



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Ferrero Ireland
C/O Elayne Hickey for Malachy Walsh & Partners
Park House
Mahon Technology Park
Bessboro Road
Blackrock
Cork

03/03/2020

RE: Section 5 Declaration R562/20 Ferrero Irl, Kinsale Road, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

In view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- Articles 5, 9, of the Planning and Development Regulations 2001 (as amended);
- Class 13 of Schedule 5, Part 1 of the Planning and Development Regulations 2001 (as amended); and
- Class 21 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

It is considered that proposed the installation of a semi-submerged Membrane Batch reactor unit, of a Reverse Osmosis unit, of an Underground pumping station, of a Canopy over the existing equalisation tank, the installation of a small building to house the MCC units and the Chemical store, as well as other ancillary above ground tanks and the diversion of existing underground services **Is Development** and is **Not Exempted Development**.

Is misa le meas,

Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT		Cork City Council Development Management Strategic Planning and Economic Development
Ref. R562/20		
Application type	Section 5 Declaration	
Description	<i>Whether the installation of a semi-submerged Membrane Batch reactor unit, a Reverse Osmosis unit, an Underground pumping station, a Canopy of the existing equalisation tank, a small building to house the MCC units and the Chemical store, as well as other ancillary above ground tanks and the diversion of existing underground services requires planning permission?</i>	
Location	Ferrero Irl, Kinsale Road, Cork.	
Applicant	Ferrero Irl.	
Date	27/02/2020	
Recommendation	<i>Is Development and Is Not Exempted Development</i>	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. Requirements for a Section 5 Declaration

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. The Question before the Planning Authority

In framing the question to the planning authority, the applicant states in Q2 of the application form:

Ferrero Ire intend to upgrade their existing WWTP at their facility on the Kinsale Road, Cork. The works will consist of the installation of a semi-submerged Membrane Batch reactor unit, a Reverse Osmosis unit, an Underground pumping station, a Canopy over the existing equalisation tank, a small building to house the MCC units and the Chemical store, as well as other ancillary above ground tanks and the diversion of existing underground services

3. Site Description

The property in question is an existing industrial factory located at Ferrero Irl, Kinsale Road Cork.

4. Planning History

14/4977 – Permission granted for Change of Use of portion of existing store to a new canteen area, installation of 4 no. windows on the northern elevation, 1 no. single and 1 no. double door on western elevation; blocking up of 1 no. single door on eastern elevation of existing store; construction of a single storey link corridor between the existing office area and the proposed canteen; and construction of ancillary drainage.

14/4929 - Incomplete Application.

12/5036 - Permission granted for an enclosed link connecting existing warehousing & Warehouse B, construction of a double bay open loading ramp between both warehouses; & blocking up of an existing door opening in north elevation of Warehouse A.

12/4903 – Incomplete Application

07/13041 – permission granted to Ferrero Ireland Ltd. for the Erection of temporary 60m high wind monitoring mast.

05/3661 – permission granted to Ferrero Ireland Ltd. for warehousing with covered connecting access to existing factory.

01/1716 – permission granted to Ferrero Ireland Ltd. for construction of two storey extension to administration building & conversion of interior courtyard to offices & signage

96/313 – permission granted to Ferrero Ireland Ltd. for alterations and extensions to industrial building to include corridor, workshop and store.

94/2925 – permission granted to Ferrero Ireland Ltd. for extension to existing industrial premises to include manufacturing building, services building, effluent treatment plant & ancillary.

94/1379 – permission granted to Ferrero Ireland Ltd. for site development works comprising excavation, filling and drainage.

93/1854 – permission granted to Ferrero Ireland Ltd. for construction of a loading bay Gatehouse and Carpark

92/1329 – permission granted to Ferrero Ireland Ltd. for construction of new locker building and loading facilities.

91/2496 – permission granted to Ferrero Ireland Ltd. for construction of Substation and Metering Building and Ancillary Site Works

5. Legislative Provisions

5.1 The Act

Section 2(1),

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

Section 3(1),

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

Section 4(1)(h),

The following shall be exempted developments for the purposes of this Act-development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

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

5.2 The Regulations**Article 9 (1)**

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

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
- (c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of given effect to the Council Directive,

Article 10 (1)

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

- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned.

6. ASSESSMENT**5.1 Development**

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘the carrying out of any works on, in, over or under land’, or ‘the making of any material change in the use of any structures or other land’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.’

I consider that the proposed elements constitute development as they comprise of works which includes construction of a new separate structure to the south of the existing unit; along with new elements to the existing Waste Water Treatment unit.

5.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development.

Class 21 of Schedule 2, Part 1 *Exempted Development* states the following:

- (a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker **for the carrying on, and for the purposes of, any industrial process**, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking –
 - (iii) the installation or erection by way of **addition** or replacement of plant or machinery, or structures of the nature of plant or machinery

Provided:

1. Any such developments shall not materially alter the external appearance of the premises of the undertaking.
2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

The proposal states that the intention is for:

- (i) the installation of a semi-submerged Membrane Batch reactor unit,
- (ii) the installation of a Reverse Osmosis unit,
- (iii) The installation of an Underground pumping station,
- (iv) the installation of a Canopy over the existing equalisation tank,
- (v) the installation of a small building to house the MCC units and the Chemical store,
- (vi) as well as other ancillary above ground tanks and the diversion of existing underground services

Article 9 (1) *Restrictions on exemptions* states:

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

- (c) *if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of given effect to the Council Directive,*

