



An
Bord
Pleanála

Inspector's Report ABP-302007-18

Development	Retention Permission sought for alterations to previously approved builders merchant yard (Reg. Ref. F16A/0529 & Ref No. PL06F.248034)
Location	Murdocks Builders Merchants, Kilbarrack Industrial Estate, Kilbarrack
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0630
Applicant(s)	Murdock Distribution (Ireland) Ltd.
Type of Application	Permission and Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	W.V. Cummins
Observer(s)	None
Date of Site Inspection	26 th October 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.62 ha, is located in Kilbarrack Industrial Estate, on the eastern side of Kilbarrack Parade, which is a cul-de-sac, accessed from the Kilbarrack Road (R104). The site accommodates a large industrial type building, which was previously in use as a depot for An Post, but which now operates as a builders' merchant, as well as parking and yard areas. The structure is set back from the road, and the boundary treatments to all sides comprises a palisade fence.
- 1.2. The site is bounded by a number of smaller industrial/commercial type units to the north, a residential area to the east (Verbena Lawn), Naomh Barróg GAA club to the south, and Kilbarrack Parade to the west. There are also a number of large industrial premises on the western side of Kilbarrack Parade. Howth Junction and Donaghmede train station is located c. 220m to the west of the appeal site.
- 1.3. The existing structure on the appeal site has a stated floor area of 2,573 sq m, and is a single storey structure of concrete portal frame construction with an asbestos roof. It has a maximum height of c. 6m. A 38kV power line also crosses the appeal site.

2.0 Proposed Development

- 2.1. Retention permission is sought for the following alterations to the previously permitted builders merchant yard (Reg. Ref. F16A/0529 & Ref No. PL06F.248034):
 - Use of rear yard for external storage of building materials and goods associated with approved builders' merchants use;
 - Omission of approved car parking area (30 No. spaces and associated circulation area) adjacent to eastern site boundary (with Alden Road/Verbena Lawn);
 - Provision of 2 No. metal racking storage units (4.54m in height) accessible by builders' merchant staff only (reduced from 3 No. storage units following request for further information);
 - Provision of 2 No. metal racking storage units (3.6m in height) adjacent to southern elevation of existing building;

- Alterations of Condition No. 6 of Reg. Ref. F16A/0529 & Ref. No. PL06F.248034 to provide for revised opening hours of 7.00am to 6.00pm on weekdays and 8.00am to 1.00pm on Saturday; and
- Reconfiguration of approved surface car park at front of site (facing Kilbarrack Parade) to provide 25 no. on-site car parking spaces.

2.1.1. Planning permission is also sought for:

- Provision of supplementary screen landscaping along full extent of eastern site boundary (with Alden Road and Verbena Lawn);
- Alterations to loading/service yard layout to delineate dedicated loading bays adjacent to existing building; and
- All associated site development works.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Fingal decided to grant permission and retention permission and the following summarised conditions are noted:

- **C2:** Terms and condition of the grant of permission under PL06F.248034 (Reg. Ref. F16A/0529) to be complied with save for the changes permitted.
- **C3:** Hours of operation to be 07:30 – 18:00 Monday to Friday, 08:00 – 13:00 Saturday, and no operation on Sundays or public holidays. No deliveries or manoeuvring of vehicles or goods outside of these hours.
- **C4:** Metal racking storage units to be amended to provide minimum 5m separation distance to the eastern boundary. No storage of goods within the 5m buffer.
- **C6:** Lighting shall not cause excessive glare or distraction. Operational lighting to racking type 1 area shall be turned off outside of permitted business hours.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's reports can be summarised as follows:

- Works seeking retention permission and proposed works are consistent with the zoning objective.
- Use of the yard seeking retention would be more intense than that of a car park.
- Use of the eastern part of the site for the storage of materials would be a more efficient use than the western part, which could result in conflicts with members of the public.
- EHO recommends reduced operating hours. It would be onerous to restrict the operation further to that already permitted.
- This type of storage is synonymous with GE zoned lands and the exposed nature of the racks together with their separation distance create an open feeling. To house the racks within an additional warehouse structure would likely be more injurious to residential amenities.
- Racks should be reduced in length to provide a 5m separation distance to the eastern boundary. This set back together with planting would mitigate the visual impact.
- Racks on the southern elevation would not give rise to impacts to the GAA club.
- This site is materially different to the other site referred to by the applicant. The site is unique in terms of its established character of GE zoned lands immediately adjacent to established residential development and proximity to dwellings.
- Applicant's desire for 7am operation is accepted, but similar development in Baldoyle Industrial Estate operates between 7:30am and 5:30pm.
- Proposal to extend hours would have the potential to be seriously injurious to residential amenities of adjacent dwellings and should remain as previously approved.

