



An
Bord
Pleanála

Inspector's Report PL28.249310

Development

Retention permission is sought for the existing boundary treatment to the west of the site, which includes a 2.4m high paladin fence over a painted block wall with concrete capping (height varying to suit the ground level). Planning permission is sought for new planting and landscaping treatments along the western site boundary and all associated works to facilitate same.

Location

Site at Musgrave Park, Kinsale Road / Tramore Road, Ballyphelane, Cork City, Co. Cork.

Planning Authority

16/37203

Planning Authority Reg. Ref.

Cork City Council

Applicant(s)

McDonald's Restaurants of Ireland Limited

Type of Application

Permission for Retention & Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal	Third Party v. Decision
Appellant(s)	Dolphin RFC
Observer(s)	None.
Date of Site Inspection	27 th January, 2018
Inspector	Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located at Ballyphelane in the inner suburbs of Cork City, approximately 1.5km south of the city centre, where it occupies an elongated corner plot at the junction of Kinsale Road with Tramore Road adjacent to Musgrave Park. The surrounding area can be described as mixed-use and includes a variety of commercial / light industrial uses, sports grounds and housing. The site itself has a stated site area of 0.0335 hectares (although the wider site area occupied by the existing 'McDonalds' drive-through restaurant and associated car parking etc. extends to 0.44 hectares), is generally rectangular in shape, and is presently occupied by a drive-through restaurant / takeaway. A notable feature of the site topography is the falling gradient on travelling northwards through the property and its lower elevation when compared to the adjacent lands to the immediate west which are occupied by training pitches associated with Musgrave Park. The western site boundary is presently defined by a low brickwork wall with paladin fencing atop same although this is supplemented somewhat by ball netting erected within the grounds of the adjacent playing pitches. There is also a narrow landscaped strip immediately adjoining the western boundary within the appeal site.

2.0 Proposed Development

- 2.1. The proposed development, as initially submitted to the Planning Authority, involves the retention of the existing boundary treatment to the west of the site which includes a 2.4m high paladin fence over a painted block wall with concrete capping (height varying to suit the ground level). Permission is also sought to supplement the existing boundary treatment with new planting and screen landscaping.
- 2.2. In response to a request for further information, amended proposals were subsequently submitted which included for the erection of a 50m length of close-board privacy fence (approximately 3.25m in height) along that section of the western site boundary between the existing restaurant building and the adjacent playing pitches. Revisions were also made to the proposed landscaping

arrangements with the omission of the proposed climbers and an increase in the initial planting height of the proposed bay laurel hedging.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of a response to a request for further information, on 29th August, 2017 the Planning Authority issued a notification of a decision to grant permission & permission for retention of the proposed development subject to 7 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Requires the submission of an implementation schedule for the landscaping and boundary treatment works, for the written agreement of the Planning Authority, within one month of the date of the grant of permission.

Condition No. 3 – Requires the proposed development to be carried out in accordance with the terms and conditions of PA Ref. No. TP 13/35825, save where otherwise amended by this grant of permission and / or the conditions attached to same.

Condition No. 4 – Prohibits the erection of any signage.

Condition No. 5 - Refers to the control of noise emissions and working hours during the construction of the proposed development.

Condition No. 6 – Refers to construction management.

Condition No. 7 – Requires the submission of a construction and demolition waste management plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report noted the planning history of the application site, with particular reference to the previous decision of the Board to refuse permission for the retention

of the existing boundary treatment along the western side of the site under PA Ref. No. 15/36604 / ABP Ref. No. PL28.246038. In this regard, it was considered that the subject proposal to reinforce the existing boundary arrangement with supplementary planting / landscaping would serve to address the Board's previous concerns in relation to the overlooking of the adjacent training pitches and would also 'soften' the visual appearance of the boundary thereby reflecting the character of the mature roadside boundary that previously defined the site prior to its redevelopment as a restaurant. However, concerns were raised as regards the limited space and soil depth available along that section of the boundary adjacent to the restaurant building and the ability of same to accommodate the proposed landscaping measures. Further concerns were also expressed as regards the potential for the proposed climbing plants to compromise the establishment of mature hedging.

Following consideration of the amended proposals submitted in response to a request for further information, which included the erection of a 50m length of close-board privacy fence (approximately 3.25m in height) along that section of the western site boundary between the existing restaurant building and the adjacent playing pitches, a final report was prepared which concluded that the submitted details were acceptable and recommended a grant of permission, subject to conditions.

3.2.2. **Other Technical Reports:**

Roads Design: No objection.

