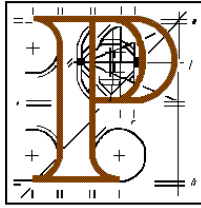

An Bord Pleanála



Memorandum

Development: Amendments to approved redevelopment of port facilities at Ringaskiddy Deepwater Port and Ferry Terminal, Lough Beg, Ringaskiddy, Co. Cork

Applicant : Port of Cork

Type of Case : Pre-Application Consultation, Section 37B Planning and Development Act, 2000, as amended

Inspector : Pauline Fitzpatrick

1. INTRODUCTION & BACKGROUND

- 1.1 Under Section 37 of the Planning and Development Act, 2000, as amended, the Board granted approval on the 25/05/15 for the redevelopment of existing port facilities at Ringaskiddy Deepwater Port and Ferry Terminal (case reference no. PA0035).
- 1.2 On the 22/03/16 the Board received a request under Section 37B (1) of the Planning and Development Act 2000, as amended, for pre-application consultations regarding proposed alterations to the approved scheme.
- 1.3 A meeting was held with the prospective applicants on the 05/05/16 whereby it requested that the pre-application procedures under Section 37 (B) be used to clarify certain legal and procedural points and that the proposed alterations then be progressed via Section 146 B.

2. DEVELOPMENT AS PERMITTED

- 2.1 The overall site is comprised of three principle areas Ringaskiddy East, Ringaskiddy West and Paddy's Point. Ringaskiddy East comprises the area adjoining, and to the north and east of the existing ferry terminal and is the area of the site to which the proposed alterations are proposed. Ringaskiddy West relates to the area of the existing Deep Water Berth and the ADM jetty, while works at Paddy's Point relate to an area adjacent to Haulbowline Bridge.
- 2.2 The approved development at **Ringaskiddy East (Container Berth and Multi-purpose Berth)** comprises the following:
 - Berth 1, a new 314m Container / Multipurpose Berth to the north of the existing ferry berth, to accommodate vessels carrying different cargoes.
 - Berth 2, a new 200m Container Berth to the north of berth 1.
 - Reclamation of approx. 2.4ha to facilitate the new berths.
 - Installation of a new link-span comprising a floating pontoon and access bridge at Berth 1 to facilitate ro-ro operations.
 - Surfacing of existing port lands to provide an operational area for container and cargo storage.
 - Dredging of the seabed to a level of -13.0m Chart Datum (CD).
 - Removal of an existing link-span, to the south of the ferry terminal.
 - Installation of container handling cranes and terminal transport equipment.
 - Maintenance building, administrative buildings and entrance kiosks.

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- Two Ship to Shore Gantry Cranes (SSG) to lift containers to / from vessels onto trailers/tractor units, for transport to the container stacks. The containers are then to be stacked by electrically operated Rubber Tyre Gantry (RTG) cranes (7 no.), up to 5 containers high, equivalent to an approximate height of 12.8m.
 - Ancillary car parking, lighting and fencing, including closure of existing public access to Ringaskiddy Pier.

The grant of permission is for a period of 10 years and is subject to 18 conditions.

3. PROSPECTIVE APPLICANT'S SUBMISSION

- 3.1 In addition to the documentation submitted with the pre-application consultation request a meeting with the prospective applicant was held on the 5th May, 2016.
- 3.2 Following the grant of permission the project has been reviewed to take account of the conditions attached to the decision, particularly:

Condition 4 which requires that phase 3 of the development comprising the link span bridge and berth to accommodate roll on/roll off freight shall not become operational until such time as the N28 and Dunkettle road upgrade schemes are completed.

and

Condition 5 which requires that the details of the Ringaskiddy Mobility Management Plan to be agreed with the Planning Authority and that all freight vehicles using the port facilities at Ringaskiddy shall be included in the vehicle booking system of the RMMP.

