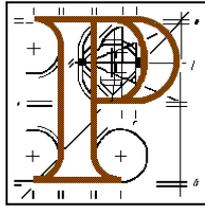


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2014

Clare County

Planning Register Reference Number: P14/377

An Bord Pleanála Reference Number: PL 03.244213

APPEAL by An Taisce of The Tailor's Hall, Back Lane, Dublin against the decision made on the 6th day of November, 2014 by Clare County Council to grant subject to conditions a permission to Burren Distillers Limited care of Paul Feeney Consulting Engineers Limited of Unit 1 Riveroaks Centre, Claregalway, County Galway in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Construction of a building for use as a whiskey distillery, and a visitor's centre, along with all ancillary site works including new vehicular access, circulation areas, and new foul water treatment plant at Newtown, Ballyvaughan, County Clare.

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 development and to the objectives of the current Clare County Development Plan, it is considered that, subject to compliance with the conditions set out below, the proposed development 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 and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Having regard to the nature, scale and extent of the proposed development, the Natura impact statement submitted with the application and the mitigation measures contained therein, the submissions on file and the Inspector's assessment, the Board completed an Appropriate Assessment in relation to potential impacts of the proposed development on nearby Natura 2000 sites and specifically the Ballyvaughan Turlough Special Area of Conservation (Site Code 000996). The Board noted that the planning authority had screened out other nearby Natura sites, including Moneen Mountain Special Area of Conservation (Site Code 000054) and Black Head-Poulsallagh Complex Special Area of Conservation (Site Code 000020) in its assessment of a previous similar application on the subject lands in 2013 (planning register reference number P13/411). The Board concurred with this decision.

Subject to the implementation of the identified mitigation measures, the Board concluded that, on the basis of the information available, the proposed development, either individually or in combination with other plans or projects, would not adversely affect the integrity of any European site in view of the site's conservation objectives.

In deciding not to accept the Inspector's recommendation to refuse permission, the following comments by the Board apply.

(a) Visual Impact

The Board determined that the applicant had taken reasonable steps to minimise the visual impact of the proposed development through the use of a vernacular architectural idiom and scale, in the mix of structures employed and by positioning these so that advantage is taken of the existing quarry and hillside to partially screen the buildings and help set them into the landscape. Additional measures, including specifications as to finishes and landscaping, can be conditioned such that the overall impact on the heritage landscape is minimal.

(b) Traffic

The Board considered the observations of the Roads department of the planning authority in relation to sightlines, parking spaces, bus parking and local junctions and noted the recommendation that a condition be imposed requiring that a traffic management plan be agreed with the planning authority in the event of a grant of planning. Such a requirement was subsequently conditioned in the planning authority's decision to grant permission (planning register reference number 14/377) and the Board considered this reasonable. The Board noted the applicant's submission that there will be 8 persons employed at the site, that deliveries (of flour) to the site would be on a weekly basis and that daily visitors would likely consist of 5-10 number cars and perhaps one coach. Overall, the impact on the local roads would be minimal and highly seasonal. In this context, the Board determined that matters relating to traffic management can be adequately addressed by way of condition as per the planning authority's approach and do not warrant a refusal of permission.

(c) Hydrogeology

The Board is satisfied that proposals to re-locate the percolation area to a location in the south western area of the subject lands wherein there is a six metre depth of unsaturated glacial deposits (as described on page 14 of the Tier 2 Hydrogeological Report submitted to the planning authority on the 23rd day of June 2014) will, taken in conjunction with the wastewater treatment technology proposed (with appropriate maintenance), provide an adequate level of protection for groundwater in the area and will not present a risk to public health or the environment.

(d) Natura sites

As previously stated, the Board notes and agrees with the planning authority's decision to screen out the Moneen Mountain Special Area of Conservation (Site Code 000054) and Black Head-Poulsallagh Complex Special Area of Conservation (Site Code 000020) in its assessment of a previous similar application (planning register reference number P13/411) on the subject lands in 2013. The third Natura site in close proximity to the subject lands is the Ballyvaughan Turlough Special Area of Conservation (Site Code 000996). The latter is described by the Department of the Arts, Heritage and the Gaeltacht as a "small, rather dry turlough...that...for its small size...has a high diversity of plant species" (from "Site Synopsis") and is located approximately 840 metres north east of the subject lands.

A Natura impact statement was prepared for the proposed development as the planning authority determined that the proposed development was likely to have a significant effect on this European site. Specifically, concern had been raised by the planning authority in its refusal of permission for a prior application on the subject lands (planning register reference number P13/411 as above) at the ability of the lands, given uncertainties concerning prevailing ground conditions, to accommodate the proposed organic loading to be disposed of via the on-site treatment plant.

The Tier 2 Hydrogeological Report submitted to the planning authority on the 23rd day of June 2014 ("Hydro report") was designed to address and allay this concern. The Natura impact statement concludes that the proposed development will not adversely affect the integrity of the European site Ballyvaughan Turlough Special Area of Conservation (Site Code 000996) in view of the site's conservation objectives. The planning authority accepted this conclusion. The Board considers that the combination of the proposed wastewater treatment plant (properly maintained) and the re-located percolation area will result in an acceptable standard of wastewater treatment. As regards the impact of groundwater abstraction on the Ballyvaughan Turlough Special Area of Conservation the Board considered the volumes of water involved of six cubic metres per day of which four cubic metres per day would be used for heating/cooling and would be returned to the ground; one cubic metre per day for sanitation and related uses which would also be returned to the ground following treatment leaving a net one cubic metre per day lost to the groundwater resource.

