



Development

Provision of a mezzanine level (183 sqm) previously permitted under Reg. Ref. No. 05/2371, and the change of use of the existing retail unit to accommodate the provision of a 24 hour gymnasium at ground level (457 sqm) and mezzanine level.

Reinstatement of previously permitted mezzanine level window to the rear elevation, signage, frosted decals to windows, connection to existing services, and site works.

Location

Unit 22, Carton Park Retail Campus, Dublin Road, Maynooth, Co. Kildare.

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

19/1134

Applicant(s)

Tesco Ireland Limited

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

First Party vs Condition

Appellant(s)	Tesco Ireland Limited
Observer(s)	Leinster Park Residents Association
Date of Site Inspection	10 th May 2021
Inspector	Phillippa Joyce

1.0 Site Location and Description

- 1.1. The appeal site is located at Unit 22 in the Carton Retail Park, on the southern side of the Dublin Road (R148), c. 500m east of Maynooth town centre. Carton Retail Park is a major retail complex, comprising a shopping centre with Tesco as anchor, retail warehouse units, smaller services providers, a petrol station and a fast-food restaurant. The buildings within the retail park are arranged around the eastern, southern, and western peripheries, with surface car parking areas provided centrally.
- 1.2. Unit 22 is at the western end of the row of retail warehouses, which is located towards the south of the Retail Park. On the eastern side of the subject unit is Boots Pharmacy, while on the western side is a single storey substation structure. As noted at site inspection, the subject unit is presently vacant. The stated floor area of the unit is 457 sqm, which largely corresponds with the redline boundary of the appeal site with an indicated area of 0.47 ha. The wider Retail Park is outlined in blue, indicating control by the applicant, and a right of way is indicated in yellow along the eastern boundary aligning with access into the service yard area.
- 1.3. Along the western side of the Retail Park is Leinster Park, an established residential street accommodating several, principally, detached single storey dwellings. The street is a cul de sac, at the end of which are sited four dwellings (No.s 6-9 inclusive) with rear gardens abutting the southwestern boundary of the retail park. Between the rear boundaries of these dwellings and the side gable of the substation/ retail warehouse row, is the service yard with circulation area serving operators within the retail park. The Royal Canal is adjacent to the southern boundary of the Retail Park.

2.0 Proposed Development

- 2.1. The proposed development comprises a new mezzanine level within the unit, and a change of use of the total unit from retail to a gymnasium, to operate on a 24-hour basis. The stated floor area of the additional mezzanine level is given as 183 sqm. The proposed development also consists of the reinstatement of a mezzanine level window in the rear elevation, frosted decals to windows, signage, connection to services, and all site works.

- 2.2. Further Information (FI) and Clarification of Further Information (CFI) were requested by the planning authority. The items raised at both stages related to noise generation associated with the proposed use and impacts on the adjacent properties to the west in Leinster Park.
- 2.3. In the responses, a Noise Impact Assessment (NIA) was undertaken in which a number of mitigation measures were identified to address noise issues. The responses did not result in any alteration to the use, hours of operation, external design (windows, signage), or floorspace (internal layout, quantum) of the proposal.

3.0 Planning Authority Decision

3.1. Summary of the Decision

- 3.1.1. On the 5th October 2020, the planning authority decided to grant permission subject to 15 conditions. While certain conditions are standard in nature, of note is Condition 2, which comprises two parts, (a) and (b), the latter which is subject of this first party appeal. Also of note are Conditions 4 to 12 inclusive which are all specific to the application and are noise related. For ease of reference, Condition 2 in its entirety is provided in full below, with an overview of the noise related conditions:

Condition 2:

(a) The subject unit shall only be used as a 24 hour gym and for no other purpose without a prior grant of planning permission.

(b): This is a temporary permission only, and shall expire 12 months from the date of the final grant of permission, unless by that time permission for it's continuation of use has been granted by the Planning Authority or An Bord Pleanála on appeal.

