



An  
Bord  
Pleanála

## Inspector's Report ABP-302233-18

---

<b>Development</b>	Acoustic screen
<b>Location</b>	Douglas Road, Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	17/37519
<b>Applicant(s)</b>	Tesco Ireland
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Tesco Ireland
<b>Date of Site Inspection</b>	20 <sup>th</sup> November, 2018
<b>Inspector</b>	Kevin Moore

## 1.0 Site Location and Description

1.1. The site of the proposed development is located on the north side of Douglas Road in Cork City a short distance east of the N27. There is an existing Tesco Express outlet on the site, which is one of two retail outlets, the other being a pharmacy. There is parking to the south and east of the building. The location for the proposed development comprises the area adjoining the northern boundary of the existing car park to the east of the building. The existing northern boundary consists of a metal fence and a line of trees. The adjoining parking area has its primary use and is also used for loading and unloading of delivery vehicles. Plant and bin enclosures are also sited in this area. Development in the vicinity includes dwellings to the north and east and St. Finbarr's Hospital on the opposite side of Douglas Road.

## 2.0 Proposed Development

2.1. The proposed development would comprise the erection of an acoustic screen along the northern boundary of the car park of the retail outlet. The screen would be 3m high and 16.5m wide. The timber screen would be c.1 metre from the existing boundary fence and landscaping would be provided between the screen and the existing boundary fence. The application also seeks the amendment of noise limits previously approved by the Board under ABP Ref. PL 28.241294 such that it reads as follows:

*“Noise emissions do not exceed 55dB(A) by day or 50dB(A) by evening or 45dB(A) by night.*

*The day, evening and night-time periods are defined as follows:*

- *Daytime – 07:00hrs to 19.00hrs;*
- *Evening – 19:00hrs to 23:00hrs; and*
- *Night-time – 23:00hrs to 07:00hrs.”*

2.2. Details submitted with the application included a cover letter explaining the background, rationale and extent of the proposed development, a noise survey report, and a letter from property owners permitting the making of the application.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

On 3<sup>rd</sup> July, 2018, Cork City Council decided to refuse permission for the proposed development for one reason relating to the intrusive impact arising from noise of activities from the site in the absence of satisfactory mitigation.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The Planner noted development plan provisions, retail planning guidelines, internal reports, and a third party submission. It was considered that the proposed amendment to the noise condition imposed by the Board was unacceptable in terms of its impact on residential amenity. A request for further information was recommended, seeking a more up-to-date noise survey, detailed mitigation measures, and a more detailed specification of the proposed noise barrier.

##### **3.2.2. Other Technical Reports**

The Roads Design Engineer had no objection to the proposal.

The Drainage Engineer had no objection to the proposal.

The Environment Engineer requested further information relating to an updated noise report and a more detailed specification of the acoustic barrier.

#### **3.3. Prescribed Bodies**

Irish Water had no objection to the proposal.

### 3.4. Third Party Observations

An objection to the proposal was received by Ian Nagle querying the veracity of the applicant's noise survey undertaken and raising concerns about the extent of the noise impacts during loading and unloading operations on the site.

3.4 A request for further information was sought by the planning authority on 28<sup>th</sup> September, 2017 in accordance with the Planner's recommendation. A response was received on 24<sup>th</sup> May, 2018. This included an updated noise survey and details of the specific acoustic barrier proposed.

3.5 Following this submission, the reports to the planning authority were as follows:

The Environment Engineer considered that the noise survey did not assess the impact in line with BS4142, that the survey did not address the 45dB level for the weekend, and that the proposed amendment to time limits would increase the weekend daytime decibel limit that would have greater potential for adverse effect on residential properties in the area. A refusal of permission was recommended.

The Planner concurred with the Environment Engineer's recommendation and recommended that permission be refused.

## 4.0 Planning History

### ABP Ref. PL 28.241294

Permission was granted by the Board for the subdivision and change of use of a car sales showroom to provide two retail units. Condition 5 attached with the permission was as follows:

"5. *The noise level shall not exceed 55 dB(A) (one hour) rated sound level (i.e. corrected sound level for a tonal or impulsive component) at any point along the boundary of the site between 0700 hours and 2200 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A)(15 minutes) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.*

*Reason: To protect the residential amenities of property in the vicinity of the site.”*

## 5.0 Policy Context

### 5.1. Cork City Development Plan 2015-2021

#### Zoning

The site is zoned ‘ZO 4 Residential, Local Services and Institutional Uses’ with the objective “to protect and provide for residential uses, local services, institutional uses, and civic uses.”

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

- The principle of the erection of the fence is not a concern. The structure would not have a detrimental visual impact on the area.
- The acoustic screen could address the slight breach of noise levels throughout the week. The only remaining issue would be the noise generated on Saturdays and Sundays.
- With regard to the most recent noise survey undertaken, the ambient and residual noise levels were assessed and a rated noise level was provided. This was in accordance with BS4142. The levels noted in the survey indicate that if the noise screen is erected the matter would be resolved.
- Having considered the results of the noise survey and the permitted noise levels as per Condition 5 of the Board’s previous decision, it would not be possible for any commercial operation to actively trade on this site and for the ambient or residual noise levels at the boundary to be lower than the 45dB level outlined as part of Condition 5. There is a high level of noise in the area from other sources. Condition 5 could be considered unenforceable.

- The grant of permission for the retail use clearly indicated that operations could occur on weekends and the noise condition was not intended to be an alternative way of restricting the opening hours of the permitted use.
- The proposed condition would be an improvement on the previous condition. Whilst residential amenity is important, similar retail convenience uses are operated near residential areas with conditions substantially similar to that proposed in this case. (Examples are provided).
- Condition 2 of the previous permission specifically allows for the unit to operate on weekends and, therefore, a reasonable level of noise is expected to occur during trading hours.
- The appellant is willing to undertake further surveys after the barrier is erected so as to ascertain the resultant levels on the site and would be willing to undertake further mitigation measures if required.

