



An
Bord
Pleanála

Inspector's Report ABP 304764-19

Development	Retain 3 no. external fermentation storage tanks and low walled containment area and erect cladding and associated works to rear of existing brewery.
Location	Srahane, Flesk Road, Killarney, Co.Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/364
Applicant	Killarney Brewing Company Ltd.
Type of Application	Retention Permission & Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. Refusal
Appellant	Killarney Brewing Company Ltd.
Observer	Thomas F. O'Connor
Date of Site Inspection	16/09/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

Killarney Brewing Company is located on the west side of Flesk Road to the south of Killarney town centre. It comprises a micro-brewery that includes a visitor's interpretive area, a merchandise sales area, a tap room and ancillary food service and restaurant area. There is a yard and service area to the rear of the building. Three fermentation storage tanks are sited at the northern end of the yard adjoining the commercial property that is attached to the premises (in office use).

Apart from a small premises to the south which is used for bicycle rental, the lands to the rear (west) are vacant and currently used for carparking. The wider area is characterised by a mix of residential and commercial uses, including substantial hotel/holiday accommodation.

2.0 Proposed Development

The proposal entails:

- (a) Retention permission for 3 no. fermentation storage tanks and low walled containment area. The tanks are 6.25 metres in height.
- (b) Permission to enclose the tanks comprising the increase in the block wall with cladding on top which is to match that of the existing building.

The tanks are located in the rear yard of the premises.

3.0 Planning Authority Decision

3.1. Decision

Refuse for 3 no. reasons which can be summarised as follows:

1. The tanks by reason of their height, scale, proximity to the boundaries and industrial character would seriously injure the residential amenities and depreciate the value of property to the north and west.
2. The tanks would result in a significant intensification of use of the site and would be contrary to the terms of the permission granted under ref. 16/620.

3. The proposal would set an undesirable precedent and would seriously injure the amenities and depreciate the value of properties in the immediate vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report includes EIA and AA screening. It can be said that permission for the retention of a micro-brewery on the site under ref. 16/620 was granted on the basis that it was a 'tourism micro-brewery'. The brewery as it now exists would be better located within an industrial area and that the need for the large industrial tanks would suggest that it is no longer a 'tourism micro-brewery'. They are not suitable in an area zoned for residential purposes. They are extremely unsightly and overbearing given their height, scale and location. The cladding would help to camouflage the tanks somewhat however the reasons for refusal on the previous application for retention under ref. 17/901 are still valid. A refusal of permission for 3 reasons recommended.

3.2.2. Other Technical Reports

Environment Section in a memo has no objection subject to a condition requiring the bunding of the tanks.

3.3. Prescribed Bodies

Transport Infrastructure Ireland has no observations.

3.4. Third Party Observations

An objection to the proposal received by the Planning Authority is on file for the Board's information. The issues raised relate to the planning history on the site, purpose of the tanks, impact on residential amenity and health and safety, waste discharges and issues pertaining to an adjoining site.

4.0 Planning History

RL08.3361 - the Board determined that the change of use of the Kerry Mineral Water Supply Co. Ltd. building to a craft brewery was development and was not exempted development.

16/620 – retention permission for a development that included the change of use of the unit to an integrated tourism micro-brewery.

17/901 – permission refused for retention of the 3 no. fermentation tanks and low walled containment area for three reasons which are comparable to those cited in the current case.

ABP 301523-18 – the Board determined that the provision of a structure to the rear of the brewery comprising three fermentation tanks and associated cladding is development and is not exempted development. It concluded that

(a) the erection of fermentation tanks and the cladding would both be within the scope of sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended, and would constitute development, and

(b) the fermentation tanks would come within the scope of Class 21, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, comprising plant or structures relating to development by an industrial undertaker for the carrying on, and for the purposes of an industrial process, but would not comply with Conditions and Limitations No 1 because they materially alter the external appearance of the premises of the undertaking and, as such, are not exempted development:

(c) the cladding does not come within the scope of Class 21, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, and as there are no other Classes by which the cladding would be exempt, is not exempted development.