Reason: In the interest of clarity and in the interest of residential amenity.

Condition 4: noise from the development as measured at noise sensitive locations shall (a) not exceed 55 db(A) Monday to Friday 8.00-18.00, and 45 db(A) at any other time, and (b) not have any audible or tonal component;

Condition 5: two-sided high acoustic screen provided to partially enclose the two condensers;

Condition 6: acoustic screen to be located as close as possible to the condensers;

Condition 7: additional wall lining to be installed on the external wall partition within the first floor studio;

Condition 8: ceiling within the 1st floor studio with a minimum of 12db Rw sound insulation performance along with an impact resilient floor covering with a minimum of 20db Lw, to be provided;

Condition 9: ground floor main gymnasium to be provided with an impact resilient floor covering, with a minimum of 20db Lw;

Condition 10: speakers within the main gym to be positioned at low levels and away from the upper section of the external wall;

Condition 11: if noise complaints are received relating to music noise exceedance, the installation of a propriety music noise limiting device shall be necessary; and

Condition 12: noise mitigation measures identified in named sections of the named report to be implemented.

The same reason is cited for Conditions 4 to 12 inclusive: 'In the interests of noise control and residential amenity'.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's reports are the basis for the planning authority decision. The key items from the planner's initial, FI and CFI reports are summarised as follows:

- Sports/ leisure use, the operation of the use on a 24-hour basis, fenestration details, and signage all considered acceptable in principle;
- Transportation (car parking) and water services infrastructure sufficient to service the proposal;
- Noise impacts arising from general operation, music and air conditioning are required to be addressed;
- Noise Impact Assessment (NIA) submitted at FI is noted;
- Additional baseline surveying at identified noise sensitive locations, cumulative noise levels associated with the proposed use (music and air

conditioning units) at these locations, and mitigation measures to address impacts of same are required to be addressed;

- Supplemented NIA information submitted at CFI is noted and considered acceptable;
- Regard had to zoning, use, location, and planning history and permission recommended to be granted subject to conditions, including Condition 2(b); and
- Save for the reason cited with Condition 2, in the planner's reports there is no discussion of or explanation for the inclusion of a temporary permission as per Condition 2(b).

3.2.2. Other Technical Reports

Environment Section: initial report requires further information including a noise assessment with baseline conditions, predicted and cumulative noise levels, tonal and vibration information, and mitigation measures; FI report requires baseline monitoring within closest properties, cumulative noise levels, and mitigation measures; and CFI report indicates satisfaction with noise assessment and conditions recommended.

Roads Section: no objection.

Area Engineer: no objection.

Chief Fire Officer: no objection, requires fire certificate.

Water Services Section: no objection subject to standard condition.

3.3. Prescribed Bodies

Irish Water: no objection subject to standard condition.

3.4. Third Party Observations

- 3.4.1. One third party submission was received by the planning authority from a named member of the Leinster Park Residents Association referring to noise nuisance with an operator of an adjacent premises within the Retail Park, and highlighting three areas of concern: unclear proposals for and possible noise pollution from air conditioning units for premises, noise impact from music of gym use; and 24-hour operation unacceptable, will attract anti-social behaviour, requests 7am to 12am.

4.0 Planning History

Appeal Site

PA Ref. 05/2371 (PL09.221653, appeal withdrawn)

Permission granted on 3rd January 2007 to the applicant for demolition of foodstore, construction of a replacement foodstore also to include 16 retail units and all associated site works.

This consent is the implemented parent permission for the retail park, with Unit 22 granted permission for ground and mezzanine floorspace totalling 656 sqm (457 sqm and 199 sqm respectively).

The applicant indicates that the mezzanine level was not implemented, and the proposed development seeks to provide a reduced mezzanine level floorspace in a configuration to meet the requirements of the proposed end user, Anytime Fitness, with fenestration and signage as previously permitted.

