



An
Bord
Pleanála

Inspector's Report 313382-22

Development	The provision of 5 no. storage container units, the retention of 15 no. storage container units and all associated site works
Location	Noyeks Newmans, North Road, Finglas, Dublin 11.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3141/22
Applicant(s)	Noyeks Ltd trading as Noyeks Newmans
Type of Application	Permission and Retention Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v. Decision
Appellant(s)	Noyeks Ltd trading as Noyeks Newmans
Observer(s)	Alan McCormack
Date of Site Inspection	13 th February 2023

Inspector

Louise Treacy

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 13,510 m² and is located on the north-eastern side of regional road R135 (North Road) proximate to its junction with Charlestown Place, Finglas, Dublin 11. The site is adjoined by other commercial land uses immediately to the north-west and south-west fronting onto the R135. A residential estate of 2-storey dwellings at McKelvey Avenue adjoins the site to the rear along its eastern boundary. Undeveloped / greenfield lands adjoin the site to the north / north-east.
- 1.2. The site is characterised by 2 no. large commercial units which are occupied by Noyeks Newmans interiors business. Block A is generally located on the northern portion of the site, while block B occupies the southern portion. Vehicular access is from the R135 along the western site boundary. A landscaped buffer and customer parking are provided to the front of the commercial units adjacent to the western / front site boundary.
- 1.3. The remainder of the site is characterised by hard standing and a number of single and double-stacked storage containers (20 ft, 40 ft and 45 ft) which have been placed adjacent to the southern, eastern and north-eastern site boundaries and adjoining the rear elevation of Block A. A large articulated trailer containing wooden pallets is also in place along the eastern site boundary, adjacent to the cul-de-sac at the western end of McKelvey Avenue and the front garden of No. 55 McKelvey Avenue.

2.0 Proposed Development

- 2.1. The proposed development will consist of:
 - (a) The provision of 5 new container storage units
 - (i) 2 new double-stacked container storage units to be located at the south-east facing elevation of Block A
 - (ii) 2 new double-stacked containers to be located in front of the hard stand area to the west of Block B

(iii) 1 new single-stacked container to be located in front of the hard stand area to the west of Block B

(b) The retention of 15 container storage units

(i) 8 new double-stacked container storage units located at the east and south-east facing elevations of Block A

(ii) 4 new single stacked containers located on the hard stand area to the east of Block A

(iii) 3 new single stacked containers located on the hard stand area to the south of Block B

(c) All associated site works necessary to facilitate the development.

- 2.2. The container units are 20 ft, 40 ft and 45 ft in size. The single 20 ft unit has an overall height of 2.8 m, a width of 2.35 m and a length of 5.9 m. It is proposed to retain this unit adjacent to the southern site boundary.
- 2.3. The 40 ft units have an overall height of 2.8 m, a width of 2.4 m and a length of 12.4 m. A total of 7 no. of these units are proposed / to be retained to the front of Block B, adjoining the southern site boundary, adjoining the side elevations of Blocks A and B, and adjoining the rear elevation of Block A.
- 2.4. The 45 ft storage units have an overall height of 2.8 m, a width of 2.4 m and a length of 13.6 m. It is proposed to retain 4 no. of these units adjoining the north-eastern site boundary, with a further 1 no. unit to be retained adjoining the rear elevation of Block A.
- 2.5. The units which are proposed / to be retained adjoining the side elevations of Blocks A and B and adjoining the rear elevation of Block A are double stacked (6 no. in total).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Refuse Permission for the Proposed Development issued on 21st March 2022 for 1 no. reason as follows:

“The development proposed, and development to be retained, would contravene materially conditions 4 and 5 of PL29/5/61381 (Reg. Ref. 3238/82) which mandate that this part of the site should be kept under grass, not used for open storage, for vehicular movements or for loading and unloading, in the interests of residential amenity. The use of this part of the site in this manner is giving rise to noise impacts which seriously injure the amenities of neighbouring residential properties on McKelvey Avenue in a Z1 residential zoning and the intensification of same would further seriously detract from the amenities and depreciate the value of property in the vicinity. The proposed development is, therefore, contrary to the proper planning and sustainable development of the area and contrary to the provisions of the Dublin City Development Plan 2016-2022”.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 3.2.2. Basis of Planning Authority’s decision.

- 3.2.3. The Planning Officer considered that the use of the containers, including the opening and closing of doors, stacking and unstacking of containers, loading and unloading of goods, and the use of machinery and vehicles in such close proximity to the adjoining residential zone, would have undue impacts on neighbouring residential amenity due to the noise involved and the close proximity to No. 68 McKelvey Avenue, and to a lesser extent Nos. 51-55. It was considered that these impacts could not be mitigated by condition.