- Hours of operation detailed on signage are different to that indicated for retention.
- Car parking provision is acceptable to Transportation Planning Section.
- Loading and delivery arrangements are acceptable.
- No Appropriate Assessment issues arise.
- Revised southern and western elevations are acceptable.
- The reduction from three to two racks reduce the undue impact on adjacent dwellings to the north at this location and is acceptable.
- Increased separation distance from eastern boundary is acceptable, and should be required by way of condition.
- Landscaping proposals are acceptable.
- Safety and health statement is acceptable. The onus is on the applicant to adhere to the ESB code of practice to ensure safety of workers.
- Condition should be included to facilitate the Council to require the applicant to take remedial steps to deal with any light overspill issues.

3.3. Other Technical Reports

- 3.3.1. Water Services: No objection.
- 3.3.2. Environmental Health: No objection, subject to conditions.
- 3.3.3. Transportation Planning: No objection on traffic grounds.
- 3.3.4. Parks and Green Infrastructure: No objection, subject to conditions.
- 3.3.5. Lighting Section: No objection, subject to conditions.

3.4. Prescribed Bodies

- 3.4.1. Irish Water: No objection.

3.5. Third Party Observations

3.5.1. A number of third party observations were received by the Planning Authority. The issues raised were generally as per the appeal as well as the following:

- Storage racks are visually overbearing and out of character with neighbouring properties.
- Materials are not securely stored and are a health and safety hazard.
- Trucks and forklifts accessing storage racks cause noise and dust pollution and loss of privacy.
- Business is operating out of permitted hours.
- Other builder's providers with 7am opening times that are referred to by the applicant are not located near houses, and are located centrally in industrial estates.
- Larger racks should be moved to the front of the building.
- Effectiveness of screening.
- Noise and dust impacts.
- Car parking provision.
- Presence of services under location of proposed boundary planting.
- Light pollution.

4.0 Planning History

4.1. Appeal Site

4.1.1. **PL06F.248034 (Reg. Ref. F16A/0529):** Permission granted for the change of use of an existing light industrial building to provide a builder merchant's use and associated development.

4.1.2. **Reg. Ref. F05A/0329:** Permission granted for: widening of existing vehicular access to the site and erection of new automated sliding entrance gate; increased width and height of existing sectional door opening; installation of new sectional door to the front of the existing building; and reconfiguration of parking.

4.2. Surrounding Area

- 4.2.1. **Reg. Ref. F13A/0401:** Permission granted for erection of CO2 storage tank with protective fencing and gates in yard in front of Unit 1B1, Kilbarrack Industrial Estate, Kilbarrack Parade, Dublin 5.
- 4.2.2. **Reg. Ref. F07A/0750 & F07A/0750/E1:** Permission granted and subsequently extended for concrete hurling training wall at Naomh Barróg GAA Club.
- 4.2.3. **Reg. Ref. F02A/1457:** Retention permission granted for six lighting standards at Naomh Barróg GAA Club.
- 4.2.4. **Reg. Ref. F99A/1049:** Permission granted for construction of a clubhouse and changing facilities, community room, lounge bar, office and ancillary accommodation at Naomh Barróg GAA Club.

5.0 Policy Context

5.1. Fingal Development Plan 2017-2023

- 5.1.1. The site is governed by the policies and provisions contained in the Fingal Development Plan 2017-2023. The site is zoned 'GE', to provide opportunities for general enterprise and employment.
- 5.1.2. A 'builders provider/yard' is a permitted in principle use under the 'GE' zoning objective. Appendix 4 of the Development Plan provides Technical Guidance Notes for use classes, and defines a 'builder provider/yard' as "A building and/or land used for the storage, sale or hire of builders materials".
- 5.1.3. Section 12.7 provides design guidelines for business parks and industrial areas.
- 5.1.4. Relevant Objectives:
 - **BALDOYLE 2:** Prepare a Masterplan for Baldoyle Industrial Estate and Kilbarrack Industrial Estate to guide and inform future development including improvements to signage and physical appearance, determine appropriate uses, provision for intensification of employment, and facilitate improvements to pedestrian access to and from Howth Junction Station and associated bus stops which can be implemented over the lifetime of the Plan.

- **ED112:** Encourage better integration of industrial areas into the urban fabric of the County, resolving tensions between uses and enhancing the security and permeability of industrial areas for pedestrians and cyclists as well as businesses.
- **DMS142:** In determining applications proximate to overhead power lines, the Planning Authority will have regard to the clearance distances as recommended by the Electricity Supply Board (ESB) and other service providers:
 - For development in proximity to a 10kV or a 38kV overhead line, no specific clearance is required.
 - With regard to development adjacent to an 110kV overhead line, a clearance distance of 20 metres either side of the centre line or 23 metres around a pylon is recommended.
 - For a 220kV overhead line, a clearance distance of 30 metres either side of the centre line or around a pylon is required.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is not located within or immediately adjacent to any sites with a natural heritage designation. The closest such sites are North Bull Island SPA and North Dublin Bay SAC (Site Codes 004006 and 000203) which are 0.8km to the south, and Baldoyle Bay SPA and SAC (Site Codes 004016 and 000199), which are 1.8km to the north east. Both North Dublin Bay and Baldoyle Bay are also pNHAs.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. One third party appeal was lodged by W.V. Cummins. The issues raised in the appeal can be summarised as follows:
- Applicant did not provide evidence that the location of metal racks under the power lines is acceptable to the network provider. Permission should not have

been granted as one of the items on the request for further information has not been met.

- Local of metal storage racking under overhead power lines does not meet safety requirements of the network and puts appellant and his property at risk.
- Discrepancies in the stated heights of the racks in Sections 2.2 and 2.5 of the applicant's response to the RFI. The statements are misleading and confusing. If the network provider finds that it is acceptable to have racking under the overhead power lines it should, or the Board should, specify what distance vertically and horizontally the racks and storage should be from the power lines.

6.2. Applicant Response

6.2.1. A response to the appeal was submitted on behalf of the applicant by Hughes Planning and Development Consultants. The issues raised can be summarised as follows:

- Applicant submitted a Safety and Health Statement which outlined a series of operational controls and procedures for the operation of the development. This was acceptable to the Planning Authority, who noted that the onus is on the applicant to adhere to the ESB Code of Practice. The applicant has no difficulty with this and will accept a suitable condition.
- The development poses no risk to the appellant's person and property and there is a not insubstantial distance between the appellant's dwellings and the appeal site.
- There are no misleading statements regarding the rack heights. The 2 No. racks in the eastern portion of the site are 4.54m in height and the 2 No. racks adjacent to the southern elevation of the building are 3m in height.
- Proposed development will not give rise to any undue impacts on the amenity of any adjacent properties.

6.3. **Planning Authority Response**

- 6.3.1. No further comment. The Planning Authority requests that a condition requiring a development contribution be included.

6.4. **Observations**

- 6.4.1. None.

6.5. **Further Responses**

- 6.5.1. None.

7.0 **Assessment**

- 7.1. I consider that the key issues in determining this appeal are as follows:

- Proximity to utilities.
- Residential and visual amenities.
- Operating hours.
- Other issues.
- Appropriate Assessment.
- Environmental Impact Assessment

7.2. **Proximity to Utilities**

- 7.2.1. A 38kV three-wire electricity power line traverses the appeal site, with a steel pylon located to the rear (east) of the builders' merchants building. The 2 No. 4.54m high metal storage racks (rack type 1) for which retention permission is sought are directly under this power line and the appellant contends that this results in significant safety issues, including to him and his property. I note that the Planning Officer's report states that no submission was received from the ESB.
- 7.2.2. A report entitled 'Safety and Health Statement', prepared by Redvale Consultants Ltd. was submitted in response to the request for further information. The report states that it has been prepared in accordance with the Safety, Health and Welfare

at Work Act 2005, and that it contains a generic risk assessment as required under the Act. The majority of the report comprises a standard Safety Statement, however a series of premises specific controls due to the overhead power lines are set out on page 36. These include:

- Warning signage;
- Induction training;
- The maximum height materials can be stored below the power lines will be limited to 3 metres;
- Horizontal carrying of long objects;
- Use of barriers, bunting and height restricting goalposts;
- Compliance with the guidance set out in the 'ESB Code of Practice for Avoiding Danger from Overhead Electricity Lines'.

