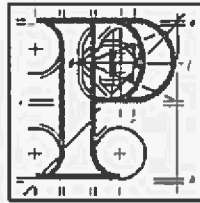


An Bord Pleanála



Inspector's Report

Development: Construction of a 25m high chimney stack to replace existing 15m high chimney stack, at Kilcolman, Asdee, Co. Kerry.

Planning Application

Planning Authority : Kerry County Council
Planning Authority Register Ref. : 14/562
Applicant : Brandon Products Ltd.
Type of Application : Permission
Planning Authority Decision : Grant permission

Planning Appeal

Appellant(s) : Jerry & Marie Quane
Type of Appeal : 3rd Party v Grant
Observer(s) : None

Date of site inspection : 2nd March 2015

Inspector: Michael Dillon

1.0 Site Location and Description

- 1.1 The site, with a stated area of 0.412ha, is located some 7km due west of the town of Ballylongford in north County Kerry. Access to the site is from county road L1000. The 80kph speed restriction applies in this area. There are no public footpaths and there is no public lighting in the area. The access road is wide enough for two vehicles to pass with care. The site is located on or about the 60m contour, within a broad valley.
- 1.2 The factory unit is made up of older creamery buildings, with newer extensions clad in buff-coloured plastic-coated corrugated metal. There is a significant amount of outdoor plant to the rear of the building – part of which comprises a 3.2m diameter circular scrubber tank with adjacent chimney support structure 15m high (supported by stay wires). This chimney is visible from the access road and from surrounding roads. All of the plant is constructed within a concrete bund.
- 1.3 Drawings submitted with the application indicate that the applicant company owns the remainder of the field to the east of the factory unit. This flat field is surrounded by hedgerows – with agricultural access from the country road leading to Letter beach. Trees have been recently planted on an earth berm (1.0-1.5m high) around the factory – to northeast, east and southeast. The roadside boundary of the site is undefined – a concrete apron existing between buildings and the edge of the carriageway. To the southeast and northwest, the site abuts agricultural land. There is a single-storey house with open forecourt in front of it on the opposite side of the road. There is an agricultural supplies warehouse on the opposite side of the access road – to the south of the site.

2.0 The Proposed Development

- 2.1 Permission sought on 21st August 2014, to construct a 25m high stainless steel chimney stack to replace an existing 15m high chimney stack. The external diameter of the stack is stated to be 0.7m. The development comprises, or is for the purposes of, an activity requiring an integrated pollution, prevention and control licence (IPPC) from the Environmental Protection Agency (EPA).
- 2.1.1 The application is accompanied by the following-
- Landscaping & Visual Assessment (including a series of photomontages) – dated May 2014.
 - Determination & Air Dispersion Modelling Assessment – dated 25th April 2014.
 - Appropriate Assessment Screening Document – dated May 2014.

- Engineering Report relating to the structure of the chimney stack (undated).
 - Review of policies within the Development Plan, which support the proposed development.
- 2.2 Unsolicited additional information was received on 10th October 2014, rebutting an objection, received by the Council, from Jerry & Marie Quane.
- 2.3 Unsolicited additional information was received on 13th October 2014, in the form of proof of purchase of the small field to the east of the existing factory.

3.0 Development Plan

The relevant document is the Kerry County Development Plan 2009-2015.

- 3.1 The site is located within an area zoned 'Rural Secondary Special Amenity' – the second of three classes of landscape classification within the county. Such landscapes can accommodate a limited level of development, dependant on the degree to which it can be integrated into the landscape. The road to the southwest of the site forms the boundary of the 'Rural Secondary Special Amenity Area'. Lands on the opposite side of the access road are zoned 'Rural General' – the lowest classification. This area of 'Rural Secondary Special Amenity' runs roughly between the R551 and the Shannon Estuary to the north.
- 3.2 There are no Views & Prospects listed for preservation, although there are such Views & Prospects listed on the sea-ward side of this same road further to the west, around to Kilconly Point.
- 3.3 The site is located within a 'Weak Rural Area'.
- 3.4 Chapter 5 of the Plan deals with Employment, Economic Activity and Retail. The following objectives are of note-

ECO 5-27 states-

Promote the economic growth of rural areas throughout the County in a sustainable manner.