Condition 26 of the parent permission relates to noise, and is as follows:

Condition 26:

*(a): Noise from the development shall not give rise to sound pressure levels (Leq 15 minutes) measured at *noise sensitive locations which exceed the following limits: 55 dB(A) between the hours of 0800 and 1800 Monday to Friday inclusive (excluding bank holidays) 45 dB(A) at any other time.*

*(b) There shall be no clearly audible tonal component or impulsive component in the noise emission from the development at any *noise sensitive location.*

*Note: *noise sensitive location: Any dwelling house, hotel or hostel, health building, educational establishment, place of worship or entertainment, or any other facility or area of high amenity which for its proper enjoyment requires the absence of noise at nuisance levels.*

Reason: In the interest of public health, to avoid pollution and to ensure proper development.

Site to Northwest

PA Ref. 18/1471, ABP 306262-19

Retention and permission refused on 12th May 2020 to CDS Superstores (International) Ltd for retention of additions to the existing unit including air conditioning and condenser units and noise abatement screens, and permission to amend Condition 9a of the planning application Ref. 17/237.

The amendment sought to Condition 9a of PA Ref. 17/237 (which is Condition 26 of PA Ref. 05/2371) involved increasing the period of the permitted higher noise 55dB(A) limit of 10 hours by a further 2 hours, introducing a new middle limit of 50dB(A) for 4 hours between 1900 and 2300, and reducing the permitted lower limit level of 45db(A) from 14 hours to 8 hours in length.

The Inspector's report outlines the history of planning enforcement at this operation (The Range) due to noise impacts arising from air conditioning and condensers units and nuisance caused to properties in Leinster Park.

5.0 Policy Context

5.1. Local Policy

- 5.1.1. The applicable development plan is the Kildare County Development Plan 2017-2023, (CDP) as varied. Section 7.6 Environmental Services contains policy on pollution control, including from noise sources. Of relevance to the proposed development includes:

PC 7: Ensure that noise levels caused by new and existing developments throughout the county do not exceed normally accepted standards and that new developments shall incorporate measures to ensure compliance with the Environmental Noise Regulations 2006 and any subsequent revision of these Regulations.

PC 9: Require activities likely to give rise to excessive noise to install noise mitigation measures and monitors.

- 5.1.2. The appeal site is located within the development boundaries of the Maynooth Local Area Plan (LAP) 2013-2019, which contains zonings and zoning matrices for use classes for the town. Within the LAP, as part of the wider Carton Retail Park, the appeal site is zoned as A2: Town Centre with the objective 'To promote mixed use development as an extension of the town centre'. For assessment purposes, I

consider the proposed development to be a 'recreational building' use class, which is identified as permitted in principle of the A2 zoning.

- 5.1.3. The lands located to the west of the appeal site are zoned as B: Existing Residential and Infill with the objective 'To protect and improve existing residential amenity; to provide for appropriate infill residential development and to provide for new and improved ancillary services'.
- 5.1.4. Neither the CDP or the Maynooth LAP have any specific objectives or policies on gymnasium uses per se.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA (pNHA).
- 5.2.2. The Royal Canal, a pNHA, abuts the southern boundary of the wider Carton Retail Park. The southern boundary of the appeal site is c.42m from the Royal Canal pNHA designation.
- 5.2.3. The European Site designations in proximity to the site include (measured at closest proximity) the Rye Water Valley/ Carton SAC (001398) 1,149m to the northeast.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The following is a summary of the main issues raised in the first party grounds of appeal:
 - Welcomes the planning authority's decision to grant permission but has serious concerns regarding the temporary nature of the permission;
 - Highlights there are nine noise conditions which are accepted, but submits Condition 2(b) is unreasonable, unnecessary, and overly restrictive;
 - Appeal is being made under the provisions of Section 139 of the Planning and Development Act, and the Board is requested to not determine the application as if made to it in the first instance;