7.2.3. I note that Objective DMS142 of the Development Plan sets out horizontal clearance distances for development proximate to overhead power lines. For development in proximity to a 10kV or a 38kV overhead line, it states that no specific (horizontal) clearance is required.

7.2.4. I would broadly concur with the Planning Authority that the onus is on the applicant to ensure that the operation of the yard and the use of the racks can be undertaken in a safe manner, in accordance with their obligations under other codes, such as the Safety, Health and Welfare at Work Act and ESB requirements. I note in this regard that section 34(13) of the Planning and Development Act 2000, as amended, states that a person shall not be entitled solely by reason of a permission to carry out any development.

7.2.5. Notwithstanding this, as noted above, the Safety and Health Statement prepared on behalf of the applicant states that one of the specific controls to address the risk from the power lines will be a restriction of 3.0m on the height on materials stored below the power lines. However, the metal storage racks have a stated height of 4.54m, and I noted on my site inspection that the materials stored on the highest level of the racks exceeded the height of the rack itself.

7.2.6. Given that there is a specific precaution/control set out in the applicant's Safety and Health Statement for materials stored under the power lines to be limited to 3.0m, and noting that the racking units for which retention permission is sought currently exceed this height, and that there are a number of dwellings in close proximity to these racking units, I consider that the height of the racking units is excessive. Should the Board be minded to grant permission, I therefore recommend that a condition be included requiring that the racks be reduced in height to 3 metres, and that the storage of materials on the racks shall not exceed this height. I consider that this reduction in height will also be beneficial in terms of mitigating the impacts of the storage racks on residential and visual amenities, as set out below.

7.3. Residential and Visual Amenities

- 7.3.1. The context of the appeal site is somewhat unusual, in that it is an industrial estate immediately abutting a residential area, with both land uses being long established. These two land uses would not generally be complementary, and there is clearly a need to balance matters of economic development and protection of residential amenity.
- 7.3.2. While the appeal focussed solely on the issue of the power line traversing the site, a range of residential and visual amenity issues were raised in the observations on the application, including noise, dust, light pollution, screening and the visually overbearing nature of the racks. Having inspected the site, I consider that the change of the eastern portion of the site from a parking area as previously permitted, to a storage and loading area is likely to have resulted in increased impacts on residential and visual amenities.
- 7.3.3. On foot of the request for further information, the applicant is proposing to move the racks westward in order to provide a 5m separation distance from the eastern boundary, and to provide shrub and tree planting along the eastern boundary. I consider that this separation distance, allied to the proposed screening planting and the reduction in the height of the racks, which I am recommending by way of condition, would be sufficient to mitigate the impacts on visual and residential amenity to an acceptable level, noting that the site is within a long-established industrial/employment area.

- 7.3.4. On my site inspection I noted that materials of various types were being stored in the area between the end of the racks and the eastern boundary of the site. Having regard to the presence of houses and their private amenity space immediately abutting this boundary, I consider such storage to be inappropriate and detrimental to the preservation of residential amenity. If the Board is minded to grant permission, I recommend that a condition be included requiring that no materials be stored within 5m of the eastern boundary of the site, in the interests of residential amenity. I consider that the establishment of this 5m buffer zone would be a reasonable means of ensuring a more suitable transition between the residential land use and the builders merchant use.
- 7.3.5. Finally, with regard to lighting, I note that the applicant submitted a lighting assessment report in response to the request for further information. This report suggests that there will be no significant lightspill outside the site. Notwithstanding this, and noting that the angle of the lights appears to be adjustable, I consider it appropriate that lighting in the eastern portion of the site should be switched off outside of the permitted hours of operation in the interests of protecting residential amenity.

