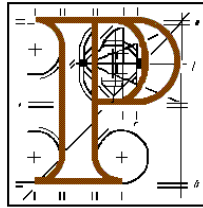


An Bord Pleanála



Inspector's Report

Application Ref.: PL28.246038

Development: Retention of boundary treatment at Musgrave Park,
Kinsale Road/ Tramore Road, Ballyphane, Cork.

Planning Application

Planning Authority: Cork City Council

Planning Authority Reg. Ref.: 15/36604

Applicant: McDonalds Restaurants of Ireland

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): Dolphin Rugby Football Club

Type of Appeal: Third Party V Refusal

Observers: None

Date of Site Inspection: 5th April 2016

Inspector: Kenneth Moloney

1.0 SITE DESCRIPTION

The appeal site is located south of Cork city situated in the inner suburbs between the city centre and the southern ring road (N25). The appeal site faces directly onto the Kinsale Road (N27) and the character of the immediate area is mixed comprising of sports grounds, light-industrial uses and housing.

The appeal site is occupied by a McDonald's restaurant, with drive-thru facility, and 57 surface car parking spaces. The size of the appeal site is approximately 0.441 ha (acres 1.09 acres) and the shape of the appeal site is approximately rectangular.

A significant feature of the appeal site is the falling gradient which falls from a south to north direction. The western boundary comprises of low-rise brick wall and paladin fencing.

There is a landscaped strip immediately adjoining the western boundary on the appeal site. On the opposite side of the boundary (west) there are training pitches associated with Musgrave Park. There are two separate pitches that adjoin the boundary. I noted that both pitches are visible from McDonald's car park although the lower pitch (southern side) is partially obscured from view due to the falling topography. In addition the lower pitch is generally screened from the public road due to the McDonald's building.

2.0 PROPOSED DEVELOPMENT

The proposed development is to comprise of retention of the boundary treatment on the western boundary, which encompasses a green paladin fence (measuring 2.4m high) over a dark grey painted block wall with concrete capping. The height of which varies having regard to the ground level.

The length of the boundary is approximately 180 metres.

3.0 PLANNING HISTORY

- L.A. Ref. 14/36158 – Permission **granted** to amend a previously permitted development (L.A. Ref. 13/35825) on a 0.441 ha site. The development includes a 6m high totem sign located towards the north-eastern corner of the site; the provision of a full access junction for access / egress to the site in lieu of a left-in, left-out arrangement, an increase in car parking provision from 30 to 57 and to amend the closing time from 2200 hours to 2300 hours.
- L.A. Ref. 13/35825 – Permission **granted** for the provision of a single storey drive-thru restaurant (361 sq. m.) including the ancillary sale of hot food for consumption off the premises.

4.0 PLANNING AUTHORITY'S DECISION

4.1 Reports

Planners Report:

- Current scheme is attractive and less imposing
- The adjacent landowner's considers the boundary is a welcome addition.
- Visibility into the play areas is limited.
- The 5m slope is outside the boundary of the application and therefore outside the assessment.
- The slope is limited in scale.

Internal Reports: There are two internal reports on the file:

- Drainage Division; - No objections.
- Environmental Waste Management; - No objections

Objections: There is one third party objection on the planning file and the issues raised have been noted and considered.

Submissions: There is a submission from Irish Water who have no objections.

4.2 Decision

The Planning Authority decided to grant planning permission subject to 2 no. conditions.

5.0 DEVELOPMENT PLAN

Cork City Development Plan, 2015 – 2021, is the operational Development Plan.

The appeal site is zoned 'ZO4-Residential, Local Services and Institutional Uses'. The objective of this land-use is 'to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to the employment policies outlined in Chapter 3.

6.0 GROUNDS OF APPEAL

The following is a summary of an appeal submitted by Dolphin Rugby Football Club;

- The rugby pitches were previously unexposed to public viewing.
- The original planning permission was for a 3m high wall.

- This boundary treatment is similar to other well established rugby and GAA clubs.
- Dolphin Rugby Club has been resident in Musgrave Park since the 1940's and unexposed viewing is a requirement.
- There is no reason from a cost perspective why McDonalds changed from the wall to the current boundary.
- It is submitted that the slope from the pitches to the current boundary is both a danger and a maintenance issue.
- The high netting is set back approximately 5m from the boundary wall.
- This sloping arrangement was never intended to be the case.
- Planning permission (L.A. Ref. TP14/36094) was obtained to erect netting at and above 3m wall on Dolphins new boundary and there was to be no sloping ground.
- The current construction is in breach of the planning permission.
- In addition there is a strip of sloped land between the high level netting and the boundary which is useless and requires maintenance.
- This will further adversely impact on the external appearance of Dolphin.
- The pitch as a result of McDonald's requirements is now smaller and totally exposed.
- It is submitted that two formal enforcement complaints were lodged to the Council (no.s E7586 and E7595). It is contended that the work carried out has not the benefit of planning permission.