Drainage: No objection.

Environment: No objection, subject to conditions.

3.3. **Prescribed Bodies**

Health and Safety Authority: No observations.

Irish Water: No objection.

3.4. **Third Party Observations**

A single submission / observation was received from the appellant, however, it does not contain any specific objection to the proposed development.

4.0 Planning History

4.1. On Site:

PA Ref. No. 1335825 / ABP Ref. No. PL28 243677. Was granted by the Planning Authority on 13th August, 2014 permitting McDonalds Restaurants of Ireland Ltd. permission 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, incorporating an enclosed yard (65 sq m) with an overall gross floor area of 432 sq m. The development will also consist of the demolition of an approximately 3m high wall (195m wide) along Kinsale Road and Tramore Road, and the construction of a new boundary treatment on the southern, eastern and western boundaries of the site comprising a stone wall and timber fence, provision of a new vehicular and pedestrian entrance to the site off the Kinsale Road; 65 No car parking spaces(including 58 No. standard spaces, 3 No. disabled spaces and 1 No. set-down space); bicycle parking stands; a height restrictor; 2 No. customer order points with canopies; associated elevational and free-standing signage; hard and soft landscaping; and all ancillary and associated works (*N.B.* A first party appeal with regard to the inclusion of certain conditions was ultimately withdrawn).

PA Ref. No. 1436158 / ABP Ref. No. PL28.244280. Was determined on appeal on 6th May, 2015 whereby a split decision was issued to McDonald's Restaurants of Ireland Limited as follows:

- To **GRANT** permission to amend the closing time of the permitted restaurant from 2200 hours to 2300 hours and an increase in the number of car parking spaces.
- To **REFUSE** permission for the provision of a six metre high totem sign located towards the north-eastern corner of the site and the provision of a full access junction for access/egress to the site for the following reasons:
 - It is considered that the provision of a full access junction for the permitted fast food and drive through restaurant would give rise to queuing and traffic turning movements on Kinsale Road, would give

rise to traffic congestion and would endanger public safety by reason of a traffic hazard and obstruction of road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- Having regard to the extent of permitted signage on the site, it is considered that the provision of an additional six metre high totem sign would give rise to advertising clutter at this location and would, therefore, seriously injure the visual amenities of the area.

PA Ref. No. 1536604 / ABP Ref. No. PL28.246038. Was refused on appeal on 19th May, 2016 refusing McDonalds Restaurants of Ireland permission for the retention of boundary treatment on the western boundary, which encompasses a green paladin fence (measuring 2.4 metres high) over a dark grey painted block wall with concrete capping (height varying to suit the ground level) for the following reason:

- Having regard to the long established usage of the sports ground to the west of the site, the Board considered that the western boundary treatment indicated on the original planning application, planning register reference number 13/35825, was a more appropriate treatment and saw no reason to allow it to be changed. The retention of the boundary treatment would, therefore, seriously injure the amenity of the area.

5.0 Policy Context

5.1. Development Plan

Cork City Development Plan, 2015-2021:-

Land Use Zoning:

The proposed development site is located in an area zoned as '*Residential, Local Services and Institutional Uses*' with the stated land use zoning objective '*To protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3*'.

Explanatory Note: 'Residential, Local Services and Institutional Uses':

The provision and protection of residential uses and residential amenity is a central objective of this zoning, which covers much of the land in the suburban area. However other uses, including small scale local services, institutional uses and civic uses and provision of public infrastructure and utilities are permitted, provided they do not detract from residential amenity and do not conflict with the employment use policies in Chapter 3 and related zoning objectives. Small scale 'corner shops' and other local services such as local medical services, will be open for consideration. Schools, third level education institutes, and major established health facilities are located within this zone and appropriate expansion of these facilities will be acceptable in principle. The employment policies in Chapter 3 designate particular locations for offices, office based industry, major retailing development and these uses are not generally permitted in this zone (Chapter 3: Enterprise and Employment). New local and neighbourhood centres or expansion of same are open for consideration in this zone provided they meet the criteria for such centres set out in Chapter 4.

