



An  
Bord  
Pleanála

## Inspector's Report PL.04.247859

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<b>Development</b>	Retention of security fence and gates.
<b>Location</b>	Unit 1, Doughcloyne Industrial Estate, Doughcloyne, Sarsfield Road, Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	16/06663
<b>Applicant(s)</b>	Keary's Motors Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	GPN Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> March 2017
<b>Inspector</b>	Kenneth Moloney

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## 1.0 Site Location and Description

- 1.1. The subject site is located south of the southern ring road in Cork City and is situated at the corner of an industrial estate adjoining Sarsfield Road.
- 1.2. The existing building on the appeal site is an industrial unit which is occupied by a car sales operation and the adjoining yard is used for car sales. The car sales yard is enclosed by a black paladin fence which is security measure. The car sales yard is accessed by electric gates.
- 1.3. The industrial unit which is used for car showrooms and sales and there is a workshop / mechanics to the rear of the building.
- 1.4. There is an access situated to the rear (north) of the unit which provides rear access to the rear of the other industrial units.
- 1.5. There is an established housing development located to the immediate north of the appeal site. The two-storey terraced houses are situated at a lower level than the appeal site.

## 2.0 Proposed Development

- 2.1. The proposed development is for the retention of security fence and gates at an existing industrial estate.
- 2.2. The fence is approximately 2 metres high and encloses an existing car sales yard.

## 3.0 Planning Authority Decision

- 3.1. Cork County Council decided to **grant** planning permission subject to 1 condition.

### 3.2. Planning Authority Reports

- 3.2.1. The main issues raised in the planner's report are as follows;
  - The application arose due to an enforcement complaint.
  - The subject fencing blocked access to the rear of residential properties and industrial units.

- The subject fence is a paladin fence with a height of 2.55m.
- The site is prominent when viewed from the adjoining Sarsfield Road.
- In terms of visual impact, the fencing is not considered overbearing.
- Palisade fencing is used in the industrial estate. Paladin fencing is considered superior in terms visual amenity.
- The fencing is visible from the adjoining housing.
- It is considered that the fence reads as an industrial building / complex.
- Other similar fencing has been permitted in adjoining blocks (L.A. Ref. 15/4269).
- The type of fencing is common in an industrial estate and it is noted that 2m high fencing is exempted development.
- The original permission L.A. Ref. 79/2066 included a grant for a 1.2m high chain-link plastic coated fence along the eastern and part of the northern boundary.
- There are outstanding issues relating to the blocking of an easement and non-conformity issues.
- Owners of Unit 2 and 4 consider that they have a right of way to access to the rear of units from east. There was an established gate to the rear of the units.
- Under L.A. Ref. 82/1441 permission was refused for the retention and completion of open storage compound.
- The vehicular access from the north-east has been blocked for over 30 years.
- The Development Management Guidelines refer to Section 34(13) of the Planning and Development Act.
- The third party submission raises no conformity issues in terms of existing uses on the site.
- However, car sales are not defined in the regulations. It is not a retail use; it is a sui generis use of sorts.
- The permitted use was a warehouse use and the current use is not.

- The current use also involves servicing vehicles.
- The most appropriate mechanism to assess this alleged unlawful planning is through enforcement.
- The use of the building does not impact on the assessment of fencing and direct any third party complaints in relation to use and cladding to Enforcement Department.

3.2.2. Area Engineer; - No objection subject to conditions.

3.3. There is a submission from Dublin Airport Authority who have no objections to the proposed development.

#### 3.4. **Third Party Observations**

There are three third party submissions and the issues raised have been noted and considered.

### 4.0 **Planning History**

- L. A Ref. 82/1441 – Permission **refused** for retention and completion of open compound yard.
- L.A. Ref. 79/2066 – Permission **granted** for warehousing.
- L.A. Ref. 782908 – Permission **granted** for erection of warehousing.

### 5.0 **Policy Context**

#### 5.1. **Development Plan**

5.1.1. The operational Development Plan is the Cork County Development Plan, 2014 – 2020.

5.1.2. The operational Local Area Plan is the Carrigaline Electoral Local Area Plan, 2011. The appeal site is zoned 'Existing Build-up Area'.

