that JHOK, the applicant company, is a partnership between Glanbia and Royal A-Ware, a Dutch cheese company. The Netherlands is currently facing major climate and water pollution mitigation obligations as a result of legal action, which means that a significant reduction in its bovine industrial agricultural sector will be required (see Appendix 1). The location attraction of Ireland for Royal A–ware is its direct and indirect subsidy regime, supporting expansion of milk production, processing and export of products.

We submit that the current impact of dairy processing in Ireland since the lifting of milk quotas as well as the current levels of nitrate fertiliser and fodder input required, resulting in the above mentioned impacts makes current bovine stocking levels unsustainable. We also consider that the movement of foreign investment into the Irish dairy industry through the JHOK partnership amounts to carbon migration. Any increase in Irish dairy production is therefore untenable.

2.1 Water quality

On 10th December 2019, the EPA published its latest report on Water Quality in Ireland 2013-2018[1]. The report reveals that water quality in Ireland is declining after a period of relative stability in the last assessment in 2017. Only 52.8% of Irish surface waters (rivers, lakes, estuaries and coastal waters) are currently in satisfactory ecological condition, with an overall 4.4% net decline in surface water body status since 2010-2015.

Rivers have declined 5.5% (net) with high status rivers being particularly adversely impacted. The number of poor status rivers has increased by 33% since 2009 and at least 25% had rising nutrient concentrations between 2013 and 2018.

Notably, the report concludes that increased nitrogen runoff from agriculture is one of two primary drivers of this decline and that nitrogen pollution has worsened since 2013 as cattle numbers and fertiliser use have increased. The report clearly demonstrates that dairy intensification specially can be directly tied to the trend of rising nitrogen levels because dairy farming is most effective on loose, freely draining soils that allow for the highest levels of nitrogen runoff.

In the NIS's assessment of SACs near the plant site, they also acknowledge the threats to water quality posed by agriculture:

- Section 4.1 (on the Lower River Suir SAC) states: "*Intensive agriculture is the primary land use along the banks of the river. The widesperead use of fertiliser and slurry pose the greatest threats to the conservation status of the SAC due to the related impairment in water quality.*"
- Section 4.2 on the River Barrow and River Nore SAC similarly states: "*The main threats to the SAC and current damaging activities include high inputs of nutrients into the river system from agricultural run-off and sewage plants along with over-grazing, invasion of non-native species and land reclamation.*"

2.2 Biodiversity loss

The latest six yearly Article 17 (Habitats Directive) report to the European Commission on the status of EU protected habitats and species in Ireland was published in August 2019. Its findings were bleak; 85% of the 59 listed habitats in Ireland were assessed to be in unfavourable ('inadequate' or 'bad') conservation status. 46% are experiencing ongoing declines. The status of protected species is somewhat better with 30% of assessed as being in unfavourable status (i.e. Inadequate and Bad), with 15% demonstrating ongoing declining trends.

[1] EPA (2019) Water Quality in Ireland 2013-2018: https://www.epa.ie/pubs/reports/water/waterqua/Water%20Quality%20in%20Ireland%202013-2018%20(web).pdf

Importantly, the report found that over 70% of protected habitats are adversely impacted by agricultural pressures, and these pressures was ranked of high importance in more than 50% of habitats. Of the agricultural pressures, intensive grazing and overgrazing was the most prevalent pressure, recorded in 39% of habitats.

More broadly, biodiversity, particularly in aquatic habitats, is facing serious threats from the deterioration of water quality as a result of agricultural runoff.

2.3 Greenhouse gas emissions

Intensive cattle farming is also a major emitter of GHGs and is contributing significantly to Ireland's ongoing failures to reach its legally binding Paris Agreement targets; GHGs from agricultural account for one third of Ireland's total emissions.

The Irish bovine agricultural lobby repeatedly claims that Ireland is a world leader in carbon efficiency, a claim reiterated in the subject EIAR as a justification for the project. However, this assertion has been negated by the publication of the United Nations Food and Agriculture Organisation (UN FAO) GLEAM Report[2] in February 2019. This report revealed that Ireland is the most carbon-intensive beef producer in Europe, and ranks as Europe's third highest on emissions from its dairy sector.

The GLEAM Report, which adopted a methodology examining the full life cycle impact of food production, contradicts claims by Ireland's agri-industrial sector (and used in the EIAR), which has long argued, using outdated 2004 data, that Irish beef and dairy is among the most efficient in the EU in terms of emissions. Despite spiralling emissions, the EIAR claims (like the agri-industrial sector and Department of Agriculture) that Ireland is 'more efficient' than other countries so therefore it is better that we produce these intrinsically emissions-intensive foods than to have them produced even more inefficiently elsewhere.