ECO 5-28 states-

Foster small scale indigenous enterprises as a means of directing employment in rural areas and to facilitate the development of an entrepreneurial culture that will contribute to the development of indigenous employment uses. It is envisaged however that larger enterprises will continue to be located in urban areas on land zoned for this purpose.

ECO 5-29 states-

Facilitate the development of smallscale enterprise and industrial units in rural areas where:-

- it can be demonstrated that the visual impact is minimised and integration with the surrounding landscape maximised,
- where renewable energy potential is maximised,
- where traffic safety and carrying capacity impacts are satisfied,
- where the natural amenity, the residential amenity of proximate properties, and the natural environment are protected.

3.5 Chapter 12 of the Plan deals with Zoning and Landscape. The following objective is of note-

ZL 12-1 states-

Protect the landscape of the county as a major economic asset as well as for its invaluable amenity value and beauty.

3.6 Section 13.12 deals with Industrial and Commercial Developments. In particular, subsection 13.12.3 states- "Any industrial or commercial development shall not by way of noise, odors [sic], pollution, and traffic or in any other way, be injurious to the residential amenity of adjoining properties".

4.0 Planning History

Ref. 06/3080: Permission granted on 3rd April 2007, to Brandon Products Ltd, for alterations and extension to old creamery building for use as seaweed processing facility, on the current appeal site.

Ref. 07/2304: Permission refused to Michael O'Sullivan Agri Parts, by Kerry County Council for erection to two warehouses on a site immediately to the east of the current appeal site. On appeal by the 1st party to the Board (**PL 08.225219**) permission was refused on 21st April 2008, for three reasons relating to landscape impact, traffic hazard and concerns relating to drainage.

Ref. 14/384: Application by Brandon Products Ltd. deemed to be invalid.

5.0 The Planning Authority's Consideration and Decision

5.1 Referral to Environmental Protection Agency

The application was referred by Kerry County Council to the EPA for comment. The response of the EPA, received on 18th September 2014, can be summarised as follows-

- An IPPC Licence application was made by Brandon Products Ltd. (Ref. P0957-01) on 24th January 2012. With the 2013 amendment of the EPA Act, the proposed activity is an Industrial Emissions Directive (IED) activity, and will be processed under the Industrial Emissions (IE) licensing regime.
- The EPA determined that Environmental Impact Assessment (EIA) was required in relation to the licence application, and wrote to the applicant requesting submission of an Environmental Impact Statement (EIS). The EIS was submitted on 5th July 2013. This was sent to Kerry County Council for comment (response received on 7th August 2013).
- The Licence application is currently being assessed by the EPA.
- It is noted that an EIS did not accompany the planning application to Kerry County Council.
- If the Council considers that a determination is required as to whether EIA is required for a proposed development, the Council shall request the EPA to provide observations to assist in its deliberations, if the development comprises or is for the purposes of an activity that requires a licence under the EPA Acts, 1992 (as amended).

5.2 Permission

By Order dated 15th October 2014, Kerry County Council issued a Notification of decision to grant planning permission subject to 3 no. conditions, which may be summarised as follows-

1. The development shall be carried out in accordance with plans and particulars received by the planning authority on 21st August and 13th October 2014.
2. Refers to dismantling of the existing chimney stack.
3. Relates to landscaping.

6.0 Grounds of Appeal

The appeal from Jerry & Marie Quane, Kilcolman, received by the Board on 11th November 2014, can be summarised in bullet point format as follows-

- No planning permission was granted for the original 15m chimney stack on this site.
- The proposal is not a satisfactory solution to malodours from this factory.
- The increased height chimney stack would be a visual obstruction on the skyline.

- Local residents have been ignored in relation to malodours from this factory.
- The original application (6380/06) stated that there would be no need for an EPA licence – evidently not the case, as a licence is now being sought.
- The appellants reside less than 160m from the plant.
- The applicant is in breach of conditions 9(vi) and 12(ii) of the original permission.
- A letter from the applicant to Kerry County Council on March 1st 2007, stated that the plant was designed in such a way that there would be no risk of malodours.

