



An
Bord
Pleanála

Inspector's Report PL08.246784.

Development	Convert an existing building constructed as a crèche to two semi-detached dwellings, at Pairc Chuimin, Kilcummin, Co Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/191.
Applicant(s)	Barth O'Neill.
Type of Application	Permission.
Planning Authority Decision	To refuse permission.
Appellant(s)	Barth O'Neill.
Type of Appeal	First party versus decision.
Observers	1. Denis Duggan. 2. Kerry Childcare Committee.
Date of Site Inspection	2 September and 18 October 2016.
Inspector	Stephen Rhys Thomas.

1.0 **Site Location and Description**

- 1.1. The appeal site is located in the townland of Clashnagarane which is part of and to the south west of Kilcummin Village, County Kerry. Kilcummin Village is located approximately 6 kilometres north east of Killarney Town. The village comprises a post office, national school, community centre, nursing home, GAA club and interspersed with detached houses on large plots, two large housing estates are located on separate approach roads outside the village.
- 1.2. The defining feature of the village is the nucleated centre arranged around a triangular loop road with a good public realm (footpaths, community garden, lighting) numerous houses on single plots along the approach roads and two large housing estates; Radharc na Sleibhte to the north and Pairc Chuimin to the south west. It is noteworthy that Radharc na Sleibhte is connected to the village by a footpath and Pairc Chuimin is not.
- 1.3. The appeal site is located to the front of the Pairc Chuimin housing estate and comprises a pair of semi-detached houses. The primary difference between the subject building and other houses in the estate is that there is a large parking forecourt to the front of the site which is not divided by a hedge or border. The overall estate is well maintained with play spaces and good open spaces; houses are of a broadly similar design and scale.
- 1.4. Upon inspection of the wastewater treatment compound to the south east of the appeal site, I observed that the ground conditions around the tank, were waterlogged and an unpleasant odour was noticeable in the vicinity. Heavy vehicle tracks lead from the entrance of the site compound to the tank associated with the wastewater treatment system.

2.0 Proposed Development

2.1. The development comprises the change of use of a building from a permitted use as a crèche to two separate dwellings and the demarcation of the front parking forecourt with a 2 metre wide grassed margin.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for a single reason, summarised below:

- The development would result in the loss of a crèche facility.
- Contravene national policy which relates to the requirement for a childcare facility in housing estates over 75 dwellings, 'Childcare Facilities Guidelines for Planning Authorities 2001'.
- The development would materially contravene an objective of the County Development Plan to encourage, promote and facilitate the provision of childcare facilities.

3.2. Planning Authority Reports

3.2.1 The basis of the planning authority decision includes:

3.2.2 The initial planning report identified that the proposal to change the use of the permitted crèche would be at variance with national guidance in relation to the provision of childcare facilities. The Childcare Facilities Guidelines for Planning Authorities issue by the Department of the Environment 2001, recent circular PL3/2016, regarding childcare facilities operating under the Early Childhood Care

and Education (ECCE) Scheme and County Development Policies with regard to residential development, were cited by the Council Planner. Appropriate Assessment Screening concluded that the proposed development would not have the potential for significant effects to Natura 2000 sites. In order to fully assess the proposal, the Council Planner recommended further information be requested, wherein the applicant was requested to calculate the size of childcare facility required for the area and if necessary identify an alternate location for a childcare within the estate.

3.2.3 The second report of the Council Planner notes the offer from the applicant to accept a condition to locate a childcare elsewhere in the estate as part of a concurrent planning application 16/247. In the absence of any firm plans to connect this estate to a public foul sewer and the uncertainty concerning the completion of the estate, permission should be refused for the change of use in order to ensure the provision of childcare facilities for the area.

3.3. **Other Technical Reports**

Kerry County Council Housing Estates Units. No objections subject to standard conditions.