5.0 Policy Context

5.1. Development Plan

Killarney Town Development Plan 2009 -2015 (as extended)

The site is within an area zoned 'residential phase 1'.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by HW Planning on behalf of the applicant against the planning authority's notification of decision to refuse permission can be summarised as follows:

- The decision has not appropriately considered the findings of the recent Section 5 referral on the fermentation storage tanks by the Board under ref. ABP 301523-18.
- The governing use of the site and building is industrial in nature. The fermentation storage tanks and cladding are wholly consistent with this and will not alter the local character. This has been determined by both the planning authority and the Board on ABP 301523-18 (EX632). It cannot reasonably be stated that the governing use on the site is for tourism purposes.
- The planning authority does not include any focused commentary on what residential properties will be affected. As there is no noise or odour related to the tanks it can be assumed that perceived impacts relate to visual amenity only. Views are available only from the rear of properties to the west which are between 55-70 metres away.
- Once cladded the tanks will be visually indivisible from the existing corrugated clad building. They will not be visually intrusive to the amenities of residential properties in the area.
- The placement and use of the tanks is not contrary to permission ref. 16/620. It does not give rise to intensification of use on the site which would conflict with the terms of the permission.

- It would not set an undesirable precedent.
- Permission has been granted for a micro-craft brewery and visitor centre at Killalee, Fossa under ref. 18/1064. It is intended to relocate all activities from the site to Fossa on its completion. The applicant is willing to accept a condition for a temporary retention/permission for 5 years to allow for the transition to the new premises.

6.2. Planning Authority Response

It is considered that all issues raised in the appeal have been fully addressed in the planner's report. The applicant's plans for a new brewery at a site in Fossa cannot be the basis for any decision made in relation to this micro-brewery. Its closure did not form any part of the application in Fossa which has been appealed (reg.ref. 18/1064).

6.3. Observations

The observation from Thomas F. O'Connor can be summarised as follows:

- The development was previously refused under ref. 17/901. It is not open to the applicant to revisit the decision.
- The site is within an area zoned residential. It would be better located in an industrial estate.
- The permission to grant retention permission for the change of use from a mineral water factory under ref. 16/620 appears to have been influenced by the fact that the term 'micro' denotes light scale activities and that it would primarily be used for tourism rather than any large scale industrial purposes. The subsequent refusal under ref. 17/901 was based on this governing use.
- Reliance on the view that Kerry County Council misconstrued the governing use is not sustainable.
- The intended use of the tanks is unclear. They did not form part of the original application.

- The scale of brewing/activities necessitating the 3 no. tanks is greatly increased and such a facility cannot now be called a 'micro-brewery' for which permission was granted. There are concerns about emissions and waste management from such increased brewing activity.
- Should the tanks be refused permission the cladding will not be necessary.
- The cladding would seriously injure the residential amenities and value of his and adjoining property. It would be a tall, obstructive and unsightly screen with no appropriate landscaping or planting. It would set an undesirable precedent in a scenic area close to Killarney House and Gardens.
- Access to the tanks is queried.
- A condition for a temporary retention/permission to allow for an intended transition to its new premises at Fossa does not provide an appropriate solution. The said permission for the premises is also on appeal. There is no link between the two permissions. It would set an undesirable precedent.
- Issue of site ownership is queried.

Note: Issues relating to the current operations at the facility and compliance with conditions attached to 16/620, in addition to matters arising on lands in the vicinity of the site also detailed in the submission.

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Principle of Development
- Impact on Amenities of Adjoining Property
- Other Issues

7.1. **Principle of Development**

The site subject of the appeal is accessed from Flesk Road to the south of Killarney Town Centre. The road is well trafficked and is characterised by a mix of uses

including residential, bed and breakfasts, hotels with other commercial activity interspersed and filling stations prevalent.

This constitutes the 2nd application for permission to retain the fermentation storage tanks with permission refused in November 2017 under ref, 17/901 for reasons comparable to those cited in the current case. The fact that the applicant did not appeal that decision does not preclude it from lodging a further application for retention permission, as in this instance, albeit where the proposal is now seeking to enclose the tanks with cladding.

As can be extrapolated from the details on file the site previous to its current use was occupied Kerry Mineral Water Supply Co. Ltd. Permission was granted in February 2017 under ref. no. 16/620 to retain 'an integrated tourism micro-brewery' including visitors interpretative centre, sales area, tap room and ancillary food service and restaurant area. This followed a Section 5 declaration by the Board under ref. RL08.3361 that the change of use of the building to a craft brewery was not exempted development. In its decision the Board determined that the brewery use was an industrial use. The planning authority in the making of its declaration leading to the referral to the Board determined that the use of part of the building as a brewery constituted an industrial use.