- 3.3 The alterations proposed to the approved development comprise:
- Change in the landside handling system from Rubber Tyre Gantry Cranes (RTG's) to a Straddle Carrier (SC) system. The latter is considered to be a more flexible system with regard to the management of truck movements and will allow for the more efficient use of the capacity of the national road network during off-peak hours. Such a straddle carrier based operation will result in containers being stacked 3 high as opposed to 5 high in the RTG modules. This will require a larger, defined storage area.

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- Defer construction of the link span bridge until the N28 and Dunkettle road upgrade schemes have been commenced. To maximise the main berth in the interim alterations are proposed to the geometry at the southern end of the Main Berth. The berth length would increase from 514 metres to 560 metres. To allow for same the dredge pocket is to be extended by 982 sq.m. to the south along the full length of the quay wall.
 - The replacement of two mooring bollards and landside storm bollard with three new mooring bollards. This will allow the ferry terminal and container terminal operations to be separated.
 - Relocation and realignment of entrance and exit area to facilitate improved circulation and separation at the interchange area. This does not impact on approved plans for vehicular access to and from site.
 - New maintenance, office and customs buildings with dedicated compound to the south of the existing Ferry Terminal access road.

3.4 The implications of the proposed alterations include:

- The proposed works will require lands that are outside the red line which delineated the site boundary to which the original application pertained. The lands in question are to the south of the original red line area within the applicant's ownership and were included within the blue line delineating same in the application. The site to which the application referred covered 419,673 sq.m. The additional site area required is identified as being 31,187 sq.m. bringing the overall site to 450,860 sq.m. This constitutes an approx. increase of 13.5% in site area.
- Adjustment of the foreshore boundary. The applicant has been in consultations with the DoECLG.
- Change in the cargo handling regime
- Relocation and alterations to the maintenance building so as to accommodate the requirements arising from the plant associated with the proposed cargo handling system.

3.5 The prospective applicant is seeking confirmation from the Board that the proposed alterations fall within the scope of Section 146B, that there are no procedural issues arising with the alterations in the red boundary line and that there is no requirement for a new permission under Section 37E.

4. COMMENT

- 4.1 I consider that the question before the Board at this juncture is whether the proposed alterations to the permitted development at the Port of Cork should proceed via the Section 146B procedures or whether a new application is required under Section 37E.
- 4.2 I note that the prospective applicant in the pre-application consultation put forward an option whereby an application is made direct to the Planning Authority under Section 34 of the Planning and Development Act 2000, as amended, on the basis of the proposed development being deemed not to constitute strategic infrastructure. In view of the nature and extent of the development and the criteria as set out in 7th Schedule of the Act, I submit that an application via the Strategic Infrastructure provisions is the correct mechanism and section 34 procedures are not appropriate.
- 4.3 Section 146B expressly allows for the *alteration of the terms* of a Strategic Infrastructure development *subject of a planning permission* granted by the Board. 'Terms' is not defined however in this context I would suggest that it means the scope of the development the subject of the permission and/or the requirements of the permission as expressed by way of the conditions attached. The provisions of Section 146B allows for consideration of '*material alterations*'. Should the Board decide that the alterations are material it can set in train consultations as it sees fit as per Section 146B(8). Such material alterations could also be of a scope as to require an EIS as per Sections 146B(4) and 146BC. As such Section 146B could be interpreted as facilitating, in principle, the consideration of significant adjustments and/or changes to a development as permitted.
- 4.4 In principle the alterations to the cargo handling regime including increased area requirements in terms of storage, the main berth arrangement, alterations to the entrance and exit layout and the proposed maintenance building could be reasonably considered under Section 146B. The materiality or otherwise of the proposed alterations is not a matter for comment or assessment at this stage.
- 4.5 However I submit that the substantive issue pertains to the fact that the proposed alterations would bring about development (including the position of the maintenance building and offices) outside the site boundary as delineated in red on the plans that accompanied the original application. The question, therefore, is whether such a scenario does, or does not present an impediment to the advancement of the proposed alterations under Section 146B and whether such an alteration could reasonably be envisaged in what

is meant by the phrase *alter the terms of the development* subject of the permission. As evidenced from the plans accompanying the application the site to which the application refers as delineated in red, is very precise and does not include all the lands within the operational area of the port. The prospective applicant acknowledged this fact at the pre-application consultation meeting.