7.0 Observations

None received.

8.0 Response Submissions

8.1 1st Party Response to 3rd Party Appeal

8.1.1 The response of AWN Consulting, agent on behalf of the applicant, Brandon Products Ltd, received by the Board on 3rd December 2014, can be summarised in bullet point format as follows-

- The appeal is vexatious and should be declared invalid, as the grounds of appeal are difficult to discern.
- The proposed stack is designed to ameliorate the potential impacts of any odour emissions. To appeal a decision which is for the purposes of ameliorating odour nuisance is vexatious, and serves no purpose.

8.1.2 The response submission indicated that it was to be one of two submissions to the Board. A second response submission, received by the Board on 9th December 2014, was returned to the applicant.

8.2 2nd Party Response to Grounds of Appeal

There is no response from Kerry County Council to the grounds of appeal submitted.

8.3 Board Refers Appeal to EPA for Comment

By letter dated 29th January 2015, the Board requested the EPA to comment on this appeal, particularly as to whether EIA is or is not required in this instance. The response of the EPA, received by the Board on 11th February 2015, can be summarised as follows. The activity to which the

IE licence application relates is of the following type listed in Schedule 5 of the Planning and Development Regulations 2001-

Part 1

6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are-

- (c) for the production of phosphorous, nitrogen or potassium based fertilisers (simple or compound fertilisers),

The EPA determined that EIA was required for this activity, and requested the applicant to submit an EIS; which was received on 5th July 2013. It should be noted that as the licence application addresses the stack proposed in the planning application referred to above, it will be included in the EPA assessment.

9.0 Assessment

The principal issues of this appeal relate to whether EIA is required in relation to the proposed development, odour nuisance and visual amenity.

9.1 Need for Environmental Impact Assessment

- 9.1.1 The Planner's Report from Kerry County Council screened the development for sub-threshold EIA, and concluded that such was not necessary. The application had been referred by the Council to the EPA for comment. The EPA noted that the factory was subject to IE licensing, and had requested and received (on 5th July 2013) an EIS from the applicant. A licence has yet to issue from the EPA. The EIS related to the overall operation of this factory and all emissions from it. The Board referred the planning appeal to the EPA for comment, particularly in relation to the need for EIA. The response indicated that the activity to which the IE licence application related was listed in Schedule 5 of the Planning and Development Regulations 2001 as- "Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are, amongst other things, for the production of phosphorous, nitrogen or potassium based fertilisers (simple or compound fertilisers)". The EPA pointed out that the licence application addressed the stack proposed in the planning application/appeal, and that it would be included in the EPA assessment. The higher stack would appear to have evolved to overcome complaints from local residents in relation to odour nuisance.

The proposed stack is to ensure better dispersal of emissions to the atmosphere. There will be no additional emissions to the atmosphere arising from this development.

9.1.2 The EPA has deemed that the original plant required the submission of an Environmental Impact Statement for IE licensing purposes. It follows that the original plant is not sub-threshold, and the present proposal should be considered under paragraph 13 of Part 2 of Schedule 5, which relates to changes, extensions, development and testing. The proposed development would not constitute a change or extension of development which would result in the overall development being of a class listed in paragraphs 1 to 12 of Part 2 of Schedule 5; as the chimney extension is not the element of the operation which brought the factory into the EIA net. Neither would the proposed development, as also required under paragraph 13, result in an increase in size greater than 25% or an amount equal to 50% of the appropriate threshold, whichever is the greater.

9.1.3 Having regard to the foregoing, I conclude that EIA is not mandatory in this instance. Furthermore, on the basis of the characteristics of the proposed development, its location, and the characteristics of its potential impacts, taking into account the conclusion of the air dispersion modelling assessment lodged with the planning application, I do not consider that it would be likely to have a significant effect on the environment which would require the submission of an EIS.

