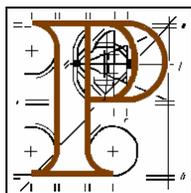


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2011

Mallow Town

Planning Register Reference Number: P.D. 55010/12

An Bord Pleanála Reference Number: PL 70.241245

APPEAL by Eileen Clune care of David J. O'Meara and Sons of Bank Place, Mallow, County Cork and by others and by Dairygold Co-Operative Society Limited care of Malachy Walsh and Partners of Park House, Mahon Technology Park, Bessboro Road, Blackrock, Cork against the decision made on the 4th day of October, 2012 by Mallow Town Council to grant subject to conditions a permission to the said Dairygold Co-Operative Society Limited in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Construction of a significant expansion of milk processing facility at Annabella, Mallow, County Cork. The proposed development consists of:- alterations to the existing north entrance/exit, this entrance/exit will accommodate all vehicles including heavy goods vehicles (HGV); alterations to the existing south entrance/exit incorporating the construction of a Central Island; alterations to the existing north boundary fence adjoining Lower Beecher Street; demolition of the following buildings or structures and associated services:- (a) milk intake unit, (b) pasteurisation and separation building, (c) elevated tower (coloured blue and white), 22.7 metres high, over the engineering workshop and stores, (d) single storey utility building, (e) two-storey office building, (f) single storey milk powder storage building incorporating elevated storage tower, 21.2 metres high and electrical equipment rooms and offices, (g) packaging and palleting area store, (h) security and weighbridge control bridge and (i) covered canopied area north of the engineering workshop and stores and removal of all associated redundant tankage. Construction of the following buildings or structures and associated services:- (a) single storey part open sided, roofed, milk intake unit, (b) part single/part two-storey pasteurisation and separation building, (c) building incorporating a six-storey (41.3 square metres) high spray dryer unit housing two number dryers, (d) evaporator unit building, (e) single storey milk powder

storage building, (f) packing and palletising area, (g) utility building, (h) two-storey administration building, (i) single storey security building, (j) single storey weighbridge control building, (k) two surface level weighbridges, (l) single storey polisher building, (m) open sided single storey chemical intake bay, (n) single storey transformer building, (o) suspended structural steel pipebridges, (p) alterations to the first floor stores of the engineering workshop and stores to form offices. Provision of the following tankage, height listed in brackets and all services associated with tankage: eight number raw milk storage tanks (19.9 metres), three number cream storage tanks (11.4 metres), three number pasteurised milk storage tanks (19.9 metres), eight number vegetable oil storage tanks (15.9 metres), two number milk ingredient storage tanks (19.9 metres), five number raw milk cleaning tanks (4.6 metres), four number pasteuriser milk cleaning tanks (4.6 metres), four number pasteurised milk cleaning tanks (4.6 metres), three number bulk chemical storage tanks (8.1 metres), eight number water condensate tanks (15.0 metres), one number process water tank (15.0 metres), one number water storage tank for fire fighting purposes (15.0 metres) and one number diesel storage tank (7.2 metres). Construction of mounded berms, boundary walls, fencing and all associated landscaping works. Construction of both a 75 space car park incorporating that area occupied by an existing car park accessed from West End, Annabella, and internal roads accessing the site from the north and south entrances/exits.

DECISION

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out 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

Having regard to the nature, scale and design of the proposed expansion of the milk processing plant, the Environmental Impact Statement submitted with the application, the submissions on file and the Inspector's assessment of environmental impacts, which is noted and adopted, the Board completed an environmental impact assessment and concluded that the proposed development would not be likely to have significant adverse effects on the environment.

Having regard to the nature, scale and design of the proposed expansion of the milk processing plant, the Natura Impact Statement and Environmental Impact Statement submitted with the application, the submissions on file and the Inspector's assessment, which is noted, the Board completed an Appropriate Assessment of the impacts of the proposed development on the River Blackwater Special Area of Conservation (site code 002170). The Board concluded that the proposed development, in itself or in combination with other plans or projects, would not adversely affect the integrity of the European site in view of the conservation objectives for that site.