However, the An Taisce Climate Committee's analysis of the GLEAM report concluded that:

> "*The FAO baseline results for livestock agriculture's climate impact indicates that, relative to other EU nations, Ireland's livestock agriculture has very high emissions intensities: close to the worst emissions per litre of protein for dairy production and the worst for beef. Indeed, for all animal product types analysed by FAO GLEAM, including sheep and pig production, Ireland's baseline emissions intensities are worse than the EU average.*"
>
> "*However, climate action requires reduction of total agricultural sector emissions, so even if emissions intensity improves, any overall increase in production wipes out any saving. The primary drivers for Ireland's increasing agriculture emissions are the rapidly increasing use of fossil-fuel derived nitrogen fertiliser, which boosts grass growth, and ever more concentrate feed per head. Climate action requires limits on*

[2] UN FAO GLEAM Report: http://www.fao.org/gleam/en/

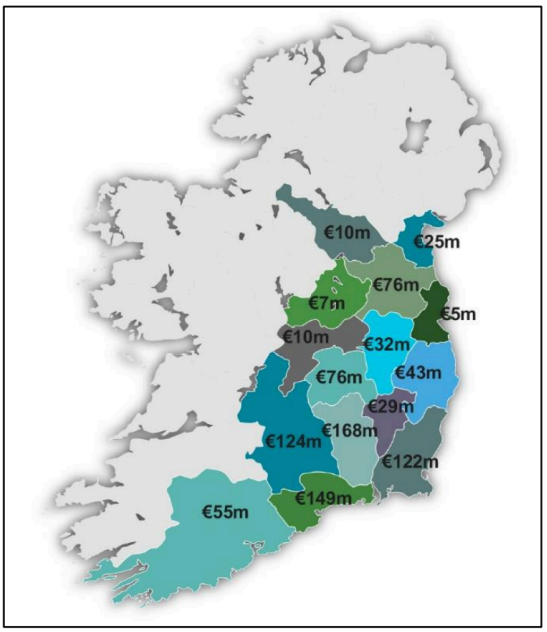
production or on total fertiliser and feed usage; otherwise efficiency gains, if any, will have no effect."

2.4 Air pollution

Ammonia emissions causing air pollution are another result of bovine agricultural processes including manure storage, slurry spreading and the use of inorganic nitrogen fertilisers on fields. Ireland is already in breach of its 116kt per annum limit under the National Emissions Ceiling Directive (2016/2284/EU): 118.4kt were emitted in 2017. Moreover, Ireland is legally obliged under the Directive to decrease its ammonia emissions to 107.5kt by 2030. Intensifying bovine agriculture in Ireland will make achieving these targets extremely difficult.

3. Details of the proposed milk supply

The EIAR and NIS state that the milk for the proposed cheese plant will be primarily sourced from Glanbia's own milk suppliers, approximately 4,500 farms. The EIAR notes that the specific farms cannot be identified, but it does state that all of Glanbia's suppliers are located in the eastern portion of country (see map below) with approximately half of the company's current supply coming from Wexford, Waterford and Kilkenny.



Glanbia's milk payments by county, 2018 (EIAR Figure 2, pg. 54)

The EIAR also notes that 75% of Glanbia dairy farms have a stream or other watercourse running through or adjacent to the farm. Despite this, only 57% of Glanbia's farms have nutrient management programmes to mitigate water quality deterioration (see EIAR section 7.8.3).

It is crucial to note that the aforementioned EPA water quality report (December 2019) states that increasing nitrogen levels are of particular concern in the southeast of Ireland, where the majority of these Glanbia dairy farms supplying the proposed plant are located and where most of the current dairy intensification is occurring.

3.1 Dairy intensification and FoodWise 2025

As noted in the subject application, including in the EIAR, the proposal is grounded in the plans contained in FoodWise 2025 for the growth of the Irish agricultural sector, including the intensification of dairy production.

EIAR Section 2.4.1.3 on FoodWise 2025 states the following:

> "*[FoodWise 2025] states that the following growth projections are achievable by 2025:*
>
> - *Increasing the value of agri-food exports by 85% to €19 billion;*
> - *Increasing the value added in the agri-food sector, fisheries and wood products sector by 70% to more than €13 billion;*
> - *Increasing the value of primary production by 65% to almost €10 billion; and*
> - *The creation of additional 23,000 direct jobs in the agri-food sector all along the supply chain from primary production to high-value added product development.*
>
> *Through domestic and foreign investment, the proposed development will export added-value food products to the EU and create employment in the local area, in direct fulfilment of the national development objectives stated above."*

FoodWise 2025, and FoodHarvest 2020 before it, have overseen the ongoing decrease in water quality, with the EPA highlighting in the 2016 State of the Environment report[3] that there is a clear correlation between the areas with the highest nitrate and phosphorus concentrations in waters and areas with the most intensive agriculture (in addition to high human density). The data gathered by the EPA are beyond dispute, 53% of river pollution is attributable to agriculture.