5.2. Natural Heritage Designations

The following Natura 2000 sites are located in the vicinity of the proposed development site:

- The Cork Harbour Special Protection Area (Site Code: 004030), approximately 2.2km east of the site.
- The Great Island Channel Special Area of Conservation (Site Code: 001058), approximately 9.0km east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

- The subject proposal gives rise to the same points of objection as were previously expressed by the appellants in their appeal of PA Ref. No. 1436158 / ABP Ref. No. PL28.244280 wherein it was submitted that *'the works exposed Dolphin to public viewing'*. During the course of that earlier planning appeal the appellants stressed the need for consistency with other

comparable developments in the Cork area, including University College Cork, Cork Constitution & St. Finbarrs GAA i.e. the provision of a wall. It is further submitted that the timeframes involved in the completion of the additional fencing and the maturation of the proposed tree planting would unacceptably prolong the exposure of the appellant's pitches for several more years.

N.B. In the interests of clarity, the reporting inspector's summation of the grounds of appeal with regard to ABP Ref. No. PL28.244280 is set out below.

- *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 (Nos. E7586 and E7595). It is contended that the work carried out has not the benefit of planning permission.*
- When taken in combination with the existing boundary works, the additional fencing proposed would serve to exacerbate the current unacceptable situation.
- Given the available width alongside the boundary and the required foundation works, it will not be possible to construct the additional fencing proposed.
- The applicant did not engage in adequate prior consultation with the Local Authority and has failed to consider the impact of the submitted proposal.

6.2. Applicant's Response

- The planning history of the application site, with specific reference to that relating to the western site boundary, serves to confirm the applicant's desire to provide an appropriate boundary treatment at this location.
- It is considered that the subject proposal, as amended in response to the request for further information, will provide for the screening of the appellant's playing pitches. Furthermore, given the scale and nature of the boundary treatment proposed, it is submitted that the appellant's assertion that the proposal will expose its playing pitches to the public is unreasonable.
- In recommending a grant of permission for the submitted proposal, the case planner concluded that the proposed development '*would not result in an unacceptable visual impact*'.
- The proposed boundary treatment has the full support of the owner of the adjoining playing pitches (i.e. Munster Rugby) as evidenced in its correspondence of 1st December, 2016 which accompanied the planning application.
- With regard to the assertion in the grounds of appeal that '*the proposed additional screen fence would make a bad situation worse*', it should be noted that the presence of the '*5m slope cutting back into the rugby property*' and '*a very high post / mesh ball screen*' comprise works which have been

undertaken within the adjoining lands in the ownership of Munster Rugby. Accordingly, these works are not relevant to the assessment of the subject application, but rather are items for discussion with the Dolphin Rugby Club as a tenant of Munster Rugby. In addition, it is of relevance to note that the appellant has provided no evidence as to the manner in which the proposed close-board fence *'would make a bad situation worse'*. The fencing proposed will be located entirely within the application site for the express purpose of providing additional screening of the adjacent playing pitches.

- The appellant's comments with regard to the foundation works are entirely subjective and are not supported by any independent technical assessment. In this respect the Board is referred to the accompanying letter from AECOM Consulting Engineers which confirms that *'the proposal seeks to provide the new screen with foundations which are independent of the current boundary wall. This will be achieved by providing cores through the existing foundation, spaced sufficiently apart and sized appropriately so as not to have an adverse effect on the existing foundation'*. Accordingly, on the basis of the foregoing, it is submitted that the appellant's assertions with regard to the foundations are without substance and should be disregarded.
- In relation to the appellant's comments that the architectural and landscape drawings are at variance with AECOM's foundation sketch, it should be noted that the appellant has incorrectly referenced the drawings which were submitted with the planning application on 16th December, 2016. The drawings which accompanied the response to the request for further information submitted to the Planning Authority on 2nd August, 2017 are the correct reference drawings and these are entirely consistent with the AECOM foundation details.
- The response to the request for further information was lodged within the statutory timeframe permitted by the Planning and Development Regulations, 2001, as amended.
- It can be confirmed that informal discussions were undertaken with the Parks Department of the Local Authority during the formulation of an appropriate response to the request for further information.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The adequacy / suitability of the proposed boundary treatment
- Appropriate assessment

These are assessed as follows:

7.2. **The Adequacy / Suitability of the Proposed Boundary Treatment:**

7.2.1. From a review of the available information, including the planning history of the application site, I would advise the Board at the outset that the boundary treatment originally approved alongside the full extent of the western side of the subject site (adjacent to Musgrave Park) pursuant to PA Ref. No. 1335825 comprised a 3m high concrete / masonry wall (capped and painted white), however, this construction was not undertaken and the existing low-rise wall with paladin fencing atop same was erected in its place. Moreover, a previous planning application to retain this existing wall and fencing was refused permission on appeal under PA Ref. No. 1536604 / ABP Ref. No. PL28.246038 on the basis that the boundary treatment originally approved under PA Ref. No. 1335825 was considered to be a more appropriate response given the long established usage of the sports ground to the west and as the boundary treatment proposed for retention was deemed to be injurious to the amenity of this facility.