4.6 The additional area required to accommodate the alterations equates to a c.13.5% increase over that within the red boundary line as delineated on the plans and particulars accompanying the original application. The Board is also advised that the proposed alterations to the mooring berths will also require an adjustment to the foreshore boundary to the south of the main berth.

4.7 The prospective applicant advances the view that:

- The adjustment of the landside red boundary is within lands owned by the applicant which were delineated by way of the blue line on the plans accompanying the application. The changes are within the port operational area.
- Certain conditions imposed by the Board would have effects outside the red-line boundary, namely condition 5, in that the Mobility Management Plan relates to all port activities and not just those generated within the red line boundary.
- The relocation of the mooring dolphins could be equated to conditions commonly attached to a grant of permission which requires works outside the site boundary necessary to implement the proposed development (such as road or water service improvement works).

4.8 I consider the 2nd and 3rd suppositions to be somewhat tenuous. The conditions attached to the permission largely reiterate aspects of the development which formed part of the application and which were detailed in the EIS. The original Mobility Management Plan made reference to the vehicle booking system to be employed with the applicant committing to its extension throughout the day at the oral hearing. The application also clearly identified the link span bridge and ro-ro as Phase 3 following the N28 and Dunkettle road improvement works.

4.9 I submit that the nature of the alterations proposed may be more attributable to the outcome of a review of the approved proposal in its own right and the desire to incorporate a more flexible cargo handling operating system. I note that the altered site boundary remains within the applicant's landownership and within the operational area of the port.

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- 4.10 In terms of general principles the extent of a permission granted on foot of an application made under section 34 of the Planning and Development Act, 2000, as amended, pertains to the land within the site boundary as delineated on the plans and drawings required to accompany the said application. The statutory requirements in terms of the details provided on the said plans and drawings are set in the Permission Regulations, Part 4 of the Planning and Development Regulations, 2001, as amended. Articles 22 and 23 refer. Of particular relevance is Article 22(2)(b) which requires a location map of sufficient size *marked or coloured so as to identify clearly the land or structure to which the application relates and the boundaries thereof*. Article 23 (a) which specifically details the requirements for the plans and drawings referred to in Article 22 requires the site boundary to be delineated in red. This is clearly differentiated from lands adjoining under the control of the applicant which are to be delineated in blue. In terms of whether these requirements are mandatory or directory I note Section 3.2 of the Development Management Guidelines for Planning Authorities which states that *Article 22 sets out the information that is statutorily required to validate a planning application*. As such I submit that the requirements should be considered as mandatory.
- 4.11 Whereas a Planning Authority is empowered to impose conditions regulating the development or use of land within the applicant's ownership it must be expedient for the purposes of or in connection with the development authorised by the permission. In the absence of such imposition development outside of the delineated site boundary as delineated in red would require a further planning application. Whilst legal judgement acknowledges that there is nothing in the Planning and Development Act which precludes the power to amend a planning permission¹ I am not aware of any precedent where such power extends to allowing an amendment whereby development would occur outside the line delineating the extent of the site to which the original application (and subsequent permission) refers.
- 4.12 I note that the application for the redevelopment of the port was made to the Board under section 37E of the Planning and Development Act 2000 as amended. There does not appear to be any statutory requirements in terms of the plans and documentation to accompany such an application (save an EIS) and this is reflected in the Board's guidance on its website which states that *'copies of plans and particulars of the proposed development, including the EIS, and any plans, particulars or other information required by the Board (the number of copies and their format will be clarified during the pre-*

