



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315781-23

<b>Development</b>	RETENTION PERMISSION of rooftop plant including 16 condenser units and the erection of a solid 2.5m high acoustic enclosing screen on the single storey part of gym.
<b>Location</b>	Gym at Units 1, 2 and 3B Whitehall Works, Drumcondra Road Upper, Dublin 9
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	5226/22
<b>Applicant</b>	Flyefit
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Grant permission (10 no. conditions)
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	All Hallows Square OMC CLG
<b>Observer</b>	Breda Fitzgerald
<b>Date of Site Inspection</b>	02/06/2023
<b>Inspector</b>	Conor McGrath

## 1.0 Site Location and Description

1.1. The subject property comprises a large former industrial unit located on a backland site off the Drumcondra Road Upper / N1, Dublin 9. The main building is two-storey with a single-storey flat-roofed element on the eastern side of the site. The property is currently in use as a gym / fitness facility, accessed over a private laneway from the west. Two-storey terraced houses to the south on Clonturk Avenue back onto the access laneway. The site is bounded to the east by duplex dwelling units in All Hallows Square and a area of intervening communal open space. To the north and west, the site is bounded by the rear of commercial properties fronting onto Drumcondra Road Upper and vacant / commercial properties.

## 2.0 Proposed Development

2.1. The proposed development comprises the retention of 16 no. AC / condenser units located at roof level on the single-storey element of the facility on the eastern part of the site. The units are arranged in two rows of eight, facing residential lands in All Hallows Square to the east. As part of the application, permission is also sought for the provision of an acoustic enclosure around these items of plant to mitigate noise impacts on the adjoining properties. This enclosure is approx. 2.5m high over parapet level, with separation from the eastern site boundary varying between 1.5m and 5m. The application was accompanied by a Plant Noise Assessment report prepared by their environmental consultants.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission for the proposed development subject to 10 no. conditions, including the following:

2. The development shall comply with the following requirements:

a) The mitigation measures set out in Section 6.0 of the Plant Noise Assessment report shall be implemented in full, with use of a 2.5m high acoustic screen with a

minimum sound reduction index of 25 dB Rw with the inner face of the screen to comprise a sound absorptive material.

- b) The mitigation measures shall be maintained throughout the operation of the gym.
- c) There shall be a maintenance programme for the plant to ensure any defects are identified and items fixed or replaced as necessary.

Details regarding the specification and performance characteristics of the acoustic screening measures shall be submitted to, and agreed in writing with the EHO.

- 3. The LAeq level measured over 15 minutes (daytime) or 5 minutes (night-time) at a noise sensitive premises when plant is operating shall not exceed the LA90 (15 minutes day or 5 minutes night), by 5 decibels or more, measured from the same position, under the same conditions and during a comparable period with no plant in operation.
- 4. The acoustic screen shall be finished externally in a durable low maintenance material similar in colour to the existing external finishes to the building.
- 5. No further condenser units or similar commercial plant shall be erected on the roofs of the gym building without a prior grant of planning permission.
- 8. (a) During the construction and demolition phases, the development shall comply with British Standard 5228 ' Noise Control on Construction and open sites Part 1. Code of practice for basic information and procedures for noise control.'
- (b) Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. In particular, the rated noise levels from the proposed development shall not constitute reasonable grounds for complaint as provided for in B.S. 4142. Method for rating industrial noise affecting mixed residential and industrial areas.
- 9. a) The site and building works required to implement the development shall only be carried out between the hours of Mondays to Fridays - 7.00am to 6.00pm  
Saturday - 8.00 a.m. to 2.00pm  
Sundays and Public Holidays - No activity on site.

b) Deviation from these times will only be allowed where a written request with compelling reasons for the proposed deviation has been submitted and approval has been issued by Dublin City Council.

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

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

The planning report notes the conclusion of the Plant Noise Assessment report that the plant would have a significant adverse effect on adjoining dwellings. The recommended mitigation measures are noted to be acceptable to the EHO, which is the competent section for the assessment and control of noise, and the planning authority agrees with this view.

