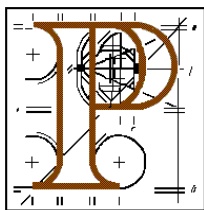


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Donegal County

Planning Register Reference Number: 14/50993

An Bord Pleanála Reference Number: PL 05E. 244593

APPEAL by An Taisce of The Tailors' Hall, Back Lane, Dublin against the decision made on the 16th day of February, 2016 by Donegal County Council to grant subject to conditions a permission to Bio-Marine Ingredients Ireland Limited care of Carr and Company Architects of Unit 1, Northern Point Business Park, Ballybofey, County Donegal in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Development consisting of: (1) site works including reduced level excavations to provide suitable levels for the building, vehicular access and circulation, car parking and yard. The excavation work may necessitate rock breaking using a controlled blasting technique in conjunction with mechanical rock breaking activity and (2) the construction of a new fish processing facility with associated offices, laboratories, plant, equipment, cold storage, product storage, staff changing and rest rooms. The facility will process up to 50,000 tonnes of fish per annum producing high end proteins, oils and calcium for despatch as food ingredients. Construction work will include a detached 30 metres high cylindrical drier building, chimney stack and other associated items of plant and equipment outside the main building envelope, at Stoney Hill Industrial Park, Killybegs, County Donegal. An Environmental Impact Statement and Natura Impact Statement have been submitted as part of the application. (As amended by the further public notice received by An Bord Pleanála on the 21st day of March, 2016)

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

In making its decision the Board had regard to:-

- (a) the planning history of the site and adjoining sites,
- (b) the pattern of development in the area,
- (c) the nature of the proposed development,
- (d) the policies and objectives set out in the Donegal County Development Plan and the former local area plan for the Town of Killybegs (under which the application was made),
- (e) the submissions made with the planning application and the appeal, and
- (f) the reports of the Inspector.

Appropriate Assessment

The Board carried out a screening exercise in relation to potential impacts on nearby European sites, specifically the West Donegal Coast Special Protection Area (Site Code 004150), the Inishduff Special Protection Area (Site Code 004115) and the Saint John's Point Special Area of Conservation (Site Code 000191), and having regard to the nature and scale of the proposed development, the nature of the receiving environment, the screening report submitted, the submissions on file and the report of the Inspector dated 11th day of June, 2015 which the Board has adopted in relation to an Appropriate Assessment, the Board concluded that, on the basis of the information available, either individually or in combination with other plans and projects, the proposed development would not be likely to have a significant effect on any European site in view of the site's conservation objectives.

Environmental Impact Assessment

The Board noted the progression in the three reports of the Inspector. In the first report, dated 11th June 2015, the Inspector recommended refusal as she considered that insufficient information had been presented to carry out an Environmental Impact Assessment of the proposed development. In the second (Addendum) report, dated 9th November 2015, the Inspector addressed the submission of the Marine Institute in relation to the fisheries-related issues raised by the appellant and concluded that the direct and indirect environmental impacts of the proposed use of the target species had been adequately addressed in the Environmental Impact Statement. The Board concurs in this assessment. The Inspector furthermore recommended seeking further information to address the perceived inadequacies of the Environmental Impact Statement identified in her first report. In the Inspector's third and final report (Addendum Report No. 2), dated 3rd June, 2016 and prepared following receipt of additional information, the Inspector considered that the Environmental Impact Statement, supported by the further information submitted to the planning authority and to An Bord Pleanála and other submissions on file, was adequate in identifying and describing the direct, indirect, secondary and cumulative effects of the proposed development. The Board completed an Environmental Impact Assessment, and agreed with the Inspector in her assessment of the likely significant effects of the proposed development, and generally agreed with her conclusions on the acceptability of the mitigation measures proposed and residual effects. The Board generally adopted the reports of the Inspector as dated above in respect of the Environmental Impact Assessment elements. The Board concluded that, subject to the implementation of the mitigation measures proposed, the effects of the proposed development on the environment would be acceptable. The

proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conclusions

Having regard to the foregoing, it is considered that, subject to compliance with the conditions set out below, the proposed development would represent a significant positive diversification in the marine-based commercial enterprise activities of the town and district of Killybegs, would not seriously injure the residential, visual or ecological amenities of the area or of property in the vicinity, would not have unacceptable negative impacts indirectly on fish stocks or on marine ecology, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 to the planning authority on the 8th day of December, 2014 and as amended by the further plans and particulars received by An Bord Pleanála on the 15th day of February, 2016, except as may be required in order to comply with the following conditions. Where a condition requires details to be agreed with the planning authority, the developer shall agree these in writing with the planning authority prior to the 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. Construction methods and environmental mitigation measures as set out in the Environmental Impact Statement and the addendum Environmental Impact Statement submitted to the planning authority on the 8th day of December, 2014, as revised, and associated documentation, shall be implemented in full, save as may otherwise be required by the attached conditions.

Reason: In the interest of environmental protection.

3. 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 interests of public safety and residential amenity.

4. All infrastructural works permitted under planning register reference number 11/20203 that are necessary to serve the present development, including the provision of the estate access road and pedestrian footpaths for the full site frontage, shall be completed in full prior to first occupation of the building hereby permitted.

Reason: In the interest of orderly development and clarity.

5.
 - (a) Blasting operations shall take place only between 1000 hours and 1700 hours, Monday to Friday, and shall not take place on Saturdays, Sundays or public holidays. Monitoring of the noise and vibration arising from blasting and the frequency of such blasting shall be carried out at the developer's expense by an independent contractor who shall be agreed in writing with the planning authority.
 - (b) Prior to the firing of any blast, the developer shall give notice of his intention to the occupiers of all dwellings within 500 metres of the site. An audible alarm for a minimum period of one minute shall be sounded. This alarm shall be of sufficient power to be heard at all such dwellings.

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

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. The landscaping scheme shown on drawing number 300A (Landscaping Master Plan drawing 1 of 2), 300B (Landscaping Master Plan drawing 2 of 2) and 301 (Site Boundary Cross Sections) as submitted to An Bord Pleanála on the 15th day of February, 2016, shall be carried out within the first planting season following substantial completion of the external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

8. All service cables associated with the proposed development (such as electrical and telecommunications) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

9. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:
 - (i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
 - (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.
- (b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

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

10. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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,
 - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any remains that may exist within the site.

11. 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 in respect of conditions numbers 4 and 7 above, 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.

12. 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.

13. The developer shall pay the sum of €50,000 (fifty 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, as amended, in respect of the provision of pedestrian safety works along the new industrial road. This contribution shall be paid prior to commencement of 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.

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

Dated this day of 2016.