¹ Decision Costello C., South-West Regional Shopping Centre Promotion Association Ltd. v. An Bord Pleanala, 2015 No.282 JR

application consultation stage)'. I also note that Section 37E (2) states *the Board may refuse to deal with any application made to it under this section where it considers that the application for permission is inadequate or incomplete, having regard in particular to the permission regulations... or to any consultations held under Section 37B.* I submit that the corollary could reasonably be said to apply in that dealing with an application regard would be had to the permission regulations and consultations had. I bring to the Board's attention the minutes of the final meeting held with the prospective applicant under Section 37E (2) on 13/05/14 prior to its lodgement of the application wherein the Board's representatives advised *There are no specific legislative provisions for strategic infrastructure drawings; however, they should comply with the Planning and Development Regulations, 2001. The scale of 1:1,000 would give sufficient detail. Buildings will need to have a scale of 1:100 and elevation drawings showing maximum height will be required. The development site should be clearly shown. Lands owned by the Port of Cork, but not part of the application should be shaded blue.* A copy of the minutes is attached for the Board's ease of reference (case reference PC0131). Whilst the minutes do not specifically refer to the delineation of the development site by way of a red line it is reasonable to conclude that the development site is that as delineated by the red line on the plans accompanying the application. In this regard I note the legend on the drawings accompanying the application for example no. IBM0474-GA-010 titled *Overall Site Location Plan* which notes that the red line delineates the '*planning boundary*' with the blue line delineating the '*port ownership boundary*'.

- 4.13 I would query whether Section 146B provides the latitude to allow for the altering of the boundary to which the application and subsequent permission with specific regard to the right of 3rd Parties. Such parties have a reasonable expectation that any alterations proposed to a development would occur within the 'four walls' of the permission and planning boundary as delineated unless explicitly provided for by way of condition. As I noted above whilst the Board may invoke the necessary consultation mechanisms which could circumvent any issues in terms of 3rd Party rights, I would be unsure as to whether the legal imperatives would be complied with.

Precedent

- 4.14 The prospective applicant made reference to the discussions had under Section 37B between the Board and Shannon LNG (ref. case PC0136). In that instance the prospective applicant availed of the opportunity to discuss proposed alterations to a scheme approved under file ref. PA0002 and certain procedural issues arising. The prospective applicant proceeded to withdraw

from the pre-application discussions and subsequently lodged a request for alterations to the approved scheme under Section 146B (ref. case PM0002). I am not convinced that the cited case is comparable to the subject case in that the proposed alterations did not require an alteration to the site boundary.

- 4.15 I also note reference to case ref. PM0004 which allowed for increase in throughput of material at the approved incinerator in Duleek which is considered to set a precedent in allowing for changes in the operational regime. Again the case did not require an alteration to the site boundary.

Conclusion

- 4.16 On balance and taking into consideration the tenets of the precautionary principle I submit that the strictures that apply for Section 34 applications in terms of the red line boundary delineating the area subject of the application would be equally applicable in Section 37B cases. Thus development outside of the said boundary, unless provided for by way of condition attached to the permission, does not have the benefit of that permission and therefore must be the subject of a further permission application. As such the provisions of Section 146B which allows for consideration of alterations to the terms of the development subject of the permission must reasonably arise within the site boundary to which the said permission refers. The consequence of such a conclusion would be the requirement to submit a revised application under Section 37B incorporating the revised site boundary.
- 4.17 Should the Board not concur it may consider it expedient to seek legal advice on the matter. Should it pursue such a course of action the question posed could query the standing of the permission granted under ref. 04. PA0035 relative to the red and blue boundaries as delineated on the plans accompanying the application; the matters arising in terms of the proposed alterations and consequent changes to the red boundary line; the appropriate legislative course of action to advance same, namely either by way of a revised application to the Board under Section 37B or alterations to the terms of the development subject of the permission under Section 146B. The Board may consider requesting the prospective applicant to furnish a legal opinion on the matter simultaneously.

5. RECOMMENDATION

I recommend that the prospective applicant be advised that the proposed amendments to approved redevelopment of port facilities at Ringaskiddy Deepwater Port and Ferry Terminal, Lough Beg, Ringaskiddy, Co. Cork does not fall within the scope of section 146B of the Planning and Development Act 2000, as amended, and that an application for the proposed development within the revised site boundary should be made to An Bord Pleanala under Section 37B of the Planning and Development Act, 2000, as amended.

Pauline Fitzpatrick
Inspectorate

June, 2016