9.2 Odour

9.2.1 Appendix 2 of the application comprises a 'Determination & Air Dispersion Modelling Assessment'—dated 25th April 2014. Modelling was based on Shannon Airport wind rose for the years 2000, 2001, 2002, 2004 & 2005. Within this report it is acknowledged that current operations are resulting in odour detection at nearby receptors located to the northwest particularly. Currently all odorous processes are directed through a bio-scrubber system to abate odour nuisance. It is proposed to install an 'Aerox' ozone abatement unit after the bio-scrubber which will achieve an additional abatement of between 50-70%. The treated air will then be vented via a chimney stack. The stack diameter of 0.6m has recently been reduced to 0.3m in order to ensure that the efflux velocity is increased, to push the plume higher into the air. The final alteration is to increase the stack height to 25m to ensure that no malodour is detected beyond the site boundaries. The modelling assumed seven-day production over 24 hours – not the case at present. The modelling also allowed for failure of the bio-scrubber and the 'Aerox' plant. It is estimated that the worst-case odour concentration (following installation of a 25m stack) would be 0.14 OU_E/m³ – some 9% of the relevant threshold of 1.50 OU_E/m³. Modelling indicates that no odour would be detectable at the

nearest residential receptor at 17m, 20m or 25m high stack height. The higher stack has been selected to ensure an optimum solution to the problem of odour nuisance.

9.2.2 From January- October 2013, there were 43 complaints of odour nuisance from four receptors – with 32 of those complaints coming from just one receptor. The complaints would appear to originate from receptors to the northwest of the factory. There was no odour noticeable on the date of site inspection by this Inspector – admittedly a very stormy and cold day. The unsolicited additional information submission from the applicant to Kerry County Council (13th October 2014) was in the form of a rebuttal to a 3rd party letter of objection received by the Council (from the appellants in the current appeal). The submission pointed out the improvements that the company had made to mitigate odour nuisance, including-

- New chimney stack extension to 14.8m.
- Two ozone units operational within the stack.
- Installation of bio-scrubber system.
- New fan to improve air collection within the factory building.
- Mist eliminator installed to improve bio-scrubber operation.
- Cone on top of stack to improve plume dispersion.
- 'Aerox' unit installed, with commissioning under way.
- Extra cooling installed to improve vapour condensation.
- Formulation tanks connected to bio-scrubber to improve air capture and treatment.

The proposed new, higher stack is an attempt to mitigate odour nuisance. The applicant argues that it is unreasonable of the appellants to object to a proposal which is designed to abate odour nuisance. The appellants point out that there is no guarantee that the increased height stack will solve the problem. However, I would contend that the Air Dispersion Modelling Report submitted has cogently argued that the increased height stack will result in lower odour concentrations at sensitive receptors in the area. Planning permission could be granted without causing any increase in odour nuisance being experienced at sensitive receptors.

9.2.3 Matters relating to emissions from the stack are for control by the EPA. In granting planning permission, the Board should not attach any condition relating to emissions from the increased height stack. The factory operation is subject to IE licensing from the EPA. An application for a licence is currently before the EPA for consideration – with no decision/licence issued to date (as per search of the EPA website for Licence application ref. P0957-01).

9.3 Visual Amenity

9.3.1 There is an existing 15m high stack on this site at present. It is a slender structure, supported by stay wires, and located to the rear of the factory

building, and thereby screened by it. The top section of the stack is visible from the county road in front of the factory. The chimney stack is somewhat more visible from the county road to the east of the site – a cul de sac leading to Letter beach. This road climbs uphill to the north, before descending again towards the Shannon Estuary. At the brow of this hill to the north, the chimney stacks of the electricity generation station at Tarbert to the east are clearly visible, as are the four wind turbines at Beale Hill Wind Farm to the west. I note that there are communications masts on Knockanore Mountain – some 4km due south-southwest of the factory – and visible from the factory itself.

