

From: Bord
Sent: Wednesday 22 January 2020 13:00
To: procbordemail
Subject: FW: Waste Recovery Services (Fermoy) Ltd - TATA Steel Site at Tivoli, Cork ABP-306161-19
Attachments: LTR_200122_WRS_Tivoli_ABP_referral_SRC_AMA.pdf

From: Andrea McAuliffe <amcauliffe@mhplanning.ie>
Sent: Wednesday 22 January 2020 12:54
To: Bord <bord@pleanala.ie>
Cc: Susan Cullen <SCullen@mhplanning.ie>; Emma Barry <ebarry@mhplanning.ie>
Subject: Waste Recovery Services (Fermoy) Ltd - TATA Steel Site at Tivoli, Cork ABP-306161-19

Dear Sir/Madam,

Appeal Reference ABP-306161-19

Confirmation that the use of an existing industrial site and buildings for a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development at the former TATA Steel site, Tivoli Docks, Cork (Cork City Ref. No. R546/19)

We act on behalf of the applicant, Waste Recovery Services (Fermoy) Ltd, Knockananig, Fermoy, Co. Cork, with regard to the former TATA Steel Site at Tivoli, Cork and wish to respond to Cork City Council's referral to the Board which was circulated to us on December 17th, 2019. We would like to take this opportunity to respond to Cork City Council's assessment of our Section 5 declaration.

Please see response attached and confirm receipt at your earliest convenience.

Many thanks,
Andrea.

Kind Regards,
Andrea Mc Auliffe
Planning Consultant

McCutcheon Halley
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22 January 2020

Tara Doyle
An Bord Pleanála
64 Marlborough Street
Dublin 1
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Re: ABP-306161-19
Confirmation that the use of an existing industrial site and buildings for a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development at the former TATA Steel site, Tivoli Docks, Cork [Cork City Ref. No. R546/19]

Dear Ms. Doyle,

We act on behalf of Waste Recovery Services (Fermoy) Ltd, Knockananig, Fermoy, Co. Cork, with regard to the former TATA Steel Site at Tivoli, Cork and wish to respond to Cork City Council's referral to the Board which was circulated to us on December 17th, 2019. We would like to take this opportunity to respond to Cork City Council's assessment of our Section 5 declaration.

Introduction

The site is situated within Tivoli Docks and Industrial Estate within the Cork City development boundary on the eastern side of the City. The site is accessed via the existing Tivoli Estate road running to the north of the subject site. Existing development on the site consists of 1 no. industrial building, 1 no. roof covered structure and 1 no. office and associated parking / hard standing / yard and ancillary areas. To the south, west and east lie lands within the ownership of the Port of Cork.

The industrial use on this site was first permitted by Cork City Council Ref. No. 73/4551 for permission for a steel stock depot / office. The industrial buildings were extended under Ref. No. 77/6677 when permission was granted for an additional covered area. The buildings within the subject site have been in use for the manufacturing of steel on a long-term basis.

The new industrial use being considered for the TATA steel site in the Tivoli Docks consists of returning waste materials to the economy. The proposed industrial use will consist of the processing of these materials to an 'end of waste status' material or product as well as an ancillary short term storage of materials on the site.

Response

The Declaration issued by the planning authority concludes that:

- 1) The 1974 permission did not explicitly permit the use of the referral site as a *Factory* or for *Industrial Processes*;

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- 2) It has not been established to the satisfaction of the Planning Authority that the previous use of the referral site by Tata Steel, has not been abandoned;
- 3) The proposed use does not accord with the definition of Industrial Process as set out in Article 5(1) of *Planning and Development Regulations 2002* (as amended);
- 4) It is not clear whether the site will be used for the deposit of material explicitly excluded from exempted development provisions by Section 3(2) of the *Planning and Development Act 2000* (as amended); and
- 5) It has not been established to the satisfaction of the Planning Authority that the proposed use is not a material change of use.

In our opinion, the primary issues relate to the definition of 'Industrial' as it applies to the nature of both the permitted and proposed use. We acknowledge that the Resource Recovery is a relatively new process in Ireland, but it will play a critical role in reducing waste and aiding Irelands transition to a circular economy.

In the interest of clarity, we will address each of the items raised by the City Council individually below.

Item 1

The 1974 did not explicitly permit the use of the referral site as a Factory or for Industrial Processes;

It is the Council's contention that the 1974 permission does not explicitly detail an industrial use. The details available on any planning permission dating back to 1974 are lacking compared to the level of detail that is provided in today's application. In considering the nature of the permitted use, we have considered the location of the site, the scale of the existing development and the definition of Industrial use (which is not limited to simply a factory).

The 1974 application notes the location of the site to be at the 'Tivoli Industrial Estate' which gives an indication of the nature of the use of the site and the adjoining lands. The Industrial Estate has provided a location for industrial uses which have benefited from their proximity to the Port of Cork.

The Tata Steel site includes an existing building of circa 3,500m². The size of this building is beyond what would have been required for a depot and would have been the area used for steel fabrication when the site was active.

The Tata Steel depot includes a large industrial building in addition to the stock yard area. The process at a steel stock yard is to receive and store lengths and rolls and steel and then using. These are then cut, bent, shaped, and assembled to create different products based on customer requirements.

