

Malachy Walsh and Partners,
Park House,
Mahon Technology Park,
Bessboro Road,
Blackrock, Co. Cork.

24 APR 2018

Appeal

Re:To construct new cheese production facility and a significant upgrade of the existing Dairygold Food Ingredients Facility.
Mogeely and Killamucky, Mogeely, County Cork

Dear Sir/Madam,

An order has been made by An Bord Pleanála determining the above-mentioned appeal under the Planning and Development Acts 2000 to 2017. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.leanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

In cases where a grant of (full) planning permission is notified by the Board, it is policy to include a copy of the Department of the Environment and Local Government's Leaflet PL11 - **Guide to the Building Control System** and a copy of the Health and Safety Authority's leaflet **Safety and Health on Construction Projects - The Role of Clients** with the notification. These leaflets are issued at the request of the above bodies.

A further enclosure contains information in relation to challenges by way of judicial review to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

Yours faithfully,

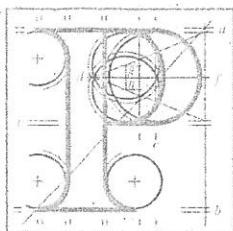
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An
Bord
Pleanála

**Board Order
PL 04.249108**

Planning and Development Acts 2000 to 2017

Planning Authority: Cork County Council

Planning Register Reference Number: 16/07031

Appeal by Mary Hynes and others of 11 Whitethorn Road, Cois Maigh, Mogeely, Cork and by others against the decision made on the 4th day of August, 2017 by Cork County Council to grant subject to conditions a permission to Dairygold Co-Operative Society Limited care of Malachy Walsh and Partners of Park House, Mahon Technology Park, Bessboro Road, Blackrock, Cork in accordance with plans and particulars lodged with the said Council.

Proposed Development: Construction of a new cheese production facility and a significant upgrade of the existing Dairygold Food Ingredients facility including: (a) cheese production building – predominantly single storey with three-storey middle section and two-storey administration block, (b) single storey part opensided, roofed, milk intake unit and piperack structure, (c) single storey workshop, (d) single storey box store, (e) two-storey reception and staff facilities building, (f) single storey boiler house, (g) single storey RO and pasteurisation building, (h) single weighbridge security building, (i) single storey water treatment and fire pumphouse building, (j) electrical substation and switchroom, (k) two-bay loading bay structure attached to the northern end of the existing cheese factory and (l) two number water storage tanks (12.6 metres and 9.6 metres high), one number salt saturation storage tank (5.1 metres high).

Closure of three entrances and the construction of new entrance for Heavy Goods Vehicle traffic off the L3627 on the northern site boundary. Closure of the existing Heavy Goods Vehicle entrance and construction of new entrance for staff and visitor car traffic only off the L3805 Mogeely-Castlemartyr Road on the eastern site boundary.

Demolition of the following buildings or structures and associated services: (a) Dairy and Maintenance workshop building, (b) Packaging Store, (c) Boiler House and three number stacks (33.9 metres high), (d) Canteen, (e) Reception and Office Building, (f) Generator Building and removal of all associated redundant tankage.

Upgrade of an existing bund and construction of new adjoining bund to accommodate existing tanks and the following new tankage, (height listed in brackets) and all services associated with the tankage: six number Milk Silos (14.0 metres), two number Milk Silos (18.5 metres), three number Cream Storage Tanks (5.8 metres), five number Cleaning Tanks (8.0 metres), four number Cleaning Tanks (5.0 metres), two number Whey Silos (12.7 metres), two number Whey Silos (13.2 metres), two number Bulk Chemical Tanks (5.45 metres).

Construction of a 124-space car park, internal roads accessing the site from the new entrances/exits, covered pedestrian walkway and mounded berms, boundary walls, fencing and associated landscaping works.

Upgrade and expansion of the existing wastewater treatment plant including new Balance Tank, Anaerobic and Aerobic Tanks, Clarifier, Picket Fence, Thickener, Dissolved Air Floatation Plant, Pumping Station, Control Room, Filters and Concrete Plinths. The proposed upgrade will include the demolition of the existing works including the existing 9.5 metres high Biotower.

Installation of an underground pipeline to convey treated water from the facility to a discharge point at an existing outfall at Rathcoursey West, Midleton, 10.6 kilometres to the south-west of the facility. The pipeline route will utilise the L3627 road corridor through Killamucky, Ballycrenane Beg, Kilmountain, Loughaderry, Stumphill, Clashduff, Ballyedekin, Churchtown as far as the Two Mile Inn, thrust boring under the N25, heading south along the L3628 through Dunsfort, Whiterock, Carrigeennamoe, Butlerstown, Carrigatoher, Gurteenina, west along the L3630, R629 and L3639 through Knockasturkeen, Carrigagour, Innygragga, Knockgorm, Scarriff, Ballynacorra West, Bawnard East, thrust boring under the R630 and utilising the L3629 road corridor through Bawnard West, Rathcoursey East to the outfall at Rathcoursey West, including all necessary pipeline connection, drainage and vent infrastructure. All at Mogeely and Killamucky, Mogeely, County Cork.

