



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306434-20

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| <b>Development</b>                  | Change of Use of upper floor from residential use to use as Creche by existing on-site Creche. The existing Creche occupies the ground floor. |
| <b>Location</b>                     | Luttrell House, Carpenterstown Road, Dublin 15  |
| <b>Planning Authority</b>           | Fingal County Council   |
| <b>Planning Authority Reg. Ref.</b> | FW19A/0174  |
| <b>Applicant(s)</b>                 | John & Phil Kelly   |
| <b>Type of Application</b>          | Permission  |
| <b>Planning Authority Decision</b>  | Refuse Permission   |
| <b>Type of Appeal</b>               | First Party   |
| <b>Appellant(s)</b>                 | John & Phil Kelly   |
| <b>Observer(s)</b>                  | None  |
| <b>Date of Site Inspection</b>      | 15 <sup>th</sup> March 2020   |
| <b>Inspector</b>                    | Ciara Kellett   |

## 1.0 Site Location and Description

- 1.1. The appeal site is located on Carpenterstown Road, Dublin 15 on the west side of the road. It is c.350m south of Coolmine Train Station and c.1km south of Blanchardstown Shopping Centre.
- 1.2. On the site there is currently a large two storey dwelling fronting onto Carpenterstown Road with a stated area of 368sq.m with two exits/entrances onto Carpenterstown Road. The overall site is c.0.095Ha in area and is triangular in shape. The east of the site bounds the Carpenterstown Road and there are residential areas on the northern and southern boundaries. There is a well-established crèche operating at ground floor known as Luttrell House and a residential area of 147sq.m at first floor level. The residential area comprises of four bedrooms, living, and kitchen/dining area at first floor.
- 1.3. Appendix A includes maps and photos.

## 2.0 Proposed Development

- 2.1. It is proposed to change the use of the residential area at first floor level to crèche use, as well as the addition of an external fire escape stairway. The first floor will comprise two areas of 'flexible child care space', toilets and a kitchen
- 2.2. It is considered that the change of use will enable an increase in capacity from 46 to 75 children with expected numbers at any one time of 65.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse permission for two reasons.

1. *The development as proposed, comprising the change of use of the first floor of this property to use as a childcare facility would remove entirely the remaining residential component on site and would as a consequence contravene materially Objective DMS95 of the Fingal Development Plan which requires that residential properties with childcare shall retain a*

*substantial residential component within the dwelling, and shall be occupied by the operator of the childcare facility. The development as proposed would therefore be contrary to the proper planning and sustainable development of the area.*

2. *The development would contravene materially a condition attached to an existing permission for development being Condition No.6 pertaining to Reg. Ref. F00A/0205 and which relates to the operation of the facility by a person in residence within the premises.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planner's Report is the basis for the Planning Authority's decision. In summary it includes:

- Site is zoned '*RS – Residential – To provide for residential development and protect and improve residential amenity*'. A childcare facility is a use which is permitted in principle.
- The first floor space at the time of inspection did not appear to be occupied as living accommodation.
- Considers the principle of development acceptable.
- Condition no.6 of the parent permission required that the crèche on site be operated by a 'person in residence in the main dwelling to which it is attached'.
- The proposed arrangements might be considered to impact unduly in a negative manner on the residential amenity of adjoining and neighbouring development given the significant increase in the numbers of children attending the facility.
- An area of the proposed fire escape will be seen from the front of the building but is not considered to impact unduly on the visual amenity of adjoining developments.

- Existing set-down can accommodate 6 – 8 cars and would be capable of accommodating the additional demand.
- Considers development would contravene materially a condition pertaining to an existing permission for development on site and would be contrary to the provisions of Objective DMS95 of the Fingal Development Plan 2017 – 2023.
- Recommends that permission is refused.

The decision is in accordance with the Planner's recommendation.

### 3.2.2. Other Technical Reports

- **Transportation Planning Section:** No objection
- **Water Services Department:** No objection
- **Environmental Health Officer:** Further information required in relation to the types of childcare facility to be provided, kitchen facilities, drinking water supply, ventilation and hours of operation.