Having regard to the proposed acoustic screen, the existing visual impact of the condensers is not of relevance. The screen material is not detailed on the drawings clearly but is 3-10m from the site boundary. The screen would not be incongruous or obtrusive given that it is below the parapet level of the building behind and is consistent therewith. The screen would not have a deleterious or intrusive impact over that already in place such as to injure residential amenities. The screen may result in an improvement in the aspect of the adjoining houses.

No Appropriate Assessment issues arise.

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

EHO: Condenser plant should not cause a noise nuisance locally. Having regard to the technical noise report, subject to the identified mitigation measures, best practise steps are being taken to prevent a noise nuisance. There should be a maintenance programme for the plant to ensure any defects are fixed or replaced as necessary. Condition recommended.

Drainage: No objection subject to conditions.

### **3.3. Third Party Observations**

One observation was received by the planning authority whose content is generally reflected in the third-party appeal.

### **4.0 Planning History**

PA ref. 4189/22: Permission refused on the subject site for retention of existing rooftop plant (16 no. condenser units) and erection of a 1.8m high acoustic enclosing screen on the single storey part of existing gym. The reason for refusal was as follows:

It has not been adequately demonstrated that the proposed mitigation measures will achieve significant reductions in sound levels at the nearest noise sensitive receptors given that sound waves may travel and diffract around the proposed screen and still cause a nuisance issue at the nearest noise sensitive receptors. Having regard to the above and the existing rooftop plant (including 16 no. condenser units) to be permanently retained and their close proximity to the dwellings to the east of the site at All Hallows Square, including the bedrooms and private amenity spaces of these dwellings and its location in a transitional zone area, it is considered that the proposed development, would seriously injure the amenities of property in the vicinity by reason of disturbance and noise potentially from 5.30am to 10.00pm on weekdays and 7.30am to 7.30pm on weekends.

### **5.0 Dublin City Development Plan 2022**

The appeal site is zoned Key Urban Villages and Urban Villages – Objective Z4: To provide for and improve mixed-services facilities.

Key Urban Villages and Urban Villages function to serve the needs of the surrounding catchment providing a range of retail, commercial, cultural, social and community functions that are easily accessible. These centres have, or will in the

future have, the capacity to deliver on a comprehensive range of integrated services along with residential development.

The adjoining residential development to the east is zoned Sustainable Residential Neighbourhood Z1: To protect, provide and improve residential amenities.

Section 14.6 *Transitional Zone Areas*, notes that it is important to avoid abrupt transitions in scale and land-use between zones and avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. In zones abutting residential areas, or abutting residential development within mixed-use zones, particular attention must be paid to the use, scale, density and design of development proposals, and to landscaping and screening proposals, in order to protect the amenities of residential properties

Section 15.14.11 *Leisure Centre / Gym / Fitness Studios*, notes that Dublin City Council will support the provision of leisure centres, gym and fitness studio uses within the city. An assessment of noise and vibration will also be required where the proposal adjoins sensitive uses such as residential developments.

Section 15.5.3 *Alterations, Extensions and Retrofitting of Existing Non-Domestic Buildings*, notes that alterations and extensions at roof level are to respect the scale, elevational proportions and architectural form of the building. Minor external additions such as plant and other equipment shall be concealed within the building envelope where feasible or designed and sited to minimise their visual impact.

Policy SI35 Ambient Noise Quality To seek to preserve and maintain noise quality in the City in accordance with good practice and relevant legislation.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal – All Hallows Square OMC CLG**

- The proposed development will directly affect residents of All Hallows Square through noise disturbance and visual obtrusion.
- At its closest point the development site is 6m from the residential properties in All Hallows Square, which is zoned Z1 for sustainable residential development.