- Relevant provisions from the Development Management Guidelines for Planning Authorities, 2007, are cited on temporary permissions, and the necessary and reasonable nature of conditions;
- Since permission was granted (5th October 2020), plant associated with an adjacent commercial operation which was proximate and causing nuisance to the properties to the west of the site, was relocated from the service yard/ circulation area to the roof of that commercial property (13th October 2020);
- The NIA as submitted at FI stage, and supplemented with further monitoring and analysis at CFI, determined that the gymnasium would not add to the baseline noise levels;
- Mitigation measures are included in the NIA as follows:
 - Selection and design of new plant/ condenser items to ensure low noise emissions;
 - Two sided, 2m high acoustic screen to partially enclose the proposed condensers;
 - Additional wall lining within the first floor level studio to address any potential noise breakout;
 - Suitable ceiling within the first floor level studio and gym floor mat to be used to ensure sounds and vibrations will not be perceptible; and
 - Internal music noise limits;
- The planning authority's Environment Department stated it had no objection and did not include a condition restricting the time period to 12 months;
- There is no indication in the planner's reports as to why the permission has been limited to 12 months; and
- The 12-month lifespan results in too high a burden and cost for the operator, jeopardising the viability of the scheme.

6.2. Planning Authority Response

- 6.2.1. The planning authority has responded to the appeal indicating the matters to which regard was given in making its decision, referring the Board to the planning report

and other technical reports. The Board is requested to uphold the decision to grant permission.

6.3. **Observations**

6.3.1. One third party observation has been made on the appeal by the Leinster Park Residents Association, the main items raised can be summarised as follows:

- Main concern is the potential for noise emissions, in particular noise from air conditioning units and other plant associated with the proposed development;
- Refers to previous noise disturbance and nuisance from another operator within the Retail Park; and
- Condition 2(b) is the only means of ensuring that noise or any other issues that may arise can be addressed and resolved in a prompt and timely manner.

7.0 **Assessment**

7.1. Having regard to the nature and scale of the proposed development, the planning history at the wider Retail Park, the specific issues arising in the appeal against one condition, and the nature of that condition, I am satisfied that the determination of the application as if it had been made to the Board in the first instance is not warranted.

7.2. In this regard, I consider that the Board should determine the matters raised in the appeal in accordance with Section 139 of the Planning and Development Act 2000, as amended. Therefore, this assessment is confined to the specific appeal of Condition 2(b) of the planning authority decision.

7.3. **Condition 2(b)**

7.3.1. Condition 2 comprises two parts, (a) specifying the use and hours of operation permitted, and (b) restricting the operation of the use to a temporary permission for a period of 12 months. The combined reason cited for Condition 2 is in the interest of clarity and in the interest of residential amenity.

7.3.2. The applicant is appealing Condition 2(b) stating it is unreasonable, unnecessary, and overly restrictive. The applicant states that the basis for the condition is not apparent from the planning authority reports.

- 7.3.3. I have reviewed the application and appeal response from the planning authority, and concur with the applicant that the planning basis for Condition 2(b) is not expressly provided. It is not apparent that a temporary permission was being considered during the assessment of the proposed development, nor is there a planning rationale for the condition per se. As such, only the reason as cited can be relied upon and the appeal pivots on the issue of residential amenity as afforded by the subject condition, with regard being had to the remaining conditions of the planning authority decision.
- 7.3.4. From a review of the planner's reports and those of the Environment Section, it is apparent that the planning authority gave due regard to noise arising from the proposed development and the resultant impacts on adjacent residential properties. As outlined in Section 3.0 of my report above, FI and CFI were requested during the assessment of the application to determine the associated noise levels and the extent of the potential impacts.
- 7.3.5. I have reviewed the Noise Impact Assessment (NIA) as submitted at FI and the supplementary information to the NIA submitted at CFI. As submitted at FI, the NIA undertook baseline monitoring within the appeal site close to the boundary with properties on Leinster Park, cumulative noise predictions were based on the selection of proposed plants items and designed to not exceed a chosen noise limit (36 db $L_{Aeq T}$), similarly the noise mitigation measures were formed based on the premise of not exceeding that noise limit. The NIA included noise and tonal/vibration surveys of existing Anytime Fitness operations (from plant and music sources). At CFI, additional baseline monitoring was undertaken within the rear gardens of No.s 7 and 9 Leinster Park, and the predicted cumulative noise levels from the proposed plant were logarithmically added to the newly determined baseline conditions.
- 7.3.6. In the NIA, as supplemented at CFI stage, the applicant includes several mitigation measures to address noise generated from the proposal and ensure that noise levels and the degree of impact will be prevented at source and/ or ameliorated. These include acoustic screening of plant, floor, ceiling and wall linings, impact resilient floor mats, and internal music noise limits. The NIA, as supplemented, concludes that subject to the mitigation measures, the noise and vibration emissions arising from the proposed development will not impact on the residential amenity of the

area. I consider the methodology employed in the full noise assessment to be logical and thorough, and as such, I consider the conclusion in respect of residential amenity to be acceptable.

- 7.3.7. The planning authority decision to grant permission is subject to nine noise related conditions, the reason cited for each is: 'In the interests of noise control and residential amenity'. I consider these conditions to be wholly comprehensive in relation to controlling noise generated by the proposal through operation (Conditions 4 and 10), through design and build (Conditions 5, 6, 7, 8, 9, and 12) and through monitoring and a complaints process (Condition 11). Compliance with these conditions will ensure that the use can operate in a reasonable manner, without adversely impacting on the residential amenity of adjacent properties.
- 7.3.8. I note the observer's request that Condition 2(b) remains, their concerns over noise nuisance associated with the proposed use, and wanting to pre-empt a problematic situation arising with the proposed development due to previous experience of noise disturbance by the operator to the northwest of the appeal site within the Retail Park.
- 7.3.9. However, as I have outlined above, I consider the applicant has presented the factual baseline information, examined other similar operations to determine comparable noise levels, used an acceptable methodology in the NIA to predict noise levels for the proposed development, and included measures to address same. There is a comprehensive suite of noise related conditions attached to the grant of permission, which will ensure noise generation is limited at source through design and operation, which are enforceable in nature. As such, I am satisfied that Condition 2(b), in effect restricting the proposal to a temporary permission of 12-months due to residential amenity, is not necessary or reasonable.

7.4. Appropriate Assessment Screening

- 7.4.1. Having regard to the nature and scale of the proposed development, the location of the site within a suitably zoned and adequately serviced urban area, the physical separation distances to European Sites, and the absence of ecological and/ or hydrological connections, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

8.0 Recommendation

- 8.1. I recommend that Condition 2 be amended through the omission of Condition 2(b) and the removal of numbering of Condition 2(a).

9.0 Reasons and Considerations

- 9.1. Having regard to nature and scale of the proposed development, its location within an established retail park accommodating a range of commercial and service uses the A2: Town Centre zoning objective pertaining to the site, and the planning history at and in the vicinity of the site, it is considered that:

- the restriction of the gymnasium use to an appropriate period of 12 months from the date of final grant as required by the planning authority in its imposition of Condition 2(b) is not warranted, and that the proposed development with the omission of Condition 2(b), would not have an adverse impact on the residential amenity of the area. Therefore, the proposed development would be in accordance with the proper planning and sustainable development of the area.

- 9.2. It is recommended that Condition 2 be amended through the omission of Condition 2(b) and the removal of numbering of Condition 2(a) as follows:

Condition 2: The subject unit shall only be used as a 24 hour gym and for no other purpose without a prior grant of planning permission.

Reason: In the interest of clarity and in the interest of residential amenity.

Phillippa Joyce

Senior Planning Inspector

17th May 2021