According to the EIAR (section 2.9), Glanbia's Milk Planning Census for 2019-2023 (which covers 86% of the company's milk pool) is projecting a 1.5% year on year productivity increase from the existing herd. They expect a supply increase from 2,347 million litres in 2018 to 3,014 million in 2023 (28% increase). The EIAR also states that a significant portion of the milk supply for the proposed cheese plant is already available and being sold to other processors. They therefore claim that the proposal will not require an increase in the dairy herd.

[3] EPA (2016) State of the Environment Report: https://www.epa.ie/pubs/reports/indicators/irelandsenvironment2016.html

Even if the bulk of the subject plant's milk supply would come from existing farms, the increase in productivity nevertheless represents a significant intensification of dairy production with a likely resulting exacerbation of the aforementioned adverse environmental impacts as discussed in section 2 above. The EIAR has not provided any data to indicate that a productivity increase would not result in additional GHG and nitrogen emissions. Moreover, those other processors currently receiving Glanbia will still require a milk supply if the proposed cheese plant is built, thereby increasing the amount of milk needed and intensifying production. Additionally, the combination of dairy and beef related projects under FoodWise2025, of which the subject proposal is a part, will entail an increase of the national herd.

Ultimately, regardless of whether the subject proposal will increase the dairy herd and intensify production, Ireland has an obligation to cut GHG emissions, which will require *reducing* dairy production, not merely keeping it stable at current levels and certainly not increasing it.

4. Legal and policy considerations

4.1 Precedents for assessing functional interdependence in supply chains

There are crucial parallels between this case and the High Court ruling on Bord na Móna's Edenderry Power Plant (ABP Ref. PL 19.245295; An Taisce -v- An Bord Pleanála [2015] IEHC 633). In the Edenderry case, it was ruled that there was "functional interdependence" between the power plant and the Bord na Móna bogs identified in the planning application. It was decided that the source of the fuel should have been considered as part of the application for the continued operation of the power plant. This decision was supported by the clear connection between the operation of the power plant and the supply of the peat fuel, the construction of the plant in close proximity to the fuel source and the connection between the supply of the fuel source from Bord na Móna owned bogs via the Bord na Móna operated railway network to the Bord na Móna owned power plant.

In giving the High Court's judgment, Mr. Justice Michael White stated: "*From any reasonable application of the objective facts of this project, there are possible indirect effects of the use of peat from these bogs on the environment."* He went on to state: "*The difficulty is that [An Bord Pleanála] excluded completely the consideration of the indirect effects, when considering the planning application for the extension of life of the power plant.*"

Given the comparable relationship with the source of the milk and the proposed cheese plant, An Taisce submits that the source of the milk and environmental impacts associated with milk production must be considered when assessing the subject application.

In a similar case in July 2019, An Bord Pleanála refused permission for the continued operation of the Co. Offaly Shannonbridge peat power plant with progressive biomass co-firing on a range of grounds, including inadequate assessment of the direct and indirect impacts of continued peat extraction from the supply bogs identified (ABP Ref. PL19.303108, see Appendix 2):

> "*The Board adopted the report of the Inspector and agreed with his conclusions in relation to the Stage 2 Appropriate Assessment that, with the implementation of the proposed mitigation measures, the proposed development of the power station and the ash disposal facility would not, either alone or in combination with other projects and plans, adversely impact the integrity of any European site.* ***However, the Board concluded that the indirect effects on European sites, arising from the continued sourcing of peat fuel from the supply bogs, cannot be conclusively determined on the basis of the information provided with the application.***" [An Taisce emphasis added]

The Board also stated that the continued harvesting and burning of peat would run counter to national climate mitigation policy: "*Finally, it is considered that the cessation of the use of peat as a fuel is a key component within national climate and energy policy in helping to reduce the generation of excessive greenhouse emissions from the established facility to assist in meeting the State's domestic, EU and international climate change obligations in the energy sector.*"

We consider that increased dairy production and processing would similarly run counter to national climate policy.

4.2 Legal requirements of the Habitats Directive

It is now well established in law that approval can only be granted for plans and projects when it has been established beyond all reasonable scientific doubt that the subject proposal will not adversely impact any Natura 2000 sites.