As the Hydro report sets out (see page 12) the groundwater resource is recharged by precipitation and effective or net rainfall in the area is calculated in the report as 1191 millimetres annually. Taking this level of precipitation the area required to ensure appropriate recharge of the proposed abstraction well is calculated in the report as a circular area of radius 32 metres or approximately 3,200 square metres (circa 0.32 hectares or circa 0.8 acres) – assuming the full daily abstraction of six cubic metres and with a 50% factor of safety applied to the required recharge area. This represents some 27% of the site area of 1.1963 hectares. In these circumstances, the Board concluded that the impact of the proposed development on the groundwater resource of the area was de minimis and it logically follows that the impact on the Ballyvaughan Turlough Special Area of Conservation (Site Code 000996), located some 840 metres distant, is also de minimis. The Board, therefore, concluded, beyond all reasonable scientific doubt, that the proposed development would not adversely affect the integrity of the Ballyvaughan Turlough SAC (or of any other Natura site) in view of that site's conservation objectives and thereby disagrees with the view of the Inspector.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted the 1st day of August, 2014 and the 14th day of October 2014, 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 external finishes of the proposed development and the proposed finished floor level shall be as per the details received by the planning authority on the 23rd day of June, 2014 and the 1st day of August, 2014.

Reason: In the interest of visual amenities.

3. The proposed vehicular access point to the site and proposed roadside boundary treatment shall be as per the Site Layout Plan drawing number BDL-01-03 submitted on the 23rd day of June, 2014. Prior to the commencement of development, the developer shall submit details of the surface treatment to be used on the access drive way, turning area and car parking areas of the proposed development. The issue of the tar macadam as a surface treatment is not permitted by this grant of permission.

Reason: In the interest of visual amenities.

4. Prior to the commencement of development, the developer shall submit the following details including a revised site layout plan for the written agreement of the planning authority:
 - (a) a revised site layout plan to show the relocation of car parking spaces number 8-12 so that their location does not detract from driver visibility on entering the site,
 - (b) a revised site layout plan to show the provision of bus parking areas for two number buses on the site, and
 - (c) an auto track swept analysis for the proposed internal road layout. The auto track swept analysis shall include a bus, car, refuse and delivery vehicles.

Reason: In the interest of traffic safety.

5. Prior to the commencement of development, the developer shall submit a detailed Traffic Management Plan for both the construction and operational phases of the proposed development for the written agreement of the planning authority.

Reason: In the interest of traffic safety.

6. (a) The proposed waste water treatment system, soil polishing filter and wetlands shall be constructed and maintained in accordance with the details submitted on the 23rd day of June, 2014 and in accordance with the EPA Waste Water Treatment manual "Treatment Systems for Small Communities, Business, Leisure centres and Hotels" EPA 2009 or any amended version of this document. No system other than the type proposed in the submissions and approved by this permission shall be installed unless otherwise agreed in writing with the planning authority.
- (b) Certification by the system manufacturer that it has been properly installed and tested shall be submitted to the planning authority within four weeks of the date of installation.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of three years from the first occupancy of the facility. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the date of installation.
- (d) Surface water soakaways shall be located such that drainage from this area shall be diverted away from the location of the wastewater treatment system.

Reason: In the interest of public health.

7. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.

8. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

9. All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site to soakpits. No surface water from roofs, paved areas or otherwise shall discharge into the wastewater treatment system, percolation area, wetlands area or onto the public road or adjoining properties.

Reason: In the interest of traffic safety and to prevent pollution.

10. The proposed whiskey distillery and visitor centre shall only be open to members of the public between the hours of 08.00 to 22.00 on weekdays and from 08.00 to 13.00 on Saturdays and Sundays unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential amenity and having regard to the hours of operation as specified in the details submitted with this application.

11. (a) Full details of all proposed signage to be used on the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development.
- (b) Lighting shall be by means of spot lighting or flood lighting.
- (c) No awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission.
- (d) No display of goods or advertising or storage of goods shall take place outside the premises.

Reason: In the interest of visual amenity.

12. (a) The developer shall employ a licensed archaeologist approved by the Department of Arts, Heritage and the Gaeltacht to carry out archaeological monitoring of all sub-surface works carried out within the proposed development site. This shall include the archaeological monitoring of the removal of topsoil, the excavation of trenches for foundations, services and drainage associated with the proposed bungalow and garage.
- (b) Should archaeological material be discovered during the course of Archaeological Monitoring, the developer shall facilitate the archaeologist in fully recording this material and details as to any archaeological material found shall be submitted to the planning authority.
- (c) The developer shall be prepared to be advised by the planning authority with regard to the appropriate course of action, should archaeological material be discovered. The archaeologist shall prepare and submit a report describing the results of the archaeological monitoring to the planning authority and to the Department of Arts, Heritage and the Gaeltacht within six weeks following the completion of Archaeological Monitoring on site.

Reason: To ensure the continued preservation (either in situ or by record of places, caves, sites, features or other objects or archaeological interest.

13. 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 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.

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

Dated this day of 2015.