- The development does not respect the transitional zone nature of the area or adjoining residential properties, and will set a precedent for similar. development in transitional zones.
- Section 14.6 of the development plan notes the need to avoid development that would be detrimental to the amenities of adjoining sensitive uses, while the plan contains policies to protect sensitive areas from noise pollution.
- While the noise disturbance aspects of the previously refused development have been reduced, this is at the expense of the visual impact of the 2.5m enclosure.
- This remains an unsuitable location for such plant.
- The impact on the health and well-being of adjoining residents many of whose bedrooms face onto the development, is exacerbated by the late night / early morning hours of operation of the gym.
- The applicants noise survey concluded that the development would have significant adverse on adjoining residents.
- Notwithstanding the noise enclosure, there will still be noise disturbance.
- A screen 2.5m high will not be sufficient to block noise to adjoining 3-storey dwellings.
- Development plan policies seek to minimise the visual impact of facilities and plant.
- The application is not clear with regard to the form or materials used in the enclosure, which will comprise a visually obtrusive wall with overbearing and overshadowing impacts on adjoining communal open space.
- The planning authority do not appear to have had regard to the visual impact of the development.

## 6.2. First Party Response

In response to the third party appeal, the first party make the following points:

Transitional Zone:

- The acoustic enclosure was modelled in the AWN acoustic report and will achieve a sound reduction rating to reduce noise to required levels.
- Condition no. 2 requires the specification to be agreed with the city council.

- Condition no. 4 requires the finish to reflect the existing external finishes.

#### Noise Pollution:

- The acoustic report measured and calculated noise levels against relevant criteria / BS standards to determine impact on All Hallows Square residences.
- Without mitigation, the plant would have a significant adverse effect at the nearest sensitive receptors.
- The acoustic enclosure has been modelled to reduce noise to required levels.
- These measures, along with the requirements of conditions no. 2, 3 and 5, comprehensively address the development plan requirements in relation to noise pollution and ensure that adequate levels of protection are maintained.

#### Visual Impact:

- The current plant layout follows from the rationalisation and updating of previous plant in 2017.
- The enclosure comprises an acoustic screen and a visual screen, which will reflect the appearance of the adjoining building and remove the plant from view.
- The development plan requirement to conceal plant from view is satisfied.

### 6.3. Planning Authority Response

No response from the planning authority has been received to the appeal.

### 6.4. Observations

One observation was received from Breda Fitzgerald, which notes the following points:

- There is a history of enforcement in relation to noise from condensers on this site.
- A subsequent application to retain the plant was refused in 2022.
- There was never any communication from Flyfit with residents.
- The condensers continue to have negative effect on residential amenities in terms of noise and visual impact.
- The previous refusal had regard to proximity to adjoining residential properties.



- The acoustic enclosure will have a greater visual effect.
- It will not achieve significant noise levels and the form of construction is unclear. Solid materials will block sunlight.
- The fans block the landscape of the area, are visually obtrusive and will be inefficient at blocking out noise along the boundary.

## 7.0 Assessment

The third-party appeal raises concerns in relation to the noise and visual impacts of the development on the amenities of residents in All Hallows Square.

The existing gym / fitness facility is a permissible use within the Z4 zone. It is understood from appeal correspondence that the current plant was installed / rationalised in 2017 which gave rise to enforcement proceedings and subsequent planning applications. The subject application is accompanied by a Plant Noise Assessment report prepared by AWN consulting. This assessment finds, on the basis of monitoring undertaken on the site, that the current operation of the plant in the absence of mitigation would have a significant adverse effect on adjoining residential amenities. The concerns expressed in the third-party appeal are therefore understood to be grounded in the resident's experience of exposure to such impacts.

In order to address these acknowledged impacts, the applicants are proposing the installation of an acoustic enclosure to deliver a reduction in noise levels at the adjoining properties to a level which would be appropriate for this urban location.

The Plant Noise Assessment indicates that the enclosure will reduce sound levels at sensitive receptors by between 6 and 11dB, with the residual values, post mitigation, set out in section 7.1 of the report. Subject to the identified mitigation measures and specification set out in the Plant Noise Assessment report, I am satisfied that noise levels at the adjoining residential properties will be reduced to satisfactory levels to ensure the protection of residential amenity. I note the report from the Dublin City Council EHO in respect of this application and I regard the conditions of the planning authority decision as reasonable and appropriate in this regard. I consider further that the results of post-installation monitoring should be submitted to the planning

authority demonstrating the effectiveness of the proposed noise mitigation measures.