### 3.3. Prescribed Bodies

- **Irish Water:** No response

### 3.4. Third Party Observations

None received

## 4.0 Planning History

- **Reg. Ref. F00A/0205:** Permission was granted in July 2000 to the current applicants for alterations, renovations and extension to the side and rear at ground and first floor level to accommodate residential and crèche/Montessori school. Of relevance to the current application is condition no.6 which states:

*The proposed crèche/Montessori shall be operated by a person in residence in the main dwelling to which it is attached. The crèche/Montessori shall not be separated from the existing dwelling by*

way of sale or letting or otherwise. **Reason:** *In the interest of the proper planning and development of the area.*

## 5.0 Policy Context

### 5.1. Childcare Facilities Guidelines for Planning Authorities, June 2001

5.1.1. Section 3.3 of these Guidelines is of relevance. It refers to **Specific Locations** and states:

#### **3.3.1 New and Existing Residential Areas**

##### *Full Day Care Facilities - Suitable Sites*

1. *Detached houses/sites or substantial semi-detached properties with space for off-street parking and/or suitable drop-off and collection points for customers and also space for an outdoor play area. In relation to new housing areas, a standard of one childcare facility providing for a minimum 20 childcare places per approximately 75 dwellings may be appropriate. This is a guideline standard and will depend on the particular circumstances of each individual site. Consideration of childcare facilities provision should be raised as early as possible in preplanning discussions for larger housing developments. [See Appendix 2 for a discussion of the criteria to be used to arrive at the base figure.]*

2. *Neighbourhood centres within a residential area provided that the premises can accommodate open space (or have easy access to a safe outdoor play area). In addition, the unit should be able to avail of ancillary parking associated with neighbourhood shops for the purposes of drop-off and collection, or be close to a public transport node.*

3. *Premises/sites on primary traffic routes close to public transport nodes and which can provide safe pull in/parking areas for customers and staff.*

5.1.2. Section 3.4 is of particular relevance to the subject proposal:

#### **Possible Conditions to Planning Permission**

##### **3.4.1 Residential Content**

*In certain circumstances, it may be appropriate to attach a condition that would require some residential content be maintained in the premises. This would apply to planning permissions for change of use to childcare facilities in existing residential areas. It is not necessary that the owner-occupier be the resident. The reason for this condition is that the presence of totally commercial premises would detract from the amenity of the residential community. This condition would not be appropriate in certain, heavily trafficked through roads.*

## **5.2. Circular Letter PL3/2016 – Department Environment, Community and Local Government 2016**

- 5.2.1. This circular notes that with forecasted economic and population growth in conjunction with the extension of the Early Childhood Care and Education (ECCE) Scheme, it is expected that there will be an increased demand for childcare spaces. In line with Government policy to increase access to childcare, it is envisaged that there may be a review of the *Childcare Facilities Guidelines for Planning Authorities 2001*. Planning authorities are requested to expedite, insofar as is possible, consideration of all planning applications in respect of childcare facilities in order to facilitate the expansion of required capacity as appropriate, and to exclude matters relating to childcare facility standards and to solely focus on planning related matters.

## **5.3. Fingal County Council Development Plan 2017 - 2023**

- 5.3.1. Chapter 12 of the Plan refers to Development Management Standards and Section 12.8 specifically addresses Childcare Facilities. There are a number of objectives including:

### ***Objective DMS94:***

*Any application for childcare facilities shall have regard to the following:*

- *Suitability of the site for the type and size of facility proposed.*
- *Adequate sleeping/rest facilities.*
- *Adequate availability of indoor and outdoor play space.*

- *Convenience to public transport nodes.*
- *Safe access and convenient off-street car parking and/or suitable drop-off and collection points for customers and staff.*
- *Local traffic conditions.*
- *Intended hours of operation.*

In addition, it is stated:

*Applications for childcare facilities in existing residential areas will be treated on their own merits, having regard to the likely effect on the amenities of adjoining properties, and compliance with the above criteria. Detached houses or substantial semi-detached properties are most suitable for the provision of full day care facilities. For new residential developments, the most suitable facility for the provision of full day care should be a purpose built, ground floor, stand-alone property.*

**Objective DMS95**

*Residential properties with childcare shall retain a substantial residential component within the dwelling, and shall be occupied by the operator of the childcare facility.*

**5.4. Natural Heritage Designations**

- Rye Water Valley/Carton SAC (site code 001398) is c.8km west of the site.

**5.5. 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, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party has lodged an appeal against the Planning Authority's decision to refuse permission and is prepared by a Planning Consultant. In summary it includes:

- Proposal is consistent with the zoning objectives, policies for childcare facilities and Development Control Standards as set out in the Plan.
- The need for more professional childcare facilities throughout the state are essential.
- Proposal would not constitute a material contravention of the Plan on the basis that: a) a childcare facility is a permitted development under the RS zoning, b) the proposal is not for a home based facility but a standalone one, and c) the ministerial guidelines specifically refer to residences onto busy thoroughfares being excluded from residential conditions.
- Test to be applied are threefold: i) is the development a permitted use in a residential area, ii) does it comply with ministerial guidelines, iii) does it comply with Development Control Standards, and iv) does it negatively affect the residential amenities presently enjoyed by residents in the area. Submit that the proposal meets all of the tests.
- Careful reading of the two ministerial guidelines on childcare facilities and the Fingal Plan clearly points to the appropriateness of a standalone childcare facility at this location.
- The Board can consider the application and is not constrained by Section 37 of the Act.
- The loss of suboptimal residential accommodation should not require support from the Planning Authority or the Board.
- With respect to contravening Objective DMS95, consider this refers to material contravention of a singular objective and not the zoning or the policy objectives contained in the Plan. Submit that the proposal can be considered under any of the three provisions of the Planning Act that would allow the

Board to grant permission: Submit the development is of strategic importance given the stated support of the Fingal County Childcare Committee (letter attached to appeal); submit that there are conflicting objectives with regard to zoning which allow childcare facilities without a requirement for owner occupation in this RS - but there is in four other zones in the Plan, i.e. RU, RD, HA and GB zones; submit that policy objectives under section 29 are fully complied with, in particular the residential requirement should be ignored on a heavy trafficked road as is the case.

- With respect to the second reason for refusal notes that any planning application must be considered *de novo* and it is incorrect to cite a condition on a 20 year old permission as a reason for refusal here. That permission should not veto any further applications on site.

## 6.2. Planning Authority Response

The Planning Authority responded to the appeal. In summary it includes:

- Attention of the Board is drawn to Objective DMS95 which requires that residential properties which provide for childcare must retain a substantial residential component and shall be occupied by the operator of the childcare facility.
- Consider this requirement reasonable having regard to the underlying land use zoning.
- Subject proposal would contravene materially the objective.
- The Board is also directed to the parent permission and the condition relating to the operation of the commercial use within a property by a person in residence. Condition continues to be relevant and forms the basis for ongoing use of the property.
- Request the Board to uphold decision of Planning Authority.

## 7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. Circular letter PL3/2016 states that Planning Authorities exclude matters related to childcare standards from their consideration of planning applications. I am satisfied that there are no traffic and transport issues. Therefore, the issues can be dealt with under the following headings:

- Reason for Refusal No.1
- Reason for Refusal No.2
- Appropriate Assessment

### 7.1. Reason for Refusal No.1

- 7.1.1. The reason for refusal states that the change of use of the first floor to a crèche which will result in the removal of the remaining residential component on site would materially contravene Objective DMS95 which requires that residential properties with childcare shall retain a substantial residential component within the dwelling and shall be occupied by the operator of the facility.
- 7.1.2. The Childcare Facilities Guidelines indicate that it may be suitable to apply a condition requiring a residential component to be maintained depending on the location of the dwelling and not on heavily trafficked roads. It is stated that *The reason for this condition is that the presence of totally commercial premises would detract from the amenity of the residential community. This condition would not be appropriate in certain, heavily trafficked through roads.* Having regard to the particular location of this dwelling, I do not consider it to be 'within' a residential development as it is a standalone dwelling facing Carpenterstown Road and could be considered also to be on a 'heavily trafficked through road'.
- 7.1.3. I consider that the Objective DMS95 is more appropriate for dwellings within housing estates where residential amenity is of concern. I note that there were no third party objections and the applicant states that there have been no complaints.