Further public notices were received by the planning authority on the 12th day of June, 2017.

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:

- (a) the written submissions made in respect of the application,
- (b) the established nature of the existing Dairygold facility on the appeal site, the detailed nature, scale and form of the development and its location relative to nearby sensitive receptors,
- (c) mitigation measures which are proposed for the construction and operation phases of the development,
- (d) the provisions of the Cork County Development Plan 2014 and the East Cork Local Area Plan 2017,
- (e) the nature of the landscape and the absence of any specific conservation or amenity designation for the site,
- (f) the pattern of development in the area including the proximity to the existing Dairygold facility and the separation distance of the site from existing dwellings,
- (g) the submissions on file including those from prescribed bodies and the planning authority, and
- (h) the documentation submitted with the application, including the Environmental Impact Statement and Natura impact statement,

it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of Local Policy, would not seriously injure the residential amenities of the area, 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.

Appropriate Assessment

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Ballymacoda Bay Special Protection Area (Site Code: 004023), Ballymacoda (Clonpriest and Pillmore) Special Area of Conservation (Site Code: 000077), Cork Harbour Special Protection Area (Site Code: 004030) and Great Island Channel Special Area of Conservation (Site Code: 001058) are the European Sites for which there is a likelihood of significant effects.

The Board considered the Natura impact statement and all other relevant submissions and carried out an Appropriate Assessment of the effects of the proposed development on these European Sites in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered, in particular, the:

- (a) likely direct and indirect effects arising from the proposed development either individually or in combination with other plans or projects,
- (b) mitigation measures which are included as part of the current proposal, and
- (c) the conservation objectives of these European Sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European Sites in view of the sites' conservation objectives.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development taking in account:

- (a) the nature, scale, location and extent of the proposed development,
- (b) the Environmental Impact Statement and supplementary information submitted in support of the application,
- (c) the submissions from the planning authority, prescribed bodies, and observers in the course of the application, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Statement, supported by the supplementary information submitted by the developer, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Statement and supplementary information submitted by the developer, and submissions made in the course of the application and the appeal.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

- **Traffic and Transportation** – The proposed development would give rise to an increase in vehicle movements during construction and operation. Significant impacts on the public road network can be mitigated by measures to manage traffic set out in the Traffic and Transportation chapter of the Environmental Impact Statement and through compliance with the conditions to implement and address traffic and village improvement measures set out below.
- **Ecology** – The proposed development would give rise to the risk of adverse effects on downstream sites of nature conservation interest, via emissions to water, and those in the wider vicinity of the site, by virtue of emissions to water, during the construction and/or operational phase of the proposed development. However, significant effects can be: (a) mitigated by measures set out in the Environmental Impact Statement to prevent the pollution of water bodies, (b) the requirement to obtain and operate the proposed development in accordance with an Industrial Emissions Licence and (c) through compliance with the conditions set out below including environmental monitoring on the outlet from the Waste Water Treatment Plant at Mogeely and automatic shutoff valves in the event trigger limits agreed with the Environmental Protection Agency are reached. Monitoring of compliance with emission limit values will fall to the Environmental Protection Agency.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to implementation of the mitigation measures proposed as set out in the Environmental Impact Statement and, subject to compliance with the conditions set out below, the effects on the environment of the proposed development either individually or in combination with other development in the vicinity would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars, including the mitigation measures specified in the Environmental Impact Statement, lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 9th day of January, 2017, the 30th day of January, 2017, the 30th day of May, 2017 and the 12th day of June, 2017, 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. Monitoring of the construction phase shall be carried out by a suitably qualified person to ensure that all environmental mitigation measures contained in the documentation which accompany the application are fully implemented. A designated member of the company's staff shall interface with the planning authority or members of the public in the event of complaints or queries in relation to environmental emissions. Details of the name and contact details and the relationship to the operator of this person shall be available at all times to the planning authority on request whether requested in writing or by a member of staff of the planning authority at the site.

Reason: To safeguard the amenities of the area.

3. All environmental mitigation measures set out in the Environmental Impact Statement and associated documentation submitted by the developer with the application and by way of further information shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this order.

Reason: In the interest of clarity and to protect the environment during the construction and operational phases of the development.

4. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

5. A noise management plan which shall include a monitoring programme shall be put in place by the developer in respect of the construction phase of the development. The nature and extent of the plan and the monitoring sites shall be agreed in writing with the planning authority prior to commencement of the development. The results of the noise monitoring programme shall be submitted to the planning authority on a monthly basis.

Reason: To protect the residential amenities of the area.

6. During construction, the wheels of all trucks shall be washed prior to their exit from the site in a wheel wash facility. Details of the construction, installation and operation of this facility shall be agreed in writing with the planning authority prior to commencement of development.

Reason: To safeguard the amenities of the area.