Class 13 of Schedule 5, Part 1 *Development for the purposes of part 10* states:

Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC

There are no details as to what the population equivalent of the existing and the proposed is. It appears from the drawings that as part of the scheme a separate unit away from the existing unit is being proposed. Further information would be required on this aspect.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended), it is not clear whether the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is unknown whether an environmental impact statement is or is not required to be submitted. Further information in the form of Environmental screening would be required.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. Conclusion

The question has been asked:

Ferrero Ire intend to upgrade their existing WWTP at their facility on the Kinsale Road, Cork. The works will consist of the installation of a semi-submerged Membrane Batch reactor unit, a Reverse Osmosis unit, an Underground pumping station, a Canopy over the existing equalisation tank, a small building to house the MCC units and the Chemical store, as well as other ancillary above ground tanks and the diversion of existing underground services

Article 5 (1), in Part 2 of the Planning and Development Regulations 2001 (as amended), defines "industrial process" as meaning "any process which is carried on in the course of trade or business, other than agriculture, and 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,

Firstly it is considered that the main elements are new elements i.e. a new plant which is operating new water treatments such as reverse osmosis. This is not physically attached to the existing Waste Water Treatment Plant and takes up new foot print in an area removed and not directly adjacent to the existing Waste Water Treatment Plant. Therefore, I do not consider that it can reasonably be defined as a replacement of the existing (as the existing will remain and a new canopy is proposed over); nor merely an addition to the existing unit. It appears to be in fact a new unit in itself.

Secondly, in general it is accepted that wastewater treatment is a process used to remove contaminants from wastewater or sewage and convert it into an effluent that can be returned to the water cycle with minimum impact on the environment. By default, it is a process which starts with contaminated waste water and proceeds to convert and treat that water to a suitably acceptable state which can have limited adverse impacts on the environment and water systems. I do not consider the treatment of the waste water to be the industrial process that is being carried out at on this site by the industrial undertaker (i.e. sweet manufacturing). Therefore, the waste water treatment plant itself, is not directing or *incidentally* involved in the industrial process which Ferrero Irl undertakes at this site namely sweet manufacturing. It is ancillary to same. I therefore do not consider that proposes comes under Class 21 as the Wastewater treatment "upgrades" proposed are not themselves used for **the carrying on, and for the purposes of, any industrial process.**

Thirdly, it is considered the both the new structure and also the proposed elements to the existing structure (the installation of a higher large canopy over the existing equalisation tank, the installation of a small building to house the MCC units and the Chemical store, and a screen separate to but in front of the existing wastewater treatment unit) will materially alter the external appearance of the premises of the undertaking.

Fourthly, it is not clear whether the proposal will require an Environmental Impact Assessment as there is not sufficient detail provided to determine whether the proposal will have any significant environmental impacts. No screening has been submitted; and based on the details submitted; it certainly cannot be screened out. Further to this, an EIAR would automatically apply if the Wastewater treatments proposals are to cater for a population equivalent of 150,000 minimum and again this is unknown.

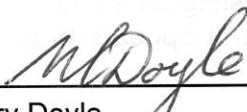
Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is development and is not exempted development

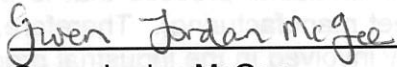
9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- Articles 5, 9, of the Planning and Development Regulations 2001 (as amended);
- Class 13 of Schedule 5, Part 1 of the Planning and Development Regulations 2001 (as amended); and
- Class 21 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

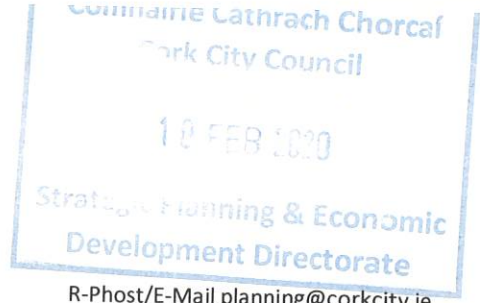
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 Mary Doyle
 Executive Planner 03/03/2020

Agreed

 Gwen Jordan McGee 3/3/2020
 Senior Executive Planner

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

Strategic Planning & Economic Development Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.



R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924564/4321

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Ferrero Irl, Kinsale Road, Cork, T12 DC84

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Ferrero Irl intend to upgrade their existing WWTP at their facility on the Kinsale Road, Cork. The works will consist of the installation of a semi-submerged Membrane Batch Reactor unit, a Reverse Osmosis unit, an underground pumping station, canopy over the existing equalisation tank, a small plant building to house the MCC units and chemical store as well as other ancillary above ground tanks. In addition to this there will be some diversion of existing underground services.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The Declaration on Exempted Development is sought under Schedule 2, Part 1 of the Regulations, under Class 21 (Development for industrial purposes) part (a), (iii) the installation or erection by way of addition or replacement of plant or machinery, or structure of the nature of plant or machinery.

3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing /proposed structure/s	353m2
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
_____	_____
_____	_____
_____	_____


4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Ferrero Irl
Applicants Address		Ferrero Irl, Kinsale Road, Cork
Person/Agent acting on behalf of the Applicant (if any):	Name:	Elayne Hickey for Malachy Walsh & Partners
	Address:	Park House, Mahon Technology Park, Bessboro Road, Blackrock, Cork
	Telephone:	_____
	Fax:	_____
	E-mail address:	_____
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		

6. I / We confirm that the information contained in the application is true and accurate:

Signature:  _____

Date: 06/02/20

.....

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution