



An
Bord
Pleanála

Inspector's Report ABP312187-22

Development

Retention permission for (i) Designated outdoor training area (59.4 sqm) (ii) Single storey pergola structure and sheltered training area (40 sqm) (iii) Storage container (15.7 sqm) (iv) All associated site and engineering works necessary to facilitate the development, all located within the existing yard to the rear of the existing gym facility.

Location

Black Rose Gym, 61 Strand Street, Townparks, Skerries, Dublin K34 N9.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F21A/0511.

Applicant(s)

Ryan Donnelly.

Type of Application

Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First / Third Party

Appellant(s)

Ryan Donnelly

Observer(s)

Michael McNamara.

Elizabeth O’Riordan.

Date of Site Inspection

14.04.2022

Inspector

Mary Mac Mahon

1.0 Site Location and Description

- 1.1. The site is located on a corner site on Strand Street, the main street in Skerries. It is the end building on a terrace, which adjoins a laneway (Fair's Lane), with a service lane to rear. The observer, Mr. Michael McNamara lives on the other side of Fair's Lane. Fair's Lane links the main street to South Strand Street. The area to the rear is largely residential in character, with both houses and apartment blocks. The property of the observer, Ms. Elisabeth O'Riordan, backs onto the service laneway.
- 1.2. No. 61 is an older, two storey building with a cement block extension to the rear. Its former use is described as a hardware shop. The site area is stated as 0.0473 ha.
- 1.3. On the evening I visited the site, noise was clearly audible in the laneway from the gym. It was coming from the walls and from the rear doors, which were kept open. There was no activity in the yard at the time of my visit, which was unannounced.
- 1.4. The yard area to the rear consists of a metal storage container, a weight rack and a pergola structure covered in Perspex corrugated sheeting, running the length of the yard. The ground was covered in rubber matting. An existing roller shutter door to the building at lower ground floor was open, as was the fire escape door at first floor level.

2.0 Proposed Development

- 2.1. The development to be retained is the use of the yard area for training and the associated structures – container, weight rack and pergola structure for training.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the above to be retained.

The stated reason is as follows:

“The development to be retained, comprising the use of a yard area for outdoor training and associated development, would result in a significant intensification of use on the site. As such, the proposal would cause a significant level of disamenity through noise

generation and disturbance to adjoining residents and residents in the area and would contravene Objectives PM69, NP03 and DMS04 of the Fingal Development Plan 2017-2023. The proposal would therefore seriously injure the residential amenities of the area, depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer noted the town centre zoning of the site and its location within the Skerries Architectural Conservation Area. Two submissions were made on the file (the observers on the appeal). The Planning Officer noted that the development to be retained does not visually impact on the conservation area. However, concerns arise from the negative impact of the development to be retained in relation to the residential amenities of residential properties in the vicinity of the site.

The report notes while the site is zoned for Town Centre uses, this has to be balanced with the predominantly residential nature of the local area. The use of matting to reduce the level of noise from the site has not had a perceptible impact on noise. The outside exercise area could provide for a large number of patrons, which could give rise to significant noise and disturbance. The development proposed to be retained would give rise to a significant intensification of use, adversely effecting residential amenity. Refusal of permission is recommended.

Other Technical Reports

The Conservation Office examined the file and had no objection or requirements.

The Environmental Health Officer recommended that gymnasiums be permitted, where possible, in stand-alone, acoustically designed buildings due to the issue of noise nuisance. Noise nuisance arising from the activity are described as impulsive and low frequency. The report notes that numerous complaints have been made about the site. These complaints cited amplified music, loud commentary from instructors and the noise and vibration from equipment use.

Water Services had no objection subject to condition.

Transportation Planning Section considered that the use of pay and display public parking in the area could cope with any additional demand arising from the proposed development and sought that 6 no. covered bicycle parking spaces be provided.

4.0 Planning History

- 4.1. Enf. 18/274A – construction of a roller door at first floor to rear of the building; the rear of the building has not been clad as per approved plans under F17A/0519; non-compliance with Condition 12 regarding the non-broadcasting of music or amplified sound from the building; non-compliance with construction working hours and non-compliance with having graphics on the windows.
- 4.2. F17A/0519 – Permission granted (01.02.2018) for a change of use from existing two storey hardware shop to gymnasium. Opening hours are conditioned to 0600 to 2200 hours, Monday to Friday and 0800 to 2100 hours, Saturday and Sunday, including bank holidays (Condition 4). Condition 3 requires that any increase in the use of the premises for gymnasium use shall be subject to a prior grant of permission. Condition 12 requires that no music or amplified sound shall be broadcast externally. Noise emanating from the premises shall not cause a nuisance to occupiers of adjacent properties and users of the public road. Condition 13 requires that the development be operated so as there will be no noise vibration on the site as would give reasonable annoyance to persons in the vicinity of the site.
- 4.3. F16A/0322 – Permission granted (18.10.2016) for the part change of use of retail to wine bar use with associated dining.
- 4.4. F09A/0474 – Permission granted (16.12.2009) for the rebuilding of the existing two storey shop with boundary walls and gate to yard behind retained building as a result of fire.
- 4.5. Various other permissions are cited in the Planning Report, but which are not relevant to the development proposed to be retained.