3.4. **Third Party Observations**

3.4.1 The Planning Authority received two submissions in relation to the planning application.

4.0 **Planning History**

4.1. Subject site

Planning authority register reference 04/1528 permission for 85 dwellings, March 2005, a crèche and waste water treatment system, and subsequent permissions (06/2062, 09/842) for amendments and extension of the appropriate period. March 2005.

4.2. Neighbouring sites:

Planning authority register reference 16/247, current appeal PL08.247054.

Permission refused for the construction of 32 dwellings and a crèche, on the grounds of premature pending the provision of a public sewerage system for the village of Kilcummin.

Planning authority register reference 16/234, current appeal PL08.246790.

Permission granted for the completion of six dwellings and construction of a detached dwelling.

Planning authority register reference 16/744 Amendment to house types, no decision issued.

5.0 **Policy Context**

5.1. Development Plan

5.1.1 **Kerry County Development Plan 2015-2021**

The appeal site is located within the Settlement Boundary outlined for Kilcummin Village on Map 12.1k of the County Development Plan Maps.

SC-22 Encourage, promote and facilitate the sustainable provision of quality affordable childcare facilities in accordance with national policy and relevant guidelines.

SC-23 Permit childcare facilities in existing residential areas provided that they do not have a significant impact on the character or amenities of an area, particularly with regard to car parking, traffic generation and noise disturbance. Where proposed facilities relate to properties which have been designed and built as dwellings and are surrounded by other houses, a significant residential element should be retained.

SC-8 Ensure that all large scale residential developments take account of the need to provide appropriate community facilities such as childcare facilities and schools and community meeting spaces. Planning applications for large scale housing developments must be accompanied by an impact assessment of such facilities and provide for the phasing of developments to match community infrastructure.

SC-18 Require as part of all new large residential and commercial developments and in existing developments where appropriate, that provision is made for facilities including local/neighbourhood shops, childcare facilities, schools and recreational facilities and to seek their provision concurrent with sustainable development.

Section 9.2 Social inclusion and 9.3 Community Facilities/Infrastructure sets out broad objectives with regard to childcare facilities, contained within SC-8 and SC-18.

Section 9.4 Childcare Facilities, outlines in detail the Council's objectives with regards to the availability and accessibility of adequate childcare in the community. National guidelines are also cited – Childcare Facilities: Guidelines for Planning Authorities (DoEHLG June 2001).

Section 13.3 Standards for Residential Developments in Urban Areas

- A minimum of 22 metres shall be generally provided between directly opposing first floor habitable rooms. This may be reduced subject to good design and the individual design requirements of the site where it can be demonstrated that residential amenity and adequate light is not compromised.

5.1.2 Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019

The appeal site is located within the Development Boundary outlined for Kilcummin Village on the Zoning Provision Map of the Local Area Plan Maps.

Development Strategy

The development strategy for Kilcummin is to facilitate the successful development of the village as a residential and service centre in the following ways:-

- New development shall contribute towards a compact settlement structure through making effective use of backland, brownfield and infill sites and preventing unnecessary ribbon development.
- Encourage the sustainable expansion in the range and number of commercial services within the village which in turn will provide local employment and improve the quality of life of the local community.

Appendix 1 contains the relevant land use zoning maps.

6.0 Natural Heritage Designations

It is noted that the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) is located approximately 430 metres to the south east.

7.0 The Appeal

7.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- The appellant cites Section 37 of the Planning and Development Act 2000 (as amended) with regard to the material contravention wording of the reason for refusal, and asserts that the board may grant permission in this instance.
- The appellant states that in order to meet childcare facility commitments, a purpose built childcare facility of 185 sq.m. will be provided as part of another planning application (register reference 16/247).
- An analysis of childcare provision in the Kilcummin area indicates that there are three childcare providers locally and a further 17 in the Killarney Town area. This results in a vacancy rate of 28% amongst the local childcare providers, nevertheless the appellant is committed to the provision of a childcare facility in Pairc Chuimin.
- The basis of the Council's decision which referred to a lack of infrastructure for the remainder of the development is incorrect, the appellant submits details which show the imminence of a foul sewer system for Kilcummin.
- The appellant concludes that though a purpose built crèche building was constructed, it has remained vacant for ten years. In addition, should permission be granted for 33 houses, in order to complete this development (register reference 16/247), it would result in a situation in which two crèche facilities would be constructed in an estate of 123 houses.