In Case C-258/11, Sweetman & Others v An Bord Pleanála & Others, it was held that the provisions of Articles 6(2)–(4) of the Habitats Directive must be interpreted together "*as a coherent whole in the light of the conservation objectives pursued by the directive*" and that they impose a series of specific obligations necessary to achieve and maintain favourable conservation status. A plan or project will negatively impact upon a site if it prevented the "*lasting preservation of the constitutive characteristics*" of the site for which it was designated, with reference to the site's conservation objectives. Significantly it was determined that "*authorisation for a plan or project ....may therefore be given only on condition that the competent authorities ....are certain that the plan or project will not have lasting adverse effects on the integrity of the site. That is so where* ***no reasonable scientific doubt remains*** *as to the absence of such effects*." [An Taisce emphasis added]

The competent authority must therefore refuse authorisation for any plans or projects where there is uncertainty as to whether the plan or project will have adverse effects on the integrity of the site. It was also held in paragraph 44 that:

> "*So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it* ***cannot have lacunae*** *and* ***must contain complete, precise and definitive findings*** *and conclusions capable of removing*

all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned (see, to this effect, Case C 404/09 Commission v Spain, paragraph 100 and the case-law cited)..." [An Taisce emphasis added]

In Kelly v An Bord Pleanála & Others, [2013 No 802 J.R.] with reference to Commission v Spain c-404/09, the High Court held in paragraph 36 that the competent authority must carry out an Appropriate Assessment for a plan or project in light of the best scientific knowledge in the field. It was also held that the competent authority must lay out the rational and reasoning which was used to arrive at the determination.

The case repeated the conclusion of the CJEU at paragraph 44 in the aforementioned Case C-258/11, namely that an AA "*cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt*." Consequently, it was held that an AA must include "*examination, analysis, evaluation, findings, conclusions and a final determination*."

The Kelly Judgement has provided a very helpful clarification of the requirements of an AA and in particular in paragraph 40, a summary of what must be delivered by the process in order to be lawfully conducted:

> *"(i) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.*
>
> *(ii) Must contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.*
>
> *(iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects.*"

If uncertainty exists regarding the potential impact of any proposed development full account should be taken of the precautionary principle, and the development should be refused.

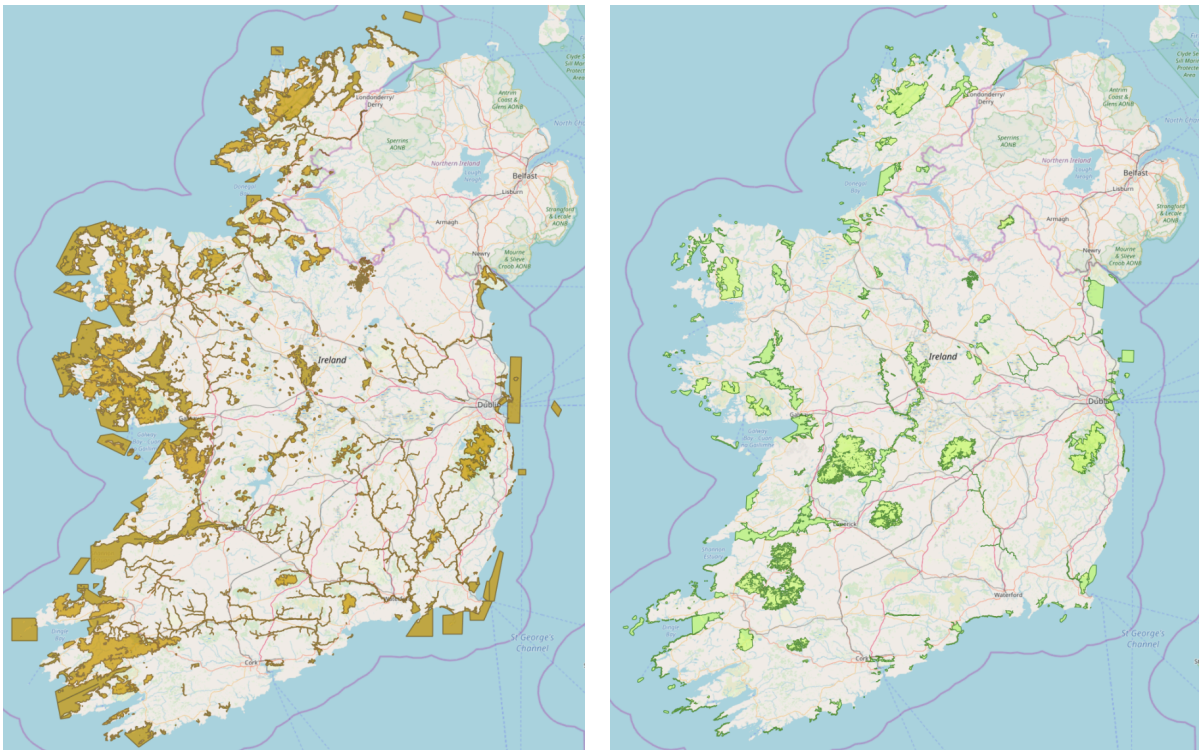
4.3 The proposal's lack of compliance with the Habitats Directive

In light of the above points, An Taisce submits that granting approval for the subject proposal would contravene Article 6(3) of the Habitats Directive for the following reasons.