It is reasonable to assume that it is in the knowledge that the brewery constituted an industrial use that the planning authority saw fit to grant retention permission for the operation notwithstanding the residential zoning for the area. Whilst the planning authority considers that the brewery as it exists (with the said tanks) can no longer be considered to be a tourism micro-brewery and would be better located in an industrial area, it ignores the principle established by its permission to retain the use, namely the industrial use. This was further reinforced in the Board's Section 5 declaration under ref ABP 301523-18 where it considered that the fermentation tanks come within the scope of class 21, Part 1, Schedule 2 of the Planning and Development Act Regulations 2001 being plant relating to development by an industrial undertaker, albeit failing to comply with limitation 1 attached to the class in that they materially alter the external appearance of the premises of the undertaking and therefore are not exempted development.

On the basis of the above I would concur with the agent for the applicant that the governing use and character of the site is industrial and that the fermentation storage tanks would be consistent with same.

The said fermentation tanks are in addition to the internally located tanks which were identified on file 16/620. Certainly, the tanks will allow for an increase in the amount of beer that can be brewed on the site. No details were provided on file 16/620 as to the then HL production anticipated per annum. As per the appeal submission the site currently produces 2,500 HL per annum inclusive of the capability of the tanks to be retained. This is materially below the 40,000HL which is used for the classification of a micro-brewery.

7.2. Impact on Amenities of Adjoining Property

As noted previously Flesk Road in the vicinity of the site is characterised by a mix of uses including a substantial level of hotel/holiday accommodation. The said road is well trafficked. The tanks to the rear of the premises are not visible from the road. Views are generally restricted save from the dwelling dwellings to the west within the Scrahan Estate which are separated from the site by the large vacant site which is currently used for car parking. Oblique views would also be available from the dwelling to the north. In view of the industrial use on the site and use of the rear yard for storage of kegs etc. I consider that the tanks would not be at variance with the character of the site and I would not concur that they are unsightly or out of scale. I consider that the cladding as proposed will assist in screening the tanks from views and is acceptable. A condition requiring its installation within a specified period of time is recommended.

The tanks themselves would not give rise to noise or odours. It is anticipated that an increase in the volume produced may give rise to an increase in vehicular movements associated with deliveries but will continue to use its current access arrangements onto Flesk Road. Notwithstanding, the operations on the site would continue to be governed by the conditions attached to the parent permission 16/620 in terms of opening hours, delivery times and matters pertaining to noise and odour. A condition can be attached to this effect in the interests of clarity.

7.3. Other Issues

I note that the applicant has secured permission from the planning authority to develop a micro-brewery on a site at Fossa under ref 18/1064. It is currently on appeal to the Board. File reference number ABP 304805-19 refers. Whilst I note that the applicant proposes to relocate the operation on the subject site to Fossa as of yet no permission for same exists. The applications stand independent of and are not reliant on each other. As such there is no obligation for the activities on the current site to cease on the commissioning of the new site. However, this does not preclude the Board from attaching a condition limiting the duration of the permission for the fermentation tanks and cladding should it so wish to allow for a further review of their impact in the future.

The Board has no role in terms of enforcement and issues of compliance with conditions attached to permission 16/620 are more appropriately addressed to the planning authority. The use of the lands to the west and outside of the red boundary line of the site to which this application and appeal refers is not a matter for comment or assessment by the Board.

I would advise the Board that as per the current Kerry County Development Contribution Scheme there does not appear to be any class of development that would be comparable to that subject of the appeal. As such I submit that the scheme does not apply in this instance.

I note that the application is accompanied by a letter of consent from the beneficial owner of the site.

Appropriate Assessment

Having regard to the nature and extent of the development as proposed, the receiving environment and the distance to the nearest European site it is considered that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the planning history and existing industrial use of the site, to the scale and nature of the development to be retained and completed and to the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development to be retained and completed would seriously injure the amenities of the area or of property in the vicinity and would not be prejudicial to public health. The proposed development to be retained and completed would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application 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. Except as may otherwise be required in order to comply with the following conditions the development to be retained and completed shall comply with the conditions attached to the permission granted on the site by the planning authority under planning register reference number 16/620.

Reason: In the interest of clarity.

3. The proposed block wall and cladding to encase the fermentation storage tanks shall be carried out and completed within three months from the date of this order.

Reason: In the interest of the amenities of property in the vicinity.

4. The fermentation storage tanks shall be contained in a waterproof bunded area, which shall be of sufficient volume to hold 110 per cent of the volume of the tanks within the bund. All drainage from the bunded areas shall be diverted for collection and safe disposal. A report from a suitable qualified person confirming that the bunded area has been put in place shall be submitted to and agreed in writing with the planning authority within three months of the date of this Order.

Reason: In the interest of public health.

Pauline Fitzpatrick
Senior Planning Inspector

September, 2019