- 9.3.2 The appellant claims that no planning permission exists for the chimney structure which exists on the site. The applicant argues that it is exempted development by reference to Part 1 of Schedule 2 of the Planning and Development Regulations 2001, which states-

Class 21

(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such an undertaker for carrying on, and for the purposes of, any industrial process, or on land used as dock, harbour or quay for the purposes of any industrial undertaking-

(iii) the installation or erection by way or addition or replacement of plant or machinery, or structures of the nature of plant or machinery,

Column 2 relating to 'Conditions and Limitations' requires that-

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.
2. The height of any such plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

The applicant contends that the chimney stack is, therefore, exempted development. This issue is not before the board for determination, as the proposed development does not constitute an extension to the existing chimney stack. The proposal involves the replacement of the existing 15m chimney stack with an entirely new structure – albeit one 10m higher.

- 9.3.3 The application was accompanied by a substantial Visual Impact Assessment Report. The report included a significant number of photomontages from a total of nine different vantage points. The proposed chimney is 25m tall and 0.7m in diameter. It is a slender structure, significantly higher than other structures in the area. The site is located within a landscape area characterised as 'Rural Secondary Special Amenity' – a broad swathe of countryside located roughly between the R551/access road to the site, and the Shannon Estuary to the north. I

note that lands on the opposite side of the access road are zoned 'Rural General'. In relation to 'Rural Secondary Special Amenity' landscapes, the Development Plan states that "Such landscapes can accommodate a limited level of development, dependant on the degree to which it can be integrated into the landscape". The proposed chimney will not have a significant impact on the landscape. The factory is located within a broad valley. There are hedgerows in the area which serve to partially screen the factory and the chimney from view. There are listed 'Views & Prospects' further to the west along the access road – but these are directed out to sea. The proposed development will not impact on these 'Views & Prospects'. The applicant has recently acquired the small field to the east of the site. Appendix 1 of the Visual Impact Assessment Report is a drawing outlining proposed screening along the eastern (roadside) boundary of this field. A 5m wide screen of native planting is proposed, which will eventually screen the development from view. I note that the applicant has recently planted mixed deciduous trees on a low earth embankment to the northeast, east and southeast of the factory buildings, to screen them from view. The trees are up to 4m tall, and will ultimately serve to screen the bulk of the factory.

- 9.3.4 The proposed development would not be detrimental to the visual amenities of this rural area. Planning permission could be granted for the development, subject to a condition requiring planting, as indicated in Appendix 1 of the Visual Impact Assessment Report along the roadside boundary to the east of the factory building, to be carried out within the first planting season following the issuing of the Board's Order.

9.4 Other Issues

9.4.1 Development Contribution

The Notification of decision to grant planning permission did not include a requirement to pay a development contribution.

9.4.2 Appropriate Assessment

- 9.4.2.1 The application was accompanied by an Appropriate Assessment Screening Report. The closest European sites were identified as the River Shannon and River Fergus Estuaries SPA (Site code 004077) and the Lower River Shannon SAC (Site code 002165). The former was indicated as being 1.9km from the site, whilst the latter was indicated as being 5.4km (p.6) from the site. This latter figure is a typing error – the distance being the same from the SPA as the SAC - 1.9km. Elsewhere in the document the figure of 1.9km is referred to. Visits were undertaken on 15th & 23rd March and on 3rd May 2014, to determine the ecological status of the site.

9.4.2.2 The conservation interests of the Lower River Shannon SAC are as follows-

- Sandbanks
- Estuaries
- Tidal Mudflats and Sandflats
- Coastal Lagoons*
- Large Shallow Inlets and Bays
- Reefs
- Perennial Vegetation of Stony Banks
- Vegetated Sea Cliffs
- *Salicornia* Mud
- Atlantic Salt Meadows
- Mediterranean Salt Meadows
- Floating River Vegetation
- *Molinia* Meadows
- Alluvial Forests*
- Freshwater Pearl Mussel (*Margaritifera margaritifera*)
- Sea Lamprey (*Petromyzon marinus*)
- Brook Lamprey (*Lampetra planeri*)
- River Lamprey (*Lampetra fluviatilis*)
- Atlantic Salmon (*Salmo salar*)
- Bottle-nosed Dolphin (*Tursiops truncatus*)
- Otter (*Lutra lutra*)

The proposed chimney stack is a replacement for an existing one. The emissions from the proposed stack will not differ from those being emitted at present. The impact, if any, on the SAC will not differ from present emissions. The facility is subject to IE licensing from the EPA. Licensing will limit emissions from the proposed stack. The principal impact from the proposed development will be emissions to air.