3.2.4. Other Technical Reports

- 3.2.5. **Engineering Department – Drainage Division:** No objection to the proposed development subject to condition.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. Third-party observations were made on the application by: (1) Linda Jones, 53 McKelvey Avenue, Finglas, and (2) Alan McCormack (and neighbouring residents), 68 McKelvey Avenue, Dublin 11. A representation was also made on the application by Cllr. Keith Connolly, Fianna Fail Community Hub, 64 Main Street, Finglas Village.

3.4.2. The issues which are raised can be summarised as follows: (1) noise impacts, (2) overlooking, (3) development will block light to adjoining residential property, (4) overbearing visual impacts.

4.0 **Planning History**

4.1. There is an extensive planning history associated with the subject site. Those applications which are considered most relevant to this appeal case are identified below.

4.2. **Planning Authority Reg. Ref. 3238/82; ABP Ref. 29/5/61381:** Permission granted for cold storage warehouse extension.

4.3. **Condition no. 4** of this permission states:

4.4. "That part of the site to the south and east of the new building shall be retained as an open grassed area and shall not be used for open storage of any kind or for vehicular movements.

4.5. **Reason:** In the interests of residential amenity".

4.6. **Condition no. 5** states:

4.7. "All loading / unloading in relation to the new building shall be carried out exclusively from the northern frontage.

4.8. **Reason:** In the interests of residential amenity".

4.9. **Condition no. 6** states:

4.10. "The existing pump room adjoining the eastern boundary of the site shall be relocated to the northern frontage of the new building.

- 4.11. Reason: In the interests of residential amenity”.
- 4.12. **Planning Authority Reg. Ref. 2523/89; ABP Ref. 29/5/81342:** Permission granted for partial change of use from cold storage to fish packing in respect of approved development, subject to **4 no. conditions** including the following:
- 4.13. Noise levels measured along the eastern boundary of the site shall not exceed 40 dBA.
- 4.14. **Reason:** To protect the amenity of existing property in the area.

Enforcement Planning History

- 4.15. **Planning Authority Ref. E0636/21:** Placement of containers on site. File opened on 9th August 2021.

5.0 Policy and Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The Dublin City Development Plan 2016-2022 was in force at the time this planning application was lodged. The Dublin City Development Plan 2022-2028 has been adopted in the interim and is the relevant local planning policy document for the adjudication of this appeal case.

5.2. Land Use Zoning

- 5.2.1. The site is subject to land use zoning “Z6 (Employment / Enterprise)” which has the objective “to provide for the creation and protection of enterprise and facilitate opportunities for employment creation”. The primary objective for this zone is to create long-term economic employment for the city.
- 5.2.2. The immediately adjoining lands to the rear/ east of the appeal site at McKelvey Avenue are subject to land use zoning “Z1 (Sustainable Residential Neighbourhoods)” which has the objective “to protect, provide and improve residential amenities”.
- 5.2.3. Section 14.6 of the development plan provides guidance in relation to transitional zone areas and states, inter alia, that it is important to avoid abrupt transitions in scale and land-use between zones. In dealing with development proposals in these

contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones.

5.3. Natural Heritage Designations

5.3.1. None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first-party appeal against the Planning Authority's Notification of the Decision to Refuse Permission for the proposed / retained development has been lodged by Tyler Owens Architects on behalf of the applicant. The appeal submission can be summarised as follows:

- It is accepted that the 1982 planning permission on the site noted that part of the site should be kept under grass, not used for storage, for vehicular movements or for loading or unloading, in the interests of residential amenity.
- This planning approval was received by the previous site owners, who had different operational requirements.
- It is recognised that the residential amenity of the neighbouring properties on McKelvey Avenue should be protected.
- It is proposed to move the container units further away from the eastern site boundary and re-introduce planting and green space in this area as per the 1982 planning permission to provide a buffer to the residential area.
- It is also proposed that an acoustic fence be introduced along the eastern site boundary.

6.1.2. The appeal submission includes 2 no. copies of Drawing No. 2021-50-ABP-001 (Existing and Proposed Site Plan) which illustrates the amendments which are proposed to the development as described above.

6.2. **Planning Authority Response**

- 6.2.1. A response was received from the Planning Authority on 29th April 2022. In the event planning permission is granted for the development, it is requested that a S. 48 development contribution condition be attached.

6.3. **Observations**

- 6.3.1. An observation was made on the appeal by Alan McCormack, 68 McKelvey Avenue, Finglas, Dublin 11. The observer supports the Planning Authority's decision to refuse permission for the proposed development. No new issues are raised.

7.0 **Assessment**

- 7.1. I am satisfied that the main issue arising in this case is:

- Impact on Residential Amenities

- 7.2. This issue is addressed in further detail below.