7.4. Operating Hours

- 7.4.1. Condition No. 6 of the permission for the builders' merchants use (PL06F.248034; Reg. Ref. F16A/0529) states that "the hours of operation shall be between 0730 hours and 1730 hours Monday to Friday and between 0800 hours and 1300 hours on Saturday. The unit shall not operate on Sundays or public holidays. No deliveries shall be taken at or dispatched from the premises and no manoeuvring of vehicles or goods outside of the premises shall occur outside of these hours".
- 7.4.2. The applicant has sought retention permission for an alteration to this Condition to provide for revised opening hours of 0700 to 1800 on weekdays and 0800 to 1300 on Saturday. I noted on my site inspection that different times are indicated on the signage to the front of the premises, which states that opening hours are between 0700 and 1700 Monday to Thursday, between 07:00 and 1600 on Friday, and between 0800 and 1230 on Saturday.

- 7.4.3. The Planning Officer concluded in his report that the hours should remain as per Condition No. 6, however I note that Condition No. 3 of the Planning Authority's decision states that the hours of operation shall be between 0730 and 1800 Monday to Friday and between 0800 and 1300 on Saturday.
- 7.4.4. The applicant has provided examples of other similar businesses which have extended operating hours. However, I consider that the context of the appeal site differs from a typical industrial estate, in that the site immediately abuts an established residential area, and includes yard and outdoor storage areas adjacent to the private amenity space of a number of dwellings. Given the potential for noise, dust and light emissions to arise, I consider that the hours of operation should remain as permitted under the 'parent' permission for the development (PL06F.248034; Reg. Ref. F16A/0529) in the interests of protecting the residential amenities of the area.

7.5. **Other Issues**

7.5.1. Development Contribution

- 7.5.2. The Planning Authority's response to the appeal requested that a development contribution condition be included, should their decision be upheld. I note, however, that no such condition was included in their decision and having regard to the nature of the development, I do not consider that a development contribution is payable.

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the development for which permission and retention permission is sought, and noting that it is in an established and serviced industrial area outside of any Natura 2000 sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.7. **Environmental Impact Assessment**

- 7.7.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive locations, there is

no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

- 8.1. I recommend that retention permission and planning permission should be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the zoning objectives for the area and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the development would not seriously injure the amenities of the area or property in the vicinity, would be acceptable in terms of traffic impact and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 15th day of May 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 20th day of July 2017 under appeal reference number PL06F.248034 (planning register reference number F16A/0529, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. Within one month of the date of this Order, the developer shall:
 - (a) Relocate the 2 No. metal racking storage units referred to as 'Rack Type 1' in a western direction in order to provide a minimum 5 metre separation distance to the eastern site boundary, as shown on drawing number 401 'Proposed Site Layout', submitted to the Planning Authority on the 15th day of May 2018. No storage of materials, goods, refuse or any other items shall take place within this 5 metre buffer area to the east and north east of the site boundary, adjoining the rear gardens of 37 and 38 Verbena Lawn and 43, 45 and 47 Alden Road.
 - (b) Reduce the height of the 2 No. metal racking storage units, referred to as 'Rack Type 1' in the abovementioned drawing, to a maximum of 3 metres above ground level, and ensure that the materials stored thereon shall not exceed this height, in accordance with the specific controls set out in the Safety and Health Statement submitted to the Planning Authority on the 15th day of May 2018.

Reason: In the interests of visual and residential amenity and public health.

4. The hours of operation shall remain as previously permitted under appeal reference number PL06F.248034 (planning register reference number F16A/0529), that is, between 0730 hours and 1730 hours Monday to Friday and between 0800 hours and 1300 hours on Saturday. The unit shall not operate on Sundays or public holidays. No deliveries shall be taken at or dispatched from the premises and no manoeuvring of vehicles or goods outside of the premises shall occur outside of these hours.

Reason: To protect the residential amenities of the area.

5. The landscaping scheme shown on drawing no. 300, as submitted to the planning authority on the 15th day of May 2018, shall be carried out within the first planting season following the date of this Order.

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.

Niall Haverty
Planning Inspector

30th October 2018