Having regard to the long-established existence of an extensive dairy processing industry and former associated manufacturing units at this location, to the nature and scale of this proposal to expand milk processing on this site, and to the objectives of the Mallow Town Development Plan 2010–2016, including the Town Centre zoning objective for this site, whereby general industry uses are open for consideration, it is considered that, subject to compliance with the conditions set out below, the proposed development would contribute to the consolidation of Mallow as a hub town as envisaged in the National Spatial Strategy, would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to attach the planning authority's condition number 48, the Board considered that it would be appropriate to recognise the wider community benefit of the proposed roundabout design changes, and decided to amend condition number 48 in accordance with the proportional response proposed by the applicant of a 17.8% contribution. However, the Board also noted the applicant's proposal to provide funding for the full cost of the development in the first instance, and considered that this would be acceptable on the basis that the balance be refunded under the provisions of 34(4)(m) of the Planning & Development Act 2000 (as amended).

Having regard to the increased development contributions that would arise from the Inspector's recommendation to amend the planning authority's condition number 52, the Board instead decided to attach this condition.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and the appeal, including the recommendations contained in the Environmental Impact Statement and the Natura Impact Statement, 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. All mitigation measures set out in the Environmental Impact Statement and Natura Impact Statement shall be implemented in full to the satisfaction of the planning authority. A schedule of all mitigation measures contained in these documents shall be submitted to the planning authority prior to commencement of development.

Reason: In the interest of clarity, and to safeguard the amenities of the area.

3. The proposed fire fighting, process and condensate water tanks in the vicinity of the western boundary of the site, including flood defences, shall be relocated or altered in dimension, only insofar as may be necessary to allow the provision of a planted strip to the west, north and south of the area occupied by these structures, between these structures and the site boundary. This strip shall be planted with indigenous species with the potential to provide adequate screening of these structures when seen from the N20. Prior to commencement of development, details to a minimum scale of 1:200 showing compliance with this requirement shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

4. (a) The landscaping scheme shown on drawings 13871-5050, 13871-5051 and 13871-5052, revision B, as submitted to the planning authority on the 10th day of August, 2012, shall be carried out within the first planting season following substantial completion of external construction works.

(b) In addition to the proposals in the submitted scheme, further planting of indigenous trees shall take place in the vicinity of Linehan's Stream and in particular in the stretch immediately to the north of the trash screen marked "existing trees to stream side". A scheme for this additional planting shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development.

Reason: In the interest of visual amenity.

5. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

6. The stone walls at the west and east ends of the northern boundary, the section of the southern boundary on West End and the eastern boundary on Shortcastle Street shall be retained, except where required for access to the site. These walls shall be protected during construction works through the establishment of a suitable buffer zone to provide protection from construction traffic or stockpiling in their vicinity. A long-term maintenance programme for the stone walls shall be carried out by a suitably qualified conservation specialist. This programme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

7. Adequate sight distances shall be provided at the entrance from the development onto Lower Beecher Street. The layout at the entrance shall be revised to achieve the maximum attainable sight distance onto the street. Proposals to this end shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Vegetation or any structure shall not exceed one metre in height within the sight distance triangle at this location.

Reason: In the interest of traffic safety.

8. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Details of construction stage drainage provision shall be agreed in writing with the planning authority prior to commencement of construction.

Reason: In the interest of public health.

9. Construction stage details of all flood control measures, flood defences and compensatory flood storage, shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development.

Reason: In the interest of flood risk management.

10. Construction stage details, including drainage and landscaping details, of the proposed berm to the south of the site, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the protection of the amenity of property in the vicinity.

11. All existing rights of way and access arrangements for the flood defence infrastructure within the site shall be maintained throughout the construction and operation phases of the development. This shall include vehicular and pedestrian access to such flood defence measures as the culvert, trash screen and penstocks from West End.

Reason: In the interest of flood risk management.

12. The developer shall engage the services of a suitably qualified person to carry out a full drawing and photographic building survey of the L-shaped two-storey former office building in advance of its demolition. No subsurface work or demolition work shall be undertaken prior to this survey being undertaken. A report containing written descriptions, a complete set of drawings (including plans and elevations) and photographs of this building shall be submitted to the planning authority.