## 6.0 The Appeal

6.1. The following is the summary of an appeal submitted by the agents of GPN Ltd.

- There is an existing fire escape to the rear of unit no. 2.
- The gate which is erected to the north eastern corner of Unit 1 blocks the fire escape route.
- It is unacceptable that Cork County Council would grant permission for something that would jeopardise the fire escape of the appellant's business.
- Public Health and Safety is a relevant consideration in the Planning and Development Law. This is supported by the view of Planning Barrister Garrett Simmons.
- It is noted that the local authority cannot take enforcement action at this stage given the length of time that the gate has been in place.
- The inability of the Local Authority to take action should not be used as a reason to justify permission for an unauthorised development.
- The proposed development will amount to a loss of an established right of way. This established right of way is indicated in yellow in the attached Appendix B document.
- It is submitted that the daily business operations to unit no. 2 is disrupted due to the neighbouring fencing. In addition, the neighbouring business has resulted in parking to the front of the entrance of unit no. 2 which restricts access to unit no. 2.
- It is submitted that the change of use from warehouse to car sales is a material change of use.
- It is submitted that the erection of the fence is pertinent to the change of use as it encloses the new use.
- The Board is referred to appeal ref. 231423 in which case the inspector concluded that the proposed development as advertised does not accurately correspond with the development on the ground.

- It is submitted that the development description of 'security fence and gates' does not accurately describe what is actually taking place at the site. The description of the subject development is not in accordance with Article 18 (1) (d) (ii).
- It is submitted that although the application intends to regularise existing unauthorised development, it facilitates an unauthorised change of use.

## 6.2. Applicant Response

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

### Alleged Fire Escape

- As GPN Holdings have only occupied unit no. 2 since 2015 they may be unaware of the following facts which disproves their theory.
- Firstly, there has never been a designated fire escape across the applicant's site and the appellants have not submitted a fire certificate to support their statement.
- There is no evidence to suggest that persons leaving the fire escape door are obliged to turn east rather than west to find a place of safety.
- It is submitted that the area to the rear of industrial unit no. 1 and no. 2 has been recently cleared however this was not always the case. This is illustrated in the submitted photographs in Appendix no. 1. These photographs illustrate that the area to the rear of the units was covered in mature hedgerows.
- This hedgerow was part of the planting associated with L.A. Ref. 2066/79.
- It is submitted that the galvanised gates were erected in the 1980's as part of a storage compound for an oil tank and waste bin for which permission was sought. This is supported in the planner's report.
- The open storage compound proposed under 82/1441 did not actually require planning permission as it was exempt under Class 22 of Part 1 of Schedule 2 of the Planning and Development Regulations.
- As such as soon as the outstanding compliance issues in relation to 2066/79 were resolved there was no longer any planning or enforcement issues.

- It is contended that the 7-year time limit on enforcement proceedings under Section 161(6) of the Planning Act is irrelevant in this case as the exceptional status of the open storage compound could have been confirmed at any time by a declaration under Section 5 of the Act.
- It is submitted that the appellants rely on the planning officer's incorrect assumptions in regard to the unauthorised status of the open storage compound.

#### Impact of the proposed development on the alleged Right of Way

- The claims in regard to easements and rights of way are outside the jurisdiction of the Board having regard to Section 34(13) of the Planning Act and Section 5.3 of the Development Management Guidelines.
- It is submitted that the appellants have not provided adequate documentation that they have actual rights of way across the applicant's property.

#### Impact on Business operations of GPN Holdings

- A submitted aerial photograph (Appendix 5) illustrates that the operation of Unit 2 does not require any encroachment on the property of unit 1.
- The right of way issue is a civil matter that must be determined by the two landlords and not an Bord Pleanála.

#### Facilitation of an alleged Unauthorised Use of Unit 1

- The Board are requested to note the following;
  - The applicant is confined to fencing and gates.
  - The L.A. Ref. 2066/70 included permission for a 4 ft. high fence. The current fencing is higher and has been extended to the north and south and includes gates which control access to the car park.
  - The Council's planner has confirmed that the fencing is acceptable from a visual perspective.
- It is submitted that from 2000 until the end of 2016 that Unit 1 was used by Autoglass who are vehicle glass repair company for visiting members of the public.