5.0 Policy and Context

5.1. Development Plan

The Fingal Development Plan, 2017-2023, applies. It includes the following policies:

“Town and District Centre zoning ‘TC’ The objective of which is to ‘Protect and Enhance the Special Physical and Social Character of Town and District Centres and / or Improve Urban Facilities.”

A recreational facility/sports club is permitted in principle in this zoning.

Page 10 of the development plan, under Section 1.6 Strategic Policy, states:

“Promote the vibrancy of town centres by providing for a mix of uses, including cultural and community uses and upper floor residential, as appropriate.”

“Objective PM69: Ensure that proposals do not have a detrimental effect on local amenity by way of traffic, parking, noise or loss of privacy of adjacent residents.”

“Objective NP03: Require that all developments be designed and operated in a manner that will minimise and contain noise levels.”

Page 413 of the plan states:

“Town, village, district and local centres are the primary focus of economic, community and residential development throughout the County. To ensure this development takes place in a sustainable and efficient manner, mixed use developments are essential. Such mixed uses should complement each other and where this is not possible segregation of uses should take place.”

“Objective DMS04: Assess planning applications for change of uses in all urban and village centres on their positive contribution to diversification of the area together with the cumulative effects on traffic, heritage, environment, parking and local residential amenity.”

Page 300 of the development plan states:

“Noise can be characterised as ‘unwanted sound’ or ‘sound that is loud, unpleasant or unexpected’ and that can eventually cause disturbance, impairment or damage to health. Road and air based transport modes are the dominant noise sources in the County, other forms of noise such as impulsive or tonal noise can potentially be more

of a nuisance. The planning system can help minimise the adverse effects of noise pollution through the use of planning conditions or by guiding development so that significant noise sources are located away from noise sensitive locations to areas where noise will not be such an important consideration. When considering applications for new developments or uses likely to increase noise levels and cause an unacceptable degree of disturbance, the Council will seek to contain and minimise noise. This is of particular concern in the urban areas where night-time activities such as public houses, clubs and restaurants and day-time uses such as factories have a significant impact on residential amenity. Additionally, the Council will continue to promote appropriate land use patterns in the vicinity of the airport and flight paths and strive in so far as is appropriate to minimise housing developments in order to limit the exposure of residents to excessive noise levels. Design aspects such as façade construction/orientation, room usage, window construction, use of active or passive air vents and site boundary noise mitigation measures reduce exposure to noise.”

5.2. Natural Heritage Designations

Having regard to the nature of the development proposed to be retained, no appropriate assessment issues arise.

5.3. EIA Screening

Having regard to the nature of the development proposed to be retained, the development does not come within the scope of Environmental Impact Assessment.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal is submitted by the appellant’s agent, CWPA Planning and Architecture Ltd.

- The extent of intensification, at 28.4%, is considered reasonable;
- The use is in accordance with the town centre zoning and is permitted in principle;

- The use is compatible with the surrounding uses;
- Mitigation measures to reduce noise have been implemented – no speakers in the outdoor training area, no provision of weight racks and sound deadening matts have been provided;
- Noise complaints to the EHO is not considered a planning matter and should not be a determining factor in the assessment of the application;
- There are two other gyms in Skerries and one, at 21 South Strand Street, adjoining a residential use and is similar in location to the appeal site [Note – this appears to have closed down].

6.2. Planning Authority Response

The planning authority has no further comment to make on the application. A financial contribution condition is requested, should An Bord Pleanála grant planning permission.

6.3. Observations

Two observations have been made on the appeal, from Mr. Michael McNamara of 60 Strand Street and Ms. Elisabeth O’Riordan of 2, Island View, South Strand. The grounds are set out below:

- Since the opening of the gym, there has been a noise and vibration problem and attempts to resolve it have not been successful;
- Warning letters have issued to the appellant from the council;
- The current structures were installed in April, 2021, but have not been operational since the warning letters;
- This part of Strand Street is predominantly residential, irrespective of zoning;
- Traffic and parking will increase as result of the development proposed to be retained;
- No noise abatement measures will work in an outdoor gym;

- The retention of the outdoor gym is contrary to the noise policy set out in the development plan;
- The mitigation measures are not working as the door openings remain open and any sound proofing is negated by this;
- The racks are attached to the container;
- Mats do not deal with air borne noise – e.g., instructions being shouted;
- Outdoor gyms are not located beside residential settings;
- The operation of the gym significantly detracts from the observers' homes, gardens and quality of life and gives rise to stress and disturbance to sleep, thereby seriously injuring residential amenity;
- The value of property if the development is retained will be devalued;

Maps are provided to illustrate the physical relationship with the gym. A log of noise disturbances covering a 2 week period is provided.