Reason: To retain a record of a building forming part of the history of this long established dairy processing site.

13. The weighbridges shall be constructed at grade (not ramped) and internal circulation roads shall be constructed to be inherently low-noise in operation. Any services within these roads or passing beneath them shall be located in such a manner so as to obviate the need for repair excavations beneath the wheel paths of lorries.

Reason: To safeguard the residential amenities of the area.

14. Other than those shown on the lodged drawings, no advertisements (including name signs) or advertisement structures, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the buildings or within the curtilage of the site unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

15. A noise monitoring programme shall be carried out by the developer in respect of the construction phase of the development. The nature and extent of the programme and monitoring sites shall be agreed in writing with the planning authority prior to commencement of the development. The results of the programme shall be submitted to the planning authority on a monthly basis.

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

16. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:
- (a) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - (b) location of areas for construction site offices and staff facilities;
 - (c) details of site security fencing and hoardings;
 - (d) details of on-site car parking facilities for site workers during the course of construction;
 - (e) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;

- (f) measures to obviate queuing of construction traffic on the adjoining road network;
- (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) provision of parking for existing properties during the construction period;
- (j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil; and
- (m) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of protection of the amenities of the area, public health and safety, and to protect the habitats and species for which the River Blackwater Special Area of Conservation is designated.

17. The developer shall record all complaints received relating to the site. The record shall contain the name of the complainant, nature, time and date and a summary of the investigation and response. All records of complaints shall be made available to the planning authority on request.

Reason: To safeguard the amenities of the area.

18. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
 - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:
 - (i) the nature and location of archaeological material on the site, and
 - (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

19. The developer shall pay to the planning authority a financial contribution of €979,080 (nine hundred and seventy nine thousand and eighty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

20. (a) The developer shall initially pay the sum of €514,836 (five hundred and fourteen thousand, eight hundred and thirty six euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of works to the Annabella Roundabout as shown on Drawing 13871-SK107, Revision D, submitted to An Bord Pleanála with the first party appeal on the 31st day of October, 2012. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer.
- (b) The provisions of section 34(4)(m) of the Planning and Development Act 2000, as amended, shall apply to this contribution. The net sum to be paid by the developer in respect of works to the Annabella Roundabout shall be €91,641 (ninety one thousand, six hundred and forty one euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office).

- (c) The balance of €423,195 (four hundred and twenty three thousand, one hundred and ninety five euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), shall be refunded to the developer in accordance with a payment schedule to be agreed between the planning authority and the developer.

In default of agreement, the matter shall be referred to the Board to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

21. The developer shall pay the sum of €28,936 (twenty eight thousand, nine hundred and thirty six euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of the provision of a crash barrier between the Annabella Junction and Beecher Street Junction on the N20 roadway. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

22. The developer shall pay the sum of €125,542 (one hundred and twenty five thousand, five hundred and forty two euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of:
- (a) the realignment of the junction of Lower Beecher Street and Shortcastle Street to improve sight distance for traffic using the junction;
 - (b) the upgrading of the section of road on Lower Beecher Street adjoining the above junction, including improved road surfacing and markings.
 - (c) alterations to the vertical alignment of Lower Beecher Street adjacent to the Beecher Street roundabout to provide a minimum dwell area of 15 metres on this minor road;
 - (d) the provision of enhanced pedestrian facilities on the public road adjoining the northern entrance and roundabout to ensure the safe passage of pedestrians from Lower Beecher Street around the plant entrance; and
 - (e) the reassignment of junction priority at the junction of the northern entrance and Lower Beecher Street, as set out in Drawing 13871-SK104 Revision C, submitted to the planning authority in Appendix 12F of the Environmental Impact Statement on the 10th day of August, 2012.

This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

23. The developer shall pay the sum of €20,500 (twenty thousand, five hundred euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of a relocated controlled pedestrian crossing (pelican type) on the N72 roadway at West End. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

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

Dated this day of 2013.