7.2.2. In my opinion, the principle concerns raised in the grounds of appeal relate to the 'exposure' of the playing / training pitches within the grounds of Musgrave Park to public view from vantage points both within the confines of the application site and beyond, such as along nearby public footpaths / roads. In this respect I would advise the Board that the playing pitches would seem to have historically enjoyed a greater level of privacy in that the presence of mature evergreen vegetation along the roadside boundary with Kinsale Road prior to the development of the existing restaurant served to prevent any undue overlooking of the rugby grounds. Furthermore, it would appear that the construction of the 3m high concrete / masonry wall approved under PA Ref. No. 1335825 was intended to maintain the 'status quo' in that it would screen any activities within the playing pitches from public view. Therefore, in the assessment of the subject proposal, it is necessary to determine whether or not the additional measures proposed by the applicant, with specific reference to the erection of a 50m length of close-board privacy fence (approximately 3.25m in height) along that section of the western site boundary between the existing restaurant building and the adjacent playing pitches, and the implementation of a programme of supplementary planting / landscaping in order to provide a screening effect, are sufficient to preserve the amenity of the adjoining playing pitches having regard to the Board's previous determination of ABP Ref. No. PL28.246038.

7.2.3. In an effort to address the rationale for the refusal of ABP Ref. No. PL28.246038, and in order to retain the existing boundary treatment as constructed, the subject application initially proposed to reinforce the existing wall / fence through the planting of a dense hedgerow of evergreen bay laurel (comprising 716 No. specimens measuring 40-60cm in height planted at a rate of 4 No. specimens per linear metre) supplemented with fast-growing climbing plants at one metre intervals. This planting would thus be allowed to mature over time with a view to establishing and maintaining a laurel hedgerow to the full height of the existing boundary fence (i.e. approximately 3.25m) along the full extent of the western site boundary. However, given the limited width and soil depth available between the drive-through element of the existing restaurant and the western site boundary, it was subsequently proposed in response to a request for further information to erect a 50m length of close-board privacy fence (approximately 3.25m in height) along that section of the western site

boundary between the existing restaurant building and the playing pitches. In addition, the height of the individual laurel specimens at the time of their planting was increased to 1-1.5m whilst the climbing plants were omitted due to the potential for same to compromise the establishment of the hedgerow.

7.2.4. Having reviewed the submitted proposals (as amended in response to the request for further information), whilst I would acknowledge that the proposed planting will take several years to mature to such an extent as to provide effective screening of the adjacent playing pitches, on balance, I am inclined to suggest that the landscaping proposed (in addition to the additional close-board fencing) is such as to allow for the retention of the existing boundary treatment. In this regard, I would concur with the assessment of the previous reporting inspector in their assessment of ABP Ref. No. PL28.246038 that cognisance should be taken of the fact that the receptor in question comprises training pitches associated with a sports club which would not typically require the same level of privacy as other forms of development (e.g. residential / housing development). Furthermore, it is of relevance to note that whilst the appellant (as a leaseholder of the adjacent rugby grounds) has objected to the boundary treatment proposed, the owner of the adjacent lands (Munster Branch IRFU) has provided correspondence to the applicant in support of the subject proposal. I am also of the opinion that the proposed planting will have a less visually intrusive and monolithic appearance when viewed from public areas to the east of the application site than the originally approved 3m high wall.

7.2.5. Therefore, on the basis that the additional screening and landscaping measures proposed by the applicant will ultimately serve to eliminate the potential for undue overlooking of the adjacent playing fields, I am satisfied that the retention of the existing wall and fence line along the western site boundary can be permitted in this instance.

7.3. **Appropriate Assessment:**

7.3.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for retention & permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

9.0 Reasons and Considerations

Having regard to the nature and scale of the development proposed to be retained, the proposal to carry out additional landscaping and screening measures, and the existing pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development proposed to be retained and completed 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

1. The development shall be retained, completed and maintained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 2nd day of August, 2017, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2.
 - a) The additional fencing works detailed in the plans and particulars submitted to the planning authority on the 2nd day of August, 2017 shall be completed within three months of the date of this grant of permission.
 - b) The landscaping works detailed in the plans and particulars submitted to the planning authority on the 2nd day of August, 2017 shall be carried out within the first planting season following this grant of permission.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

Robert Speer
Planning Inspector

29th January, 2018