6.4. **Further Responses**

No further responses as the observations were not circulated.

7.0 **Assessment**

7.1. The main issues in this appeal, in my opinion, are:

- Development policy;
- Planning history;
- Impact on residential amenities;

7.2 The site is located in a town centre zoning, where a recreational use / sports club is permitted in principle. However, the development plan acknowledges that noise pollution can have an adverse impact on surrounding uses and that conditions are necessary to contain and minimise noise. Gyms generate noise and vibration through the use of amplified music, the movement of equipment and instructions in classes, which must be louder than the volume level of the amplified music.

- 7.3 The planning history of the subject site demonstrates that the planning authority was aware of the potential for noise to impact on the surrounding area. It attached conditions under F17A/0519 to enable the operation of the gym while protecting the amenity of the area. These included hours of operation, limiting the physical extent of the gym use and a requirement that noise emanating shall not cause nuisance to occupants of adjacent properties.
- 7.4 Hours of operation are prescribed (see Section 4.0 for details). A perusal of the gym's website, <https://blackrosegym.ie/> on 27.04.2022, indicates that classes are confined to these hours. Classes begin at 0615 and the last class begins at 1915. The noise log provided by the observer, Ms. O'Riordan, confirms that noise does not occur outside these hours.
- 7.5 On the evening I visited the site, the yard area was not in use. However, noise could be heard coming through the walls and from open rear doors at ground and first floor levels. The volume of noise emanating from the building arises in part, due to the fact that the doors to the rear of the premises were kept open to allow ventilation inside the building. The noises included amplified music, equipment and instruction. The noises were loud and could be heard clearly throughout the area around the site. The bulk of the area is residential in nature. I am satisfied that the level of noise I experienced on the site visit would constitute a nuisance for those in the area.
- 7.6 I am of the opinion that the sound insulation levels within the building are not sufficient to prevent noise from escaping the building. The absence of a proper ventilation system has resulted in the operators relying on the opening of doors to cool gym users. The combination of both factors has resulted in a development that gives rise to noise nuisance. Both these factors are amenable to rectification.
- 7.7 Having regard to the above, the question arises whether the development seeking retention should be permitted to be retained as an outdoor training area. I cannot see how the open yard can be operated without giving rise to some noise. However, one of the issues that the current Covid pandemic has demonstrated is the necessity for businesses to have access to outdoor areas, to continue to function. If planning permission is granted, the level of noise can be limited through condition such as operational hours and the prohibition of amplified music be played outdoors.

- 7.8 The development proposed for retention would not give rise to a devaluation of property in the vicinity.
- 7.9 Furthermore, I am conscious of the town centre location of the premises, in an Architectural Conservation Area and the difficulty of attracting and retaining businesses into these areas. Where an existing business is seeking an extension of its use and the use is acceptable in principle in the zoning, this is in accordance with the general policy to ensure the vibrancy of town centres.
- 7.9 I would consider that the extent of additional use will not give rise to significantly more traffic or parking requirements.
- 7.10 Therefore, I am minded to recommend a grant of permission that the outdoor area be retained but available for use only between 0900 hours until 2000 and that no amplified music is permitted in this area.
- 7.11 A grant of permission for the retention of the development does not preclude the planning authority from taking enforcement action in relation to conditions attached to F17A/0519, to remedy the existing defects in the operation of the gym, as outlined above.

8.0 Recommendation

- 8.1. I recommend that permission for the development proposed for retention, be granted, subject to condition.

9.0 Reasons and Considerations

Having regard to the 'Town and District Centre' zoning of the site and the policies as set out in the Fingal Development Plan, 2017-2023, the planning history of the site, and the pattern of development in the area, it is considered, that subject to the conditions as set out below, the development proposed for retention, would not seriously injure the amenities of property in the vicinity. The development would therefore be in accordance with the proper planning and development of the area.

10.0 Conditions

1.	<p>The hours of operation of the outdoor area shall be between 0900 hours and 2000 hours Monday to Saturday and between 1200 hours and 1800 hours on Sundays or public holidays.</p> <p>Reason: In the interest of the [residential] amenities of property in the vicinity.</p>
2.	<p>Amplified music is not permitted in this area.</p> <p>Reason: In order to protect the amenities of residential property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.</p>
3.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p>

	<p>Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Mary Mac Mahon
Planning Inspector

29 April, 2022