It is stated multiple times in the application that although the milk will primarily be sourced from Glanbia farms, the exact farms and their locations are uncertain and would likely change year to year. For example, section 7.3 of the NIS on potential indirect impacts of the proposal states:

> "*Milk will be the significant raw material input into the proposed development – 450 million litres per year. The milk will be mostly sourced from the existing Glanbia farms, of which there are ca. 4,500 farms; however, the specific farms supplying milks to the proposed facility cannot be identified and are likely to change from year to year.*
>
> *One of the greatest threats to both habitats and species in Ireland is the intensification and changes in agricultural practices."*

The maps below shows the location of all SACs and SPAs in Ireland as designated by the EU Habitats and Birds Directives. Crucially, in the southern and eastern portions of the country, where Glanbia's dairy farms are located, the majority of the Natura 2000 sites are water-based, either following river systems or encompassing lakes, estuaries and coastal waters.



EPA maps showing SACs (left) and SPAs (right) across Ireland. The Glanbia farms are in the eastern half of the country, with a concentration in the southeast, where most protected sites are water-based and where most nitrogen pollution is occurring.

Given the dependence of the plant on this supply of milk, the known potential for adverse impacts of bovine agriculture on the environment, and the significant number of Natura 2000 sites in the Glanbia dairy farm catchment area, we consider that the impacts of the dairy farms must be evaluated in the Appropriate Assessment. The fact that the localities of the farms from which the milk will be sourced are uncertain means that the potential impacts on nearby Natura 2000 sites cannot be properly assessed and definitive findings cannot be reached. These lacunae in the data means that it cannot be concluded beyond all reasonable scientific doubt that the indirect impacts of the proposed cheese plant will not adversely affect Natura 2000 sites.

An Taisce also draws the Board's attention to one of the reasons it gave for the refusal of the continued operation of the West Offaly Power Plant: "*given the lack of information regarding the source of the biomass to be used as a fuel, the Board concluded that it cannot reasonably be determined that the main direct and indirect effects of the proposed development on the environment would be mitigated.*"

We consider that the lack of information on the milk source farms in the subject application is analogous to the lack of information on the biomass source in the West Offaly case and that it therefore cannot reasonably be determined that the indirect effects of the proposed cheese plant on the environment would be mitigated.

The NIS goes on to state in section 7.3 that:

> "*Therefore, while it is not practicable to assess potential indirect effects on all Natura sites, it can be concluded in general terms that the continued implementation of the above-mentioned programmes and mitigations measures on dairy farms that will supply milk to the proposed development will mitigate potential indirect adverse effects on Natura 2000 sites.*"

While completing an Appropriate Assessment for all 4,500 Glanbia farms may indeed be impractical, we note that *none* have been assessed, not even those in closest proximity Natura sites.

As referenced in NIS section 7.3 quoted above, the NIS and EIAR outline the various sustainability programmes in which Glanbia farms participate and upon which the applicant's claims of no adverse indirect impacts as a result of the milk supply are largely predicated. This includes, but is not limited to:

- Bord Bia's Sustainable Dairy Assurance Scheme (SDAS, quality assurance standards)
- Agricultural Sustainability Support and Advice Programme (ASSAP, aimed at reducing impacts on water quality)
- Open Source Future Farm Programme (a joint programme with Teagasc that Glanbia is using to meet national requirements for dairy farms)
- Biodiversity Regeneration in a Dairying Environment (BRIDE, aimed at conserving an restoring habitats in intensively farmed lowland areas)

Firstly, the fact that the NIS's conclusion that the above programmes will mitigate any adverse impacts is made "in general terms" indicates a lack of definitive findings.

Furthermore, neither the EIAR nor the NIS provide any data or other evidence to indicate that these programmes have actually made demonstrable environmental improvements in water quality, GHG and ammonia emissions reduction, biodiversity protection, etc. It is also not detailed how these programmes are monitored and enforced. This lack of data on the programmes' efficacy is particularly notable in light of the aforementioned recent reports highlighting agriculture's significant contribution to water quality deterioration, biodiversity loss, and continually rising GHG emissions.

Due to the uncertainty around the milk supply farms and their locations, the lack of assessment of any of the supply farms, the undeniable evidence of the negative environmental impacts of bovine agriculture, and the lack of evidence showing the efficacy of the farm sustainability programmes cited as mitigation measures, the extent of the risks to the Natura 2000 network as a result of the subject proposal could not be quantified and identified through Appropriate Assessment. It is our considered opinion that the subject application and NIS has not presented complete, precise and definitive findings, hence reasonable scientific doubt about potential impacts on protected sites remains and granting approval for the subject application would breach Article 6(3) of the Habitats Directive. An Taisce therefore submits that An Bord Pleanála should overturn Kilkenny County Council's grant of permission.

5. Other considerations

In addition to the previously discussed contravention of Article 6(3) of the Habitats Directive, we submit that An Bord Pleanála should also have regard to following.