7.1.4. As such, I do not consider that permitting the change of use is a material contravention of the Plan. However, should the Board disagree and wish to grant permission, being of the opinion that it is a material contravention of Objective DMS95, I address the tests laid out in Section 37(2)(b) of the Planning and Development Act below. For the convenience of the Board Section 37(2)(b) states:

*(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where*

*it considers that—*

*(i) the proposed development is of strategic or national importance,*

*(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*

*(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

7.1.5. While it could be argued that the provision of a crèche is not of strategic or national importance, it is noted that there is a requirement for additional crèche places and as stated in Circular 3/16, the demand for spaces is expected to continue to rise. Therefore, it is of strategic importance for the expanding Dublin 15 area and I note the stated support of the Fingal County Childcare Committee (letter attached to appeal).

- 7.1.6. I consider that there are conflicting objectives within the Development Plan particularly between DMS94 and DMS95 (See section 5.3 above). DMS94 requires that applications are assessed for *inter alia*, the suitability of the site for the type and size of facility proposed, convenience to public transport nodes, safe access and convenient off-street car parking and/or suitable drop-off and collection points for customers and staff, yet DMS95 applies a blanket requirement on proposals in residential areas, regardless of compliance with DMS94. Furthermore, this residential component requirement is not followed through on the zoning classes. The permitted use of Childcare Facilities in zoning GB, HA, RC, and RU have a caveat requiring that *the use is ancillary to the use of the dwelling as a main residence* but this is NOT a requirement in the subject RS zoning.
- 7.1.7. I consider that the permission should be granted having regard to Section 28 and Section 29 of the Act and what is stated in the Childcare Facilities Guidelines for Planning Authorities with respect to facilities in existing residential areas. The Guidelines specifically state that the residential component does not apply to heavily trafficked areas.
- 7.1.8. In conclusion, I am of the opinion that the proposal is not a material contravention of the Development Plan having regard to its location, but if the Board do not agree then I consider that the tests laid out in the Planning and Development Act are complied with, and the Board can grant permission for the development.

## 7.2. Reason for Refusal No.2

- 7.2.1. I am of the opinion that this application should be considered *de novo* and on its merits. If the Board is of the opinion that this application is in accordance with proper planning and sustainable development and should be granted permission, I do not consider that the existence of a condition on an earlier permission should veto this development and accordingly do not consider that this is a reason for refusal.

## 7.3. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not

considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. I recommend that planning permission subject to conditions should be granted for the following reasons and conditions.

## 9.0 Reasons and Considerations

Having regard to the site's location on Carpenterstown Road and the existing creche facility and to the policy and objective provisions in the Fingal County Development Plan 2017-2023, the nature, scale and design of the proposed development, to the pattern of existing and permitted development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of traffic and pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

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| 1. | 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.<br><b>Reason:</b> In the interest of clarity. |
| 2. | Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no further advertisement signs (including any signs installed to be visible   |

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|    | <p>through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> To protect the visual amenities of the area, and to allow the planning authority to assess any such further signage or advertisements through the statutory planning process.</p>   |
| 3. | <p>The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public health</p>   |
| 4. | <p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to use as specified in the lodged documentation, unless otherwise authorised by a prior grant of planning permission.</p> <p><b>Reason:</b> To protect the amenities of property in the vicinity</p>  |
| 5. | <p>The developer shall agree details regarding the number of children to be accommodated in the crèche, with no more than 65 children at any one time, and the type of childcare to be provided, in writing with the planning authority prior to commencement of development</p> <p><b>Reason:</b> To protect the amenities of property in the vicinity</p>   |
| 6. | <p>The site and building works required to implement the development shall be carried out only between the hours of 0800 to 1800 Monday to Fridays, between 0800 to 1400 hours on Saturdays and not at all on Sundays and Public Holidays. 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 adjoining property in the vicinity</p> |

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| 7. | <p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p> |
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Ciara Kellett

Senior Planning Inspector

15<sup>th</sup> March 2020