9.4.2.3 The River Shannon and River Fergus Estuaries SPA Features of Interest are as follows-

- Cormorant (*Phalacrocorax carbo*).
- Whooper Swan (*Cygnus cygnus*).
- Light-bellied Brent Goose (*Branta bernicla hrota*).
- Shelduck (*Tadorna tadorna*).
- Wigeon (*Anas penelope*).
- Teal (*Anas crecca*).
- Pintail (*Anas acuta*).
- Shoveler (*Anas clypeata*).
- Scaup (*Aythya marila*).
- Ringed Plover (*Charadrius hiaticula*).
- Golden Plover (*Pluvialis apricaria*).
- Grey Plover (*Pluvialis squatarola*).

- Lapwing (*Vanellus vanellus*).
- Knot (*Calidris canutus*).
- Dunlin (*Calidris alpina*).
- Black-tailed Godwit (*Limosa limosa*).
- Bar-tailed Godwit (*Limosa lapponica*).
- Curlew (*Numenius arquata*).
- Redshank (*Tringa totanus*).
- Greenshank (*Tringa nebularia*).
- Black-headed Gull (*Chroicocephalus ridibundus*).
- Wetland and Waterbirds.

The proposed chimney stack is a replacement for an existing one. The emissions from the proposed stack will not differ from those being emitted at present. The impact, if any, on the SPA will not differ from present emissions. The facility is subject to IE licensing from the EPA. Licensing will limit emissions from the proposed stack. The principal impact from the proposed development will be emissions to air. The slender chimney stack will not have any impact on birds in flight.

9.4.2.4 The Biodiversity Officer of Kerry County Council reviewed the application, and undertook a Habitats Directive Screening Report – indicating that the closest European sites within the Shannon Estuary were 1.7km to the north. I would agree that this distance is the correct one – and not 1.9km as indicated in the planning application. The Kerry Head SPA is not located proximate to the site. The assessment noted that the emissions from the stack were on-going and would be subject to licence from the EPA, and would not, in any event, result in alteration of key environmental conditions, such as air quality. There were deemed to be no 'in-combination' impacts from this development. The report concluded that the development, individually or in combination with other plans/projects was not likely to have a significant effect on a European site. I would agree with the conclusions reached in this instance.

9.3.3 Advertising Structures

A condition should be attached to any grant of planning permission requiring that no advertising should be applied, or advertising structures attached to the chimney stack, in the interest of visual amenity.

9.3.4 Waste Material

Kerry County Council attached a condition relating to disposal of waste material (the dismantled chimney). The amount of waste involved will be minimal. I would not consider that such a condition is necessary.

10.0 Recommendation

I recommend that permission be granted for the Reasons and Considerations set out below and subject to the attached Conditions.

REASONS AND CONSIDERATIONS

Having regard to the existence of the factory unit on site and its 15m high stack, the slender nature and limited height of the proposed new chimney stack, the location of the site in a broad valley, proposals to screen the factory and chimney stack using trees and shrubs, the proposal to mitigate odour nuisance through increase in height of the chimney stack (in conjunction with the introduction of other odour abatement plant), it is considered that, subject to compliance with the attached conditions, the proposed development will not be detrimental to the visual amenities of the area and will not be prejudicial to public health.

CONDITIONS

1. The development shall be carried out 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.

Reason: In the interest of clarity.

2. Landscaping on site, as set out in Appendix 1 of the Visual Impact Assessment Report submitted with the planning application, shall be carried out within the first planting season following the grant of this Order.

Reason: In the interest of visual amenity.

3. No advertising shall be applied, or advertising structures affixed, to the proposed chimney stack.

Reason: In the interest of visual amenity.



Michael Dillon,
Inspectorate.

5th March 2015.