Under Article 5(1) of the 2001 Planning and Development Regulations (as amended by Article 3 of S.I. No.364 of the Planning and Development Regulations 2005) an "industrial building" is defined as:

*"a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of **any industrial process**";*

Article 5(1) of the regulations defines "industrial process" as:

"any process which is carried on in the course of trade or business, other than agriculture, and which is-

*(a) for or incidental to the **making of any article or part of an article**, or*

(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals" (emphasis added).

We submit that steel fabrication complies with the definition of an 'industrial process' as defined by Article 5(1)(a).

Item 2

It has not been established to the satisfaction of the Planning Authority that the previous use of the referral site by, Tata Steel, has not been abandoned;

As stated in our submission to Cork City Council, we acknowledge that the TATA Steel site has been inactive for a number of years. In considering the new industrial use of the site we refer the Council to Molloy & Others – v – The Minister for Justice, 2004 which specifically addresses the validity of a planning permission when a use has ceased for a period of time.

The Molloy Case (Molloy & Others v The Minister for Justice, 2004) found that in circumstances where a planning permission is capable of being implemented and there has been no material structural alteration to the land or property, which would render the planning permission incapable of being implemented, **a valid planning permission cannot be lost or abandoned**. So, for example, in a situation where a planning permission was granted for an industrial use but that use ceased for a period having been implemented, the industrial use **can be reawakened if there has been no material structural alteration to the premises**.

The main conclusion reached by the High Court in this case reads as follows:

"I take the view that where there is an existing valid planning permission for a specific use of land or property and no subsequent planning permission has been granted for the use of the land or property concerned and where a material unauthorised change of use has taken place and has been carried on even for a period in excess of twenty years and notwithstanding that there may have been no complaint raised by any adjoining interested party in respect of the material unauthorised change of use and no enforcement action has been taken by the appropriate Planning Authority, where in circumstances that the original planning permission is capable of being implemented and by this concept I mean where there has been no material structural alteration to the land or property which would render the original planning permission for use incapable of being implemented, I hold that the original valid planning permission cannot be lost or abandoned."

The Molloy case is particularly relevant in this instance as the development has always been used for industrial purposes as granted by Ref No.'s 73/4551 and 77/6677. There has also been no material or structural alteration to the land or property which would render any original permission incapable of being implemented. Therefore, the industrial and ancillary uses permitted by Cork City Council under Ref No.'s 73/4551 and 77/6677 have not been lost or abandoned and remain in effect.

Item 3

The proposed use does not accord with the definition of Industrial Process as set out in Article 5(1) of Planning and Development Regulations 2002 (as amended).

As detailed in our Section 5 Declaration to the City, it is proposed that waste materials will be used to produce 3 number of products:

1. Recycled Aggregate;
2. Solid Recovered Fuel (SRF); and
3. Biomass Fuel.

We consider that the production of these materials is consistent with definition of an 'Industrial Process'. There is no detail on the City Council's rationale for not considering the proposed use as an industrial process as the 3 processes described will all result in the making of an article.

Item 4

It is not clear whether the site will be used for the deposit of material explicitly excluded from exempted development provisions by Section 3(2) of the Planning and Development Act 2000 (as amended); and

Section 3 of the Planning and Development Act 200 (as amended) defines development as follows:

3.—(1) In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris, the use of the land shall be taken as having materially changed.

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

Cork City Council have queried whether Section 3(2)(b)(iii) applies to the proposed use. In considering this Section of the Act we note that Section 3(2)(b)(iii) specifically references the 'deposit' of various materials. This infers the long-term storage of these materials at this location.

The processes described are a resource recovery process. As with any industrial use, materials will be temporarily stored on site. These materials will be stored in accordance with the waste permit, where required. No material will be 'deposited' on site. All storage will be temporary in line with production of the recycled aggregate, SRF and Biomass Fuel.

Item 5

It has not been established to the satisfaction of the Planning Authority that the proposed use is not a material change of use

As detailed in our Section 5 Declaration to the City Council, Article 5(1) of the 2001 Planning and Development Regulations defines an "industrial building" as "a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any "**industrial process**", while "industrial process" is defined in the Regulations as:

"any process which is carried on in the course of trade or business, other than agriculture, and which is:

(a) for or incidental to the making of any article or part of an article, or

(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals".

The proposed industrial use constitutes the processing of waste material into 3 no. new materials or 'articles', namely, Recycled Aggregate, Solid Recovered Fuel (SRF) and Biomass Fuel. We consider that the each of the articles resulting from the processing of the waste material adheres to the definition of an industrial process and that therefore the use of the premises for manufacturing and ancillary storage falls within the definition of an industrial process.

We contend that the permitted use of the site is also industrial and therefore the use of this existing industrial site and buildings for a Resource Recovery and Recycling Centre and ancillary storage does not constitute a material change of use and therefore is not development, and consequently does not require planning permission.

Conclusion

With regard to the planning history, provisions of the 2001 Planning and Development Regulations and the case law cited in this submission, it is our opinion that the use of the existing industrial site for the Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development as it does not constitute a material change of use.

Please do not hesitate to contact us should you require any further information.

Yours sincerely



Susan R. Cullen
McCutcheon Halley