5.1 Cumulative impacts

An Taisce considers that the EIAR has failed to adequately assess the cumulative impacts of the subject proposal in combination with other existing, proposed and expanded dairy-reliant projects such as infant formula and milk powder processing operations and two other proposed new cheese factories, namely the other current proposal by Glanbia at Togher, Portlaoise, Co. Laois (subject EPA Licence RSE P1108) and the Norwegian TILE Cheese factory proposal in conjunction with Dairygold at Mogeely, Co Cork. It should also be assessed against other plans and projects that fall under FoodWise 2025 in relation to dairy and beef expansion.

5.2 Greenhouse gas mitigation in a time of climate emergency

Ireland committed to cut national emissions by 2020 by 20% relative to 2005. Instead, emissions are rising rapidly due to government and industry ignoring climate targets. Irish agriculture emissions in particular are going in the opposite direction, increasing rapidly due to dairy herd expansion. They are already higher in 2017 than in 2005, as more fertiliser-fed grass and imported feed are fed to more cattle producing ever more methane and nitrous

oxide – both potent, climate-polluting greenhouse gases. The industry-produced policies FoodHarvest 2020 and FoodWise 2025 failed to include targets to cut total emissions, and Teagasc project emissions will be above 2005 levels to 2050 and beyond.
Section 15(1)(d) of the Climate Action and Low Carbon Development Act 2015 requires that all government departments and public bodies (including planning authorities) shall, in the exercise of their functions, have regard to "*the objective of mitigating greenhouse gas emissions and adapting to the effects of Climate Change in the State.*"

Therefore, planning authorities, including An Bord Pleanála, have a legal obligation to respond to the challenges of climate change through regulating development in a manner that reduces GHG emissions. Given that agriculture accounts for one third of Ireland's overall GHG emissions, planning authorities must have regard to the Climate Action and Low Carbon Development Act 2015 and the need to mitigate emissions when assessing agriculture-related developments. In light of the intensification of dairy production required to meet the demands of the subject proposal (and in combination with other existing and proposed dairy developments), An Taisce considers that a grant of permission would contravene the Climate Action and Low Carbon Development Act 2015.

Conclusion

The multiple impacts, as set out in this appeal, that have already occurred as a result of increasing dairy production have reached a tipping point of unsustainably. Dairy production, both nationally and in the southeast of Ireland, needs to be reduced. There is no capacity for new milk processing capacity as proposed in this application.

We submit that granting approval for this application would contravene the Habitats Directive, the EIA Directive and the Climate Action and Low Carbon Development Act 2015 and request that the Board overturn the grant of permission issued by Kilkenny County Council.

Please acknowledge our appeal and advise us of any decision made.

Yours sincerely,

Phoebe Duvall
Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland

Ian Lumley
Head of Advocacy
An Taisce – The National Trust for Ireland

Appendix 1

From the Farming Independent

Look what happened in the Netherlands – Hogan warns Irish dairy sector on environment



1 EU Agriculture and Rural Development Commissioner Phil Hogan

Ciaran Moran

September 11 2018 3:04 PM

Agriculture and Rural Development Commissioner, Phil Hogan has warned the Irish dairy sector that it must maintain its reputation for producing products of the highest standards of safety and sustainability.

Speaking INTL FCStone dairy conference recently, he said that broadly speaking, the European dairy sector has a good story to tell, and good prospects for the future.

But went on to say that "we have to be honest about the potential pitfalls that lie ahead".

Hogan said the appealing image of dairy cows eating grass in wide open fields is a very successful selling point for Irish products.

However, he said if that reputation for quality and sustainability is compromised in any way, there is a clear and present danger of a negative market impact.

“I have used the Netherlands as a cautionary example in Ireland before, and for good reason.

“The Dutch dairy industry has been dealing with an ongoing phosphate problem which has resulted in the reduction of the Dutch dairy herd by around 122,000 cows over nine months, with a consequent reduction in phosphate and nitrates production.

“Currently, Dutch milk supply has fallen by 1.5pc,” he said.

Hogan warned that building a more sustainable foundation in relation to inputs “is not a choice: it is a must”.

Ireland and all other EU MS need to get the balance right under the Nitrates Directive and the Water Framework Directive, he said and added that failure to act now will lead to negative consequences in the near future – “potentially very negative consequences,” he warned.

Read also: The Dutch dairy dilemma - How dairy farmers in the Netherlands are coping with new phosphates regulations

CAP payments

Hogan also spoke on reform of the Common Agricultural Policy (CAP) and said that despite the difficult budgetary context of Brexit and other new EU challenges such as security and migration, the Commission has proposed a strong budget for agriculture.

“Direct payments to farmers are cut moderately by no more than 4%.

“This reduction is complemented with a proposal to achieve greater equity in direct payments per hectare, by means of continued convergence, degressivity and capping,” he said.

