Response to Submission of Frank Kelleher

In his submission, Mr Kelleher suggests that Indaver has sought to create "confusions and smokescreens" regarding the ownership of the lands and has sought to "hide the proper ownership of the land from the public and from the relevant authorities."

Mr Kelleher's submission appears to be based on the proposition that the applicant is not entitled to identify itself by its registered business name. This is a proposition which runs wholly contrary to the scheme for registration of business names established by the Registration of Business Names Act 1963. As explained in the documentation submitted with Mr Kelleher's submission, the purpose of the registration of a business name is to make public the identities of those individuals, partnerships or corporate bodies being the legal entity behind the business name. There is no sense, therefore, in which the registration of a business name, or the carrying of business under such a name could be regarded as a mechanism for hiding the true ownership of a business; in fact, the requirement for registration is intended to and does achieve quite the opposite result.

The submission further appears to suggest that Indaver Ireland's ownership of the lands the subject matter of this application is in question and that there may be difficulties with the registration of its ownership because the land is registered in the name of the registered business name and because section 45 of the Lands Act 1945 may not have been complied with.

Firstly, the fact that the lands have been registered by the Land Registry in the name of Indaver Ireland serves to undermine Mr Kelleher's suggestion that it is impermissible for a company to conduct its affairs using its registered business name.

Secondly, the submission ignores the fact that by virtue of section 31 of the Registration of Title Act 1964, the register acts as conclusive evidence of the title of the owner of the land as appearing on the register. No necessity to "look behind" the registration (for instance to see whether any particular formality has been complied with) arises as third parties are entitled to rely on the contents of the register as conclusive proof that the owner as appearing on the register is the actual owner. The Board can rely on the fact that the Land Registry must have satisfied itself that any necessary statutory requirements, including compliance with section 45 of the Lands Act 1965 have been complied with. Any complaint regarding compliance with section 45 simply does not arise for consideration by the Board.

In truth, the submission in relation to section 45 of the Lands Act 1965 is difficult to understand in circumstances where, as appears from the documentation submitted by Mr Kelleher, the section has now been repealed.

Mr Kelleher raises concerns regarding the difficulty of enforcement against Indaver Ireland. Firstly, there is no such difficulty – people or companies who carry on business under registered business names do not render themselves thereby immune from legal process. The complaint ignores the more fundamental point which is that any grant of planning permission, by virtue of section 39(1) of the Planning and Development Act 2000 enures for the benefit of the land and any person for the time being with an interest therein. Any remedies which might be sought in relation to the carrying

of the proposed development are not restricted to the party in whose name planning permission is granted.

Finally, it should be noted that Mr Kelleher's entire submission is subtended by the mistaken proposition that for the purpose of making a valid planning application, an applicant must prove to the Board their title to the lands the subject matter of the application, it seems according to Mr Kelleher, to a level which would satisfy the Land Registry (or the Property Registration Authority). No such obligation exists. Article 22 of the Planning and Development Regulations merely requires that where an applicant for permission is not the owner of lands, he must have the written consent of the owner to the making of the application. As expressed in *Frescati Estates v Walker* [1975] 1 IR 177 (recently endorsed in *Buckley v An Bord Pleanala* [2015] IEHC 572):

To sum up, while the intention of the Act is that persons with no legal interest (such as would-be purchasers) may apply for development permission, the operation of the Act within the scope of its objects and the limits of constitutional requirements would be exceeded if the word "applicant" in the relevant sections is not given a restricted connotation. The extent of that restriction must be determined by the need to avoid unnecessary or vexatious applications, with consequent intrusions into property rights and demands on the statutory functions of planning authorities beyond what could reasonably be said to be required, in the interests of the common good, for proper planning and development. Applying that criterion, I consider that an application for development permission, to be valid, must be made either by or with the approval of a person who is able to assert sufficient legal estate or interest to enable him to carry out the proposed development, or so much of the proposed development as relates to the property in question. There will thus be sufficient privity between the applicant (if he is not a person entitled) and the person entitled to enable the applicant to be treated, for practical purposes, as a person entitled.

Indaver Ireland is the applicant for permission. Indaver Ireland is the registered owner of the lands. It is abundantly clear that the applicant has a sufficient interest to make a valid planning application.

Rory Mulcahy SC