7. All solid wastes arising on the site shall be recycled as far as possible. Materials exported from the site for recovery, recycling or disposal shall be managed at an approved facility and in such a manner as is agreed with the planning authority. In any case, no such wastes shall be stored on the site, except within the confines of the buildings on site. Adequate on-site arrangements for the storage of recyclable materials prior to collection shall be made to the satisfaction of the planning authority.

Reason: To safeguard the amenities of the area.

8. All wastewater pump sumps or other chambers from which spillages might occur shall be fitted with high-level alarms. The alarm systems contain an audible and visible alarm, and shall relay via GSM dial out to a responsible person. There shall be no emergency overflow arrangements from any such sump. Adequate storage shall be provided to ensure there is no emergency overflow from this sump. Levels shall be set and controlled so that risk of odour nuisance is minimised, and contents are conveyed for treatment as expeditiously as practical.

Reason: To safeguard the amenities of the area, and prevent water pollution.

9. All lighting within the site curtilage shall be directed and cowlled so as not to interfere with, or cause any glare or additional light spill to adjoining residential property.

Reason: To minimise light interference.

10. Prior to any construction work commencing (including site clearance, grading, well boring, levelling and water course crossing) at the site in Mogeely, or any associated site works from Mogeely to Rathcoursey, appropriate surface water management controls shall be in place to prevent the discharge of sediment contaminated water to adjacent water courses. Unregulated slopes shall be temporarily scarified during construction to minimise runoff velocities. Controls shall be inspected daily and maintained regularly, and achieve a discharge standard of less than 25 milligrammes/litre suspended solids.

Reason: To prevent water pollution.

11. (a) Continuous TON and Ammonia monitoring shall be provided to the satisfaction of the planning authority on the outlet from the wastewater treatment plant prior to forward feed to the holding tank at Rathcoursey, with automatic shutoff valves in the event trigger limits are reached. Trigger limits shall be agreed with the Environmental Protection Agency. Appropriate storage shall be provided on site to ensure out of specification wastewater is not accidentally discharged.

- (b) A remotely actuated valve shall be incorporated at the end of the proposed treated effluent pipeline before the connection to the Irish Water discharge chamber. This valve shall be closed immediately on detection of any non-compliance in the quality of the treated effluent.

Reason: To safeguard the amenities of the area, and to prevent water pollution.

12. The site shall be landscaped and planted in accordance with a scheme to comprise predominantly native and naturalised hedgerow, shrub and tree species reflecting those species naturally occurring in the locality. This plan shall be prepared with input from an ecologist. Details (including drawings) shall be submitted in a landscape plan which shall be agreed in writing with the planning authority prior to commencement of development. It is desirable that the plan will reflect the principle of no net loss of native trees or hedgerows.

Reason: In the interest of protecting the biodiversity value of the site.

13. Prior to commencement of development, the developer shall enter into a connection agreement with Irish Water. The agreement shall provide for an inspection of the diffuser at the end of the Rathcoursey discharge pipe and for measures to address any deficiencies found.

Reason: To safeguard the amenities of the area, and prevent water pollution.

14. The following traffic and village improvement mitigation measures shall be implemented before the proposed development comes into operation. Revised drawings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development providing for the following:
 - (a) A two-metre wide footpath shall be constructed to the satisfaction of the planning authority along the full length of the eastern and northern boundaries of the site. A footpath shall be provided with public lighting and drainage, lighting to be capable of lighting the entire road width.
 - (b) The road and cycle path on the road fronting the developer's site to the north shall be reduced in width to comply with the requirements of the Design Manual for Urban Roads and Streets issued by the Department of the Environment, Community and Local Government and the Department of Transport, Tourism and Sport in March, 2013.
 - (c) The kerb radii on the junction of the road to the north of the developer's site with the road to the east of the developer's site shall comply with the requirements of Design Manual for Urban Roads and Streets issued by the Department of the Environment, Community and Local Government and the Department of Transport, Tourism and Sport in March, 2013.

(d) The proposed layby on the road fronting the developer's site to the north shown on the developer's drawings as "Existing Lay-by to be retained and upgraded" shall be removed as it is likely to impede sight distance at the developer's vehicular exit on this frontage.

Reason: In the interests of public realm improvement and traffic safety.

15. Prior to commencement of development, revised drawings shall be submitted to, and agreed in writing with, the planning authority indicating the following:

(a) The public road fronting the site to the north shall be strengthened and resurfaced along its full width and full length to the satisfaction of the planning authority before the development comes into operation.

(b) The public road fronting the site to the east shall be strengthened and resurfaced across its full width for a distance of 100 metres on either approach to the developer's vehicular entrance. Works shall be completed to the satisfaction of the planning authority before the development comes into operation.

Reason: To address structural damage to roads.

16. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

17. The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

18. The developer shall pay the sum of € 70,000 (seventy thousand 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 in respect of works proposed to be carried out for the provision of the upgrade of the junction in Mogeely village and towards pedestrian facilities at the N25 junction in Castlemartyr. 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 An Bord Pleanála 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.

DR. Marcia Fitzgerald

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

Dated this 24th day of April 2018