Hogan highlighted that the direct payments envelope for Ireland in the next budget is €8.15 billion, a reduction of 3.9pc compared to the 2020 baseline allocation.

For rural development, he said the Commission proposes to rebalance EU and national support, so that public support to European rural areas remains largely unchanged.

Board Order
ABP-303108-18

Planning and Development Acts, 2000 to 2019

Planning Authority: Offaly County Council

Application for permission under section 37E of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an Environmental Impact Assessment Report and Natura Impact Statement, lodged with An Bord Pleanála on the 26th day of November, 2018 by the Electricity Supply Board care of Electricity Supply Board International of One Dublin Airport Central, Dublin Airport, Cloghran, County Dublin.

Proposed Development: West Offaly Power Station currently has planning permission to operate as a peat-fuelled electricity generating station under Offaly County Council register reference 01/187/An Bord Pleanála appeal reference number PL19.125575. The Station has a nominal total electrical rating of 150 megawatts and contains a number of structures and buildings with a combined gross floor area of c. 27,073 sq.m. These include: a c. 20,165 sq.m. generating station [including a boiler, steam turbine, electrostatic precipitators, stack (max. height 80m), workshops and stores, control and administration buildings, cooling water system, minor ancillary buildings]; miscellaneous plant and equipment including water treatment facilities; oil and water storage facilities; electrical plant including transformers; peat and ash storage facilities and handling plant (including elevated/overhead conveyors); electrical switchgear, site access ways, yards, areas of hardstanding and site fencing. West Offaly Power Station is accessed from the

R357. The ash disposal facility - in which the ash from the West Offaly Power Station is landfilled, is currently permitted to accommodate up to 825,000 tonnes of dry ash in engineered cells. The ash disposal facility site is accessed by a dedicated access road. Under the current planning permission, the permitted activities on both the West Offaly Power Station and ash disposal facility sites are required to cease on, or before, the 31st December 2020. The proposed development will enable the continued operation of West Offaly Power Station and the associated ash disposal facility; and the phased transition of West Offaly Power Station from being fuelled by peat, to biomass. The development will consist of:

i. the continued and on-going operation of the existing generating station and the associated ash disposal facility beyond the previously permitted date of 31st December 2020, including the continued use of all structures, plant, hard-surfaced areas, boundary treatments and access ways on the existing sites – comprising structures with a combined gross floor area of c.27,073 sq.m. and other existing development on the 35.5 Ha West Offaly Power Station site; and existing development (including c.43 sq.m. of buildings, a c. 84 sq.m. wash slab, a c.1,491 sq.m. leachate lagoon (4,200 cubic metre capacity) and other infrastructure associated with the existing operational landfill (c.128,780 sq.m. in area) located on the 59.2 Ha ash disposal facility site;

ii. the phased transition of the West Offaly Power Station from peatfiring to firing exclusively on renewable biomass – the term ‘biomass’ describing a range of non-waste materials such as non-pelleted woody biomass; products, co-products, by-products and residues from energy crops and agricultural industries; and manufactured wood pellets. It is anticipated that from early 2020 (subject to planning being granted by that date) West Offaly Power Station will be fuelled by reducing volumes of peat and increasing volumes of biomass, with an associated reduction in carbon dioxide emissions. By the end of 2027, the station will be fuelled exclusively by biomass;

iii. the development of fuel management and handling facilities on the West Offaly Power Station site to facilitate the change in fuel type – including the development of

two biomass storage slabs (c. 3,924 sq.m. and c. 6,331 sq.m.) flanked by boundaries up to 5m and 3.6m high respectively; a 61 sq.m. pellet intake building (overall height 17.2m); a pellet storage silo (c. 28 sq.m. in area, 260 cubic metre capacity, maximum height 14.7m); and the re-organisation of surface storage, circulation and car parking areas – including new internal fencing and access gates, and associated development works within the West Offaly Power Station site;

iv. the development of additional landfill capacity (c.929,200 cubic metres over an area of c. 173,130 sq.m.) at the existing dedicated ash disposal facility, to facilitate the disposal of an additional c. 880,000 tonnes of ash from the West Offaly Power Station, and associated ancillary development on that site including a new leachate lagoon (surface area c. 1,400 sq.m, storage capacity 4,500 cubic metres) and associated boundary treatment, on lands located at the existing West Offaly Power station, Shannonbridge, Co. Offaly in the townland of Cloniffeen, Eircode N37 C840; and at an existing ash disposal facility located in the townlands of Clonfinlough, Clondelara, Leitra, and Derrylahan, Co. Offaly.

Decision

REFUSE permission under section 37G of Planning and Development Act, 2000, as amended, for the above proposed development based on the reasons and considerations set out below.