7.0 RESPONSES

First Party Response

This is a summary of a response submitted by the applicant's agent;

- The proposed development relates to the retention of a western boundary.
- The boundary treatment permitted under L.A. Ref. 13/35825 consisted of a 3m high wall.
- The boundary treatment as constructed comprises of green paladin fence over a dark grey painted block wall. This is illustrated in submitted photographs.
- The height of fence measures approximately 2.4 metres and the height of the block wall is approximately 850mm.
- It is contended that the current boundary is a more attractive solution than a concrete block wall.
- The current boundary is a lighter finish and less visually dominant than that previously proposed.
- As such the western boundary has no material impact on the overall development.
- It is submitted that a number of issues raised in the third party submission are outside the scope of the appeal.
- In relation to exposure to public viewing it is noted that Sunday's Well Club also use the pitch in question and they have no objections to the boundary treatment.

- It is also noted that due to pitch sharing that persons involved with Sunday's Well or Munster Rugby can view activity on Dolphin's pitch.
- It is submitted that the Planning Officer concluded that visibility into the playing pitch is limited due to level of the pitch, the location of the goal posts and additional high netting along the boundary.
- The issues raised as problematic due to the slope or maintenance cannot be addressed by McDonalds. The Planning officer notes that the issues in relation to slope and maintenance are outside the red-line boundary of the site.
- The issue of the dimension of the pitch is outside the scope of the applicant.
- It is submitted that enforcement issues are outside the remit of the Board

Second Party Response

The local authority submitted a response stating that they had no further comments.

8.0 ASSESSMENT

The main issues to be considered in this case are: -

- 8.1 Principle of Development
- 8.2 Impact on Amenities
- 8.3 Appropriate Assessment
- 8.4 Other Issues

8.1 Principle of Development

The development before the Board is essentially a change to the boundary treatment at the western side of the appeal site. The original boundary as permitted under L.A. Ref. 13/35825 was a 3m high wall.

The western boundary which currently exists on the appeal site and which is the subject of this retention application is a low rise block wall with paladin fence on top. The boundary is located between an existing McDonald's restaurant and an established Rugby Club with playing pitches.

The zoning of the appeal site is 'ZO4-Residential, Local Services and Institutional Uses'. The main objective of this land-use zoning is to protect local services. The adjoining lands to the immediate west of the appeal site are zoned 'Sports Grounds'.

I would consider, based on the established use on the appeal site and the adjoining site and the zoning objectives of both the appeal site and the adjoining site that the western boundary, as proposed to be retained, is acceptable in principle, provided that there is no adverse impacts on established amenities in the area.

8.2 Impact on Amenities

The most valid objection submitted by the appellant, in my view, is that the boundary as constructed visually exposes the playing pitches of the rugby club.

In considering this objection and whether the new boundary will adversely impact on established amenities I will examine the previous and permitted western boundary on the site. I have included within my attached pouch an aerial photograph of the appeal site prior to the construction of the McDonald's restaurant on the site. It is evident from this photograph that there was a mature evergreen vegetation along the boundary adjoining the public road (Kinsale Road). There is a photograph attached to the appeal submission which illustrates the effect of this mature evergreen boundary on the ground. I would accept that this mature evergreen boundary would prevent any undue overlooking into the rugby grounds. However this boundary was in place prior to the redevelopment of the site.

The permitted western boundary on the appeal site, as per L.A. Ref. 13/35825, is a 3m high wall. I would accept this boundary would prevent any undue overlooking into the rugby grounds.

I would acknowledge, on the basis of the information available, that the appellant is a leaseholder of the rugby ground and it would appear that the landowners of both the McDonald's site and the rugby grounds have agreed to the western boundary proposed to be retained. The appellant has not demonstrated, during the course of the application or appeal, that legally they would have any consent to the design of the boundary treatment.

Notwithstanding the legal issues I would accept, based on a visual observation of the local area, that the rugby grounds and pitches will experience some additional overlooking, in comparison to the permitted 3m high wall, primarily from the car park associated with McDonald's restaurant. The lower pitch (northern pitch) is generally less visible from public areas due to the presence of the McDonald's building and the local topography as the lower pitch is partially screened by the western boundary.

I would consider given that the receptor is a playing field associated with a sports club that any overlooking facilitated by the western boundary of the McDonalds site would not be so significant to justify a refusal or a material amendment to the established boundary.

I would also note, based on a visual observation of the area, that the high level nets, which prevent rugby balls entering the McDonald's car park, are set back approximately 1 meter from the actual boundary line the subject of this appeal. This gap, in my view, provides an opportunity for screen planting should it be required. Overall I would consider that the western

boundary to be retained will not unduly impact on the amenities of the area having regard to the established uses.

8.3 Appropriate Assessment

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an inner suburban and fully serviced location, no appropriate assessment issues arise.

8.3 Other Issues

The appellant, in their submission, has raised a number of issues in relation to enforcement, including changes to the slope of the pitches adjoining the boundary between the McDonalds site and the Rugby Club.

However, having regard to the current planning legislative provisions, the Board has no enforcement function and as such these are issues that can only be addressed by the local authority.

9.0 RECOMMENDATION

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be **granted** for the reasons set out below.

REASONS AND CONSIDERATIONS

Having regard to the zoning of the site as set out in the Cork City Development Plan, 2015 – 2021, and the extent of the development, it is considered that subject to compliance with conditions set out below, the development proposed to be retained would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be retained 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be carried out in full compliance with the conditions of the governing permission 13/35825, except where otherwise amended by this grant of permission and/or required by the conditions contained in this schedule.

Reason: In order to define the scope of the permission in the interests of proper planning and sustainable development.

Kenneth Moloney
Planning Inspector
21st April 2016