- This previous use was a motor service station.
- It is contended that as the use was established for more than 7 years and is not governed by planning condition the use is immune for planning enforcement.
- The change of use in recent months has been a change within the general category of automotive sales and services.
- It is contended that there has been no material change of use in relation to the following;
  - On-site parking of customer vehicles
  - Servicing and repair of vehicles within the building
  - On-site storage of car parts
  - Ancillary reception and office facilities
- It is submitted that any additional traffic generated by car sales as compared to the glass repair company would be slight in the overall context of the industrial estate.
- In relation to PL88.RL2959 it is considered that this case would not set out a precedent for the current appeal. In this case both the Board and the Planning Inspector considered that a change of use from car showroom to a shop was a material change of use but would be exempted development under Class 14(a) of Part 1 of Schedule 2.
- It is submitted that the materiality of a change of use can only be considered under the criteria set out in *McMahon v Dublin Corporation* and *Galway County Council v Lackagh Rock Ltd*.
- In relation to elevational changes the planner's report considers that these changes should be reviewed by the Enforcement Department.
- However, it is contended that the elevational changes are exempt under Section 4(1)(h) of the Planning Act.
- It is submitted that further investigation of the current use and cladding of the building could be clarified by the issue of a Declaration under Section 5 of the

Planning Act. As the change of use is not material and the elevation amendments are exempt under Section 4(1)(h).

### 6.3. **Planning Authority Response**

None

### 6.4. **Observations**

None

## 7.0 **Assessment**

The development is for plastic coated steel security fence which encloses an existing yard adjoining an industrial unit. The planner's report refers to the subject fencing as a paladin fence as opposed to the more commonly used palisade fencing. The paladin fencing is generally considered more visually acceptable and based on my visual inspection of the site I would concur with this view. The proposed fence measures approximately 2.5 metres in height and is a black colour and in general is more visually transparent than palisade type fencing. In terms of visual impact, I would concur with the Executive Planner that the subject fencing is not considered incongruous or overbearing and I would consider that the proposed fencing would not impact on the visual amenities of the local area.

The appellant submits that the proposed development to be retained will adversely impact on their business operations. However, having regard to a visual observation of the site and the immediate environs I would concur with the applicant's agent in their response submission that the subject development will have limited impact on the business operations of Unit no. 2. The applicant's agent submits an aerial photograph of an existing HGV unloading to the area in front of Unit 2 and Unit 3, i.e. the adjoining industrial units, and I would be satisfied that this image confirms that the subject fence will have little or no impact on the business operations of the adjoining industrial / warehouse units.

The submitted appeal makes a number of arguments that are, in my view, outside the scope of this planning appeal. Firstly, it is argued that the proposed development will adversely impact on an existing 'right of way' and secondly that the proposed development facilitates an unauthorised use. The appeal documentation does not include any legal documentation demonstrating that the alleged 'right of way' actually exists. Nonetheless the Board are unable to adjudicate on the issue of a right of way within the remit of the Planning and Development Act. It is important to note Section 34(13) of the Planning and Development Act, 2006, which states 'a person shall not be entitled solely by permission under this section to carry out any development'. The Development Management Guidelines, 2007, advise that a planning system is not designed as a mechanism for resolving disputes about title to land. There is therefore an obligation on the applicant to ensure that they have full legal title before proceeding with any permitted development.

Secondly it is claimed by the appellant that there is an unauthorised use on the appeal site as it is alleged that the adjoining industrial unit has changed its use from warehouse to shop, i.e. car sales. I would consider that the subject fence is immaterial to the use within the adjacent warehouse. The subject fence, in my view, is more of a security measure for the overall site. I would consider that the claim of an unauthorised change of use has occurred would be an enforcement issue and the Board have no function in relation to enforcement matters. It is therefore an issue to be addressed by the local authority.

Overall and in conclusion I would consider that the retention of the paladin fencing is acceptable in principle having regard to the pattern of development in the local area and the established uses and therefore is in accordance with the proper planning and sustainable development of the local area.

## **8.0 Recommendation**

- 8.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan and the Local Area Plan, and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

## 9.0 Reasons and Considerations

Having regard to the zoning of the site as set out in the Carrigaline Electoral Local Area Plan, 2011, the pattern of development 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.

## 10.0 Conditions

- The development shall be retained in accordance with the plans and particulars lodged with the application lodged with the Planning Authority on the 25<sup>th</sup> October 2016.
- 1.

Reason: In the interest of clarity.

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Kenneth Moloney  
Planning Inspector

23<sup>rd</sup> March 2017