Determine under section 37H(2)(c) the sum to be paid by the developer in respect of costs associated with the application as set out in the Schedule of Costs below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Stage 1 - Appropriate Assessment Screening:

In completing the screening for Appropriate Assessment, the Board considered the identification of the European sites in the area which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives. The Board was not satisfied that the proposed continued harvesting of peat associated with the supply of fuel to the power plant, either individually or in combination with other plans or projects, would not have potential for significant effects upon the European sites of the River Shannon Callows Special Area of Conservation (000216), the Middle Shannon Callows Special Protection Area (004096), Pilgrim's Road Esker Special Area of Conservation (001776), River Suck Callows Special Protection Area (004097), Fin Lough Special Area of Conservation (000576), River Boyne and River Blackwater Special Area of Conservation (002299) and River Barrow and River Nore Special Area of Conservation (002162), in view of the sites' Conservation Objectives and that a Stage 2 Appropriate Assessment was required.

Stage 2 - Appropriate Assessment:

The Board adopted the report of the Inspector and agreed with his conclusions in relation to the Stage 2 Appropriate Assessment that, with the implementation of the proposed mitigation measures, the proposed development of the power station and the ash disposal facility would not, either alone or in combination with other projects and plans, adversely impact the integrity of any European site. However, the Board concluded that the indirect effects on European sites, arising from the continued sourcing of peat fuel from the supply bogs, cannot be conclusively determined on the basis of the information provided with the application.

Environmental Impact Assessment:

The Board completed an Environmental Impact Assessment and agreed with the Inspector in his assessment of the likely significant effects of the proposed development, which include climate impacts by means of continued burning of peat, transportation impacts, impacts on water from continued harvesting of peat to fuel the plant during the transition phase and nuisance to residents in the vicinity of the power plant due to increased traffic through the village and the extended delivery times for the biomass fuel. Furthermore, given the lack of information regarding the source of the biomass to be used as a fuel, the Board concluded that it cannot reasonably be determined that the main direct and indirect effects of the proposed development on the environment would be mitigated.

1. It is considered that the provision of a regionally significant power generating facility, dependent primarily upon the burning of a fuel imported into the facility, needs to be associated and aligned with strategic energy management, planning and renewable energy policies and plans in order to achieve balanced, orderly and sustainable development. Furthermore, it is considered that the development of such energy infrastructure, pursuing optimal sustainable utilisation of renewable energy emanating from the power production process, is required in order that such development positively contributes to the environment and that the siting of such development is appropriately located, with accessibility to the supply network of the intended fuel sources. Finally, it is considered that the cessation of the use of peat as a fuel is a key component within national climate and energy policy in helping to reduce the generation of excessive greenhouse emissions from the established facility to assist in meeting the State's domestic, EU and international climate change obligations in the energy sector.

   Having regard to:

   (a) the national requirements under the European Union Renewable Energy Directive 2009/28/EC relating to the share of energy from renewable sources and to the increased obligations under the (recast) Renewable Energy Directive EU 2018/2001,

(b) national policy provisions supporting the cessation of the burning of peat as a fuel source for electricity generation,

(c) the dependence of the proposed development on the continuance of peat burning and its ongoing contribution to greenhouse gas emissions, notwithstanding any transition period proposed,

(d) the requirement for the alternative fuel to be used to produce renewable energy to be 'sustainable',

(e) the inadequacy of the indigenous biomass supply in the State to serve the proposed development, and the proposed high dependence on imported biomass which is contrary to European Union and national policy,

(f) the siting of the existing power plant in the Midlands, away from coastal ports, and its significant dependence on the importation of biomass from global markets, which will result in unsustainably high volumes of Heavy Goods Vehicle (HGV) movements across the State to serve the development, and

(g) the likely significant impact for the amenity of the village of Shannonbridge and for its residents by way of traffic impact, nuisance and disturbance due to the servicing of the power station by biomass transported by the road network,

it is considered that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to:

(a) the nature and scale of the proposed development,

(b) the proposed phased replacement of the fuel type from railway-delivered peat to road-delivered biomass,

(c) the quantity of biomass proposed to be used at the facility,

(d) the transportation movements generated in the sourcing of the biomass and in the distribution of end product, both nationally and globally,

(e) the deficiencies in the regional road network to serve the ongoing delivery by HGVs of biomass to the plant, due to the extent of narrow road widths, bridge width restrictions, poor horizontal alignment, and structural condition, and

(f) the inadequacy of the access provisions to the east of the site and the consequent reliance on the main entrance, resulting in significant volumes of HGV traffic passing through the village centre of Shannonbridge,

it is considered that the proposed fuelling of the power plant by biomass would give rise to unsustainable transportation movements on a substandard regional road network and would endanger public safety by reason of traffic hazard and obstruction of road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Schedule of Costs

In accordance with the provisions of section 37H(2)(c) of the Planning and Development Act 2000, as amended, the amount due to be reimbursed to the applicant is **€23,724.**

A breakdown of the Board's costs is set out in the attached Appendix 1.

Dave Walsh
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2019