## 6.2. Planning Authority Response

The planning authority submitted that it had no further comments to make.

## 7.0 Assessment

- 7.1. It is my submission to the Board that the application for the proposed acoustic screen warrants a balanced, measured response to achieve an improved environment for those residing near the existing retail outlet. The retail outlet is an approved commercial use, approved in the knowledge that it was sited adjoining residential property immediately to the north of the site. The acceptance of the functioning of a retail unit must be understood in this context and this includes the servicing of such a retail unit. The functioning of this retail unit must, however, endeavour to meet minimum acceptable standards to allow for the amenities of the adjoining established residential property to be maintained. It is clear from the noise assessments undertaken for this site and from the enforcement action that preceded the application that the existing noise levels arising from the operation of the retail unit, and particularly around the timing of deliveries, have undermined the amenity of

the neighbouring residential property and have exceeded the limits set by the Board when the retail unit was permitted under Appeal Ref. PL 28.241294.

- 7.2. Having regard to the above, I am firmly of the opinion that the proposed acoustic screen would greatly improve the noise impact from deliveries on the adjoining residential property. I have no concerns in accepting that the noise assessments undertaken clearly demonstrate that there would be a positive, improved outcome for the neighbouring property if this screen was erected as proposed. I do not see why an application for an acoustic screen of the type proposed, that would improve the noise environment for neighbouring properties, should be refused permission. It is a sensible response to address unacceptable noise levels emanating from the delivery of goods and the trolley and vehicular movements associated with this.
- 7.3. Further to the acknowledgement of the adverse impact on adjoining property arising from the existing operation, the location of this retail outlet must also be placed in context. The shop is located alongside the very busy Douglas Road in a built-up urban location. I have no doubt that baseline noise levels are greatly influenced by the heavy volumes of traffic on this road. However, I must acknowledge the proximity of the service area for the shop to the neighbouring residential property and how the timing and nature of such servicing activities can greatly affect the amenity of the neighbouring house.
- 7.4. As has been referenced earlier, the proposed acoustic screen would make a positive contribution towards mitigating adverse impacts that prevail at present. This acoustic screen would result in the development complying with Condition 5 of the Board's previous decision based upon the appellant's findings. The difficulty for the operator of the retail outlet is the functioning of the unit outside of the Monday to Friday period, and in particular on Saturdays when deliveries would continue. It would be my understanding that the Board, in taking a decision to grant permission for such a use in a location in close proximity to sensitive residential properties, would have given due consideration to the noise impacts of a functioning retail unit on such property and that the attachment of Condition 5 was with a distinct purpose. It is apparent that the Board sought to differentiate between a 'normal working week' of Monday to Friday and a 'weekend' that is understood to mean Saturdays and Sundays. The latter was seen to merit more restrictive noise controls. I am of the opinion that this was a reasonable and balanced approach in the context of where

the proposed retail unit was to be sited, i.e. in very close proximity to established housing. It is reasonable that this understanding would be gauged from this condition when one has regard to the reason actually given for this condition, namely “*To protect the residential amenities of property in the vicinity of the site*”.

- 7.5. Having regard to the above, it is my conclusion that the acoustic screen is merited as a direct and appropriate response to introduce necessary measures to limit the adverse noise impacts of a functioning retail outlet on adjoining residential property, while I advocate the retention of Condition 5 of the planning permission granted by the Board under Appeal Ref. PL 28.241294 to ensure the further protection of amenities at weekends. While this latter outcome will likely affect the current method of delivery, loading and unloading of products associated with the retail unit, it would not necessarily prohibit deliveries where an alternative methodology may be employed which culminates in noise levels below the current levels of the existing operation or where provision for deliveries can be sufficiently provided for on other days. A split decision is, therefore, recommended.

Note: The development the subject of this planning application is not of a class of development to which EIA applies.

## 8.0 Recommendation

- 8.1. I recommend that permission is granted for the proposed acoustic screen and that permission is refused for the amendment of Condition 5 of Planning Permission Ref. PL 28.241294.

## 9.0 Reasons and Considerations

- (a) Grant of Permission for the proposed acoustic screen

Having regard to the need to reduce the noise impacts arising from the established retail outlet in the interest of amenity and having regard to the form, layout and height of the proposed acoustic screen, it is considered that



the proposed development would significantly reduce noise levels emanating from the operation of this outlet beyond the site boundary, would positively impact on the residential amenities of adjoining properties, would be acceptable in terms of visual impact, and would otherwise be in accordance with the proper planning and sustainable development of the area.

(b) Refusal of Permission for the amendment of Condition 5 of Planning Permission Ref. PL 28.241294

It is considered that the proposed amendment of Condition 5 of Planning Permission Ref. PL 28.241294 would result in excessive adverse noise impacts on adjoining residential property at weekends arising from the servicing of the retail outlet and, as a consequence, would seriously injure the amenity of property in the vicinity. The proposed amendment would, therefore, be contrary to the proper planning and sustainable development of the area.

## 10.0 Conditions

1. This permission relates solely to the provision of the proposed acoustic screen.

**Reason:** In the interest of clarity.

2. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further drawings and details submitted to the planning authority on the 24<sup>th</sup> 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.

3. Prior to the commencement of development, details of the specification of the acoustic screen shall be submitted to the planning authority for written agreement.

**Reason:** In the interest of visual amenity.

---

Kevin Moore  
Senior Planning Inspector

29<sup>th</sup> November, 2018