7.3. **Impact on Residential Amenities**

- 7.3.1. Dublin City Council refused permission for the retained / proposed development on the basis that the use of this part of the site, would materially contravene condition nos. 4 and 5 of Planning Authority Reg. Ref. 3238/82 which mandate that it should be kept under grass, not used for open storage, vehicular movements or for loading or unloading in the interests of residential amenity. It was considered that the use of the site in this manner is giving rise to noise impacts which seriously injure the amenities of neighbouring residential properties on McKelvey Avenue, which are subject to a Z1 residential zoning. It was considered that the intensification of the use, would further seriously detract from the amenities and depreciate the value of properties in the vicinity.
- 7.3.2. In considering this issue, and having regard to the applicant's appeal submission, the issues which have been raised by the observer, and having undertaken an inspection of the site, I agree that the development has the potential to have a significant negative impact on the residential amenity of the adjoining estate at McKelvey Avenue, given the separation distances arising and the noise and

disturbance impacts arising. In this regard I note that it is proposed to retain 3 no. single containers which have been placed directly adjacent to the front, side and rear garden of No. 68 McKelvey Avenue and a further 1 no. container located approx. 11 m north of the front property boundary of Nos. 53 and 55 McKelvey Avenue. It is also proposed to retain 3 no. single containers adjacent to the southern site boundary. These containers are proximate to Nos. 39a – 39d McKelvey Avenue, although these dwellings have not been identified on the site plan drawings which accompany the planning application or appeal. Two double height containers are proposed adjacent to the side elevations of Blocks A and B, with a separation distance of approx. 20 m arising to the shared boundary with McKelvey Avenue.

- 7.3.3. The owner of No. 68 McKelvey Avenue has submitted an observation on the appeal which notes that mature trees along the property line have been removed. The observer also raises concerns in relation to noise impacts arising from forklift truck movements over the new concrete yard adjacent to their property. They also note the recent presence of a 5-tonne truck on the site, which they submit is subject to loading movements every morning. This truck (articulated trailer) was present on site at the time of my inspection but does not form part of this planning application. In this regard, I note that the enforcement provisions which apply under Part VIII of the Planning and Development Act, 2000 (as amended) may be relevant in relation to this matter.
- 7.3.4. In considering the foregoing, I note that Google imagery of the site confirms that its north-eastern portion was previously under grass, with trees in place along the northern/north-eastern boundaries. This area of the site has now been covered in concrete and the boundary trees have been removed as identified by the observer and confirmed during my site inspection. In my opinion, the previous treatment of the site, as required under condition no. 4 of Planning Authority Reg. Ref. 3238/82; ABP Ref. 29/5/61381, represents a more appropriate transition between the commercial and residential land uses. I also note that condition no. 5 of this permission requires all loading / unloading to be carried out exclusively from the northern frontage of the existing buildings. In my opinion, the justification for the imposition of these conditions remains valid in the current context.
- 7.3.5. Section 14.6 of the development plan highlights the importance of avoiding abrupt transitions in scale and land-use between zones, and that in dealing with proposals

in such areas, it is necessary to avoid development that would be detrimental to the amenities of the more environmentally sensitive zone. While the applicant accepts the requirements of the 1982 permission pertaining to the site, it is submitted that this planning approval was received by the previous site owners who had different operational requirements. In my opinion, this justification does not address the potential for the proposed and retained development to have a significant negative impact on the amenity of the pre-existing residential development at McKelvey Avenue.

- 7.3.6. In seeking to address the Planning Authority's refusal reason, the applicant has proposed changes to the development under the appeal submission including:
- (1) the introduction of a landscaped buffer along the north-eastern site boundary and the repositioning of 3 no. single containers away from the boundary (proposed set back of 5.125 m from the shared boundary with No. 68 McKelvey Avenue), and
 - (2) the erection of a 2.4 m high acoustic fence / noise barrier along the length of the eastern site boundary.
- 7.3.7. In my opinion, these changes are not sufficient to mitigate the impacts arising to the residential amenity of the existing dwellings at McKelvey Avenue on foot of the proposed and retained development. It is also not possible to determine the level of mitigation which would be offered by the proposed acoustic fence / noise barrier given that a noise assessment has not been provided with the appeal submission. As such, I recommend that planning permission and retention permission be refused in this instance.

8.0 Recommendation

- 8.1. I recommend that planning permission and retention permission be refused.

9.0 Reasons and Considerations

- 9.1. The proposed and retained development, by reason of its proximity to the adjoining dwellings at McKelvey Avenue, which are subject to a Z1 (Sustainable Residential Neighbourhoods) land use zoning, would have a serious negative impact on the residential amenities of these dwellings, and in particular No. 68 McKelvey Avenue, by reason of noise and disturbance impacts arising on foot of loading, unloading and traffic movements associated with the use of the proposed / retained development. Thus, the proposed / retained development would seriously injure the residential amenities of the area, would depreciate the value of property in the area and would be contrary to the proper planning and sustainable development of the area.

Louise Treacy
Senior Planning Inspector

17th February 2023