While the acoustic consultant's report identifies different construction forms to achieve a minimum sound reduction value, the conditions imposed by the planning authority identify performance criteria to be achieved by such enclosure in line with the specification set out in the consultant's report. I consider that such conditions are sufficient to ensure that adequate levels of residential amenity are achieved.

The plant and proposed acoustic enclosure are located on a single-storey flat roof structure close to the eastern site boundary. The existing main two storey warehouse / gym building is not of high visual quality and, notwithstanding the subject items of plant, the existing outlook for residents in All Hallows Square is not considered to be of particularly high quality or interest. The proposed plant enclosure is 2.5m high over parapet level and will be provided with a similar finish to the main building behind. I consider that it will be in keeping with the nature of existing development on this Z4 site. In this regard, while the enclosure will be visible, I do not consider that there will be any significant negative impact on the visual amenities of properties in All Hallows Square. I note condition no. 4 of the planning authority decision in this regard.

Having regard to the location of the enclosure to the west of All Hallows Square, and its overall height below that of existing adjacent structures on the site, I do not consider that any significant effects on sunlight or daylight to the adjoining development will arise.

While the appellants refer to the provisions of the development plan relating to transitional areas and to the installation of plant, I consider that the proposed acoustic screen will satisfy the requirements of the plan in terms of potential noise and visual impacts in such areas, and concur with the decision of the planning authority in this regard.

## 8.0 EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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.

## 9.0 AA Screening

The proposed development is located within an established urban area and comprises the retention of rooftop plant and provision of a noise enclosure extension. There are no emissions to water or drainage systems from the proposed development not any increase in impermeable surfaces. There are no European sites within the zone of influence of the proposed development.

Having regard to the small scale and limited nature of the development, its location in a serviced urban area and the absence of a pathway to any European site, it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

## 10.0 Recommendation

That the decision of the planning authority be upheld and that permission be granted for the proposed development for the reasons and considerations, and subject to the conditions, set out below.

## 11.0 Reasons and Considerations

Having regard to the established use on these lands zoned for mixed services facilities, the nature and scale of development and the mitigation proposed in order to address noise emissions from plant to be retained, it is considered that subject to

compliance with the conditions set out below, the proposed development would not negatively impact on the visual amenities of the area, would not have significant negative effects on adjoining residential amenities by reason of noise disturbance and would not be prejudicial to public health. It is therefore considered that the proposed development would be in accordance with the proper planning and sustainable development of the area.

## 12.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>a) The Mitigation measures set out in Section 6.0 of the Plant Noise Assessment report shall be implemented in full and shall be maintained throughout the operation of the gym.</p> <p>b) Following installation of the proposed acoustic enclosing screen, the results of further noise monitoring undertaken at the site shall be submitted to the planning authority for their written agreement, confirming the effectiveness of the noise mitigation measures.</p> <p>c) A maintenance programme for the plant shall be implemented to ensure any defects to plant are identified and items fixed or replaced as necessary.</p> <p>d) Details regarding the specification and performance characteristics of the proposed acoustic screening measures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	<b>Reason:</b> In order to protect adjoining residential amenity
3.	<p>(a) The LAeq level measured over 15 minutes (daytime) or 5 minutes (night-time) at a noise sensitive premises when plant is operating shall not exceed the LA90 (15 minutes day or 5 minutes night), by 5 decibels or more, measured from the same position, under the same conditions and during a comparable period with no plant in operation.</p> <p>(b) Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. In particular, the rated noise levels from the proposed development shall not constitute reasonable grounds for complaint as provided for in B.S. 4142. Method for rating industrial noise affecting mixed residential and industrial areas.</p> <p><b>Reason:</b> In order to protect adjoining residential amenity</p>
4.	<p>The external finishes of the proposed acoustic enclosure shall be similar to those of the existing buildings on site in respect of colour and materials.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
5.	<p>No further condenser units or similar commercial plant shall be erected on the roofs of the gym building without a prior grant of planning permission.</p> <p><b>Reason:</b> In the interests of residential and visual amenity</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Conor McGrath  
Planning Inspector

06/06/2023