7.2. Planning Authority Response

No response was received from the Planning Authority.

7.3. Observations

7.3.1 (a) Dennis Duggan, Clashnagarrane, Kilcummin, Co Kerry.

(a) Kerry Childcare Committee, Unit 5 Davcon Business Centre, Monavalley Business Park, Tralee, Co Kerry.

The following observations were submitted by Dennis Duggan an objector to the planning application:

- The planning application does not take account of section 9.4 of the County Development Plan with regard to childcare facilities.
- There is no adequate pathway between Pairc Chuimin and Kilcummin Village, additional dwellings will lead to a danger to pedestrians and drivers on an already substandard road.
- It is not appropriate that a proposed crèche at an alternate location to the rear of the estate can be taken into account.
- There is no proper functioning wastewater facility for the estate and additional houses will put extra strain on a defective system could lead to pollution.

The following observations were submitted by the Kerry Childcare Committee:

- No consultations were had between Kerry Childcare Committee and the applicant prior to the lodgement of the current application, or a subsequent application to provide a crèche in an alternate location in the estate.
- It is noted that there are two sessional (3/3.5 hours per day) facilities in the village of Kilcummin, but the only other full day childcare facility is quite some distance from the village.
- The extension of the ECCE scheme to 88 weeks, will put pressure on existing facilities.

- There is no full or part time care services for the under three year olds in the vicinity.
- An improving economy will place demands upon the requirement for additional childcare spaces.

8.0 Assessment

8.1. I note at the outset the reference to material contravention in the planning authority's reasons for refusal. The planning authority cited an objective (SC-22) which seeks to encourage, promote and facilitate the provision of quality affordable childcare facilities in accordance with national policies and guidelines. The provisions of Section 37 (2) (b) of the Planning and Development Act 2000 (as amended), state that, amongst other things, the the Board may only grant permission in accordance with paragraph (a) where it considers that:

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

I consider this objective to be imprecise and not clearly stated, as it is a county wide aspiration and not specific to the appeal site. I do not consider that the proposed development can be reasonably considered to constitute a material contravention of the development plan under such circumstances. I consider, therefore, that the key issues in this case relate to the following:

- Concurrent Appeals
- Principle of the development
- Childcare provision and compliance with guidance and policies
- Residential/Visual Amenity

- Wastewater Treatment
- Appropriate Assessment

8.2. Concurrent Appeals

The Board are requested to note two concurrent appeals in the vicinity of this site and within the overall housing estate of Pairc Chuimin. The relevant appeals are PL08.247054 for 32 dwellings and a crèche and PL08.246790 for 7 dwellings. There are interconnected issues to do with wastewater treatment and childcare provision, however, I have assessed each case on its own merits.

8.3. Principle of the development

8.3.1 The appeal site is located within an existing housing estate inside the development boundary of Kilcummin Village. The site is also located within the functional area of the Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019 (LAP). The development strategy of the LAP is to ensure that new development should contribute towards a compact settlement structure through effective use of backland, brownfield and infill sites and preventing unnecessary ribbon development. The proposed development to convert the use of the existing building to two dwelling units will comply with this objective and is therefore acceptable.

8.3.2 Section 2.8.10 Sewerage Infrastructure and waste water management of the LAP, states that waste water treatment plants are required to be upgraded in Kilcummin and other villages. Therefore, in such villages residential development may be permitted but houses within schemes cannot be occupied until the new infrastructure is fully operational. I note however, that the buildings the subject of the appeal are already in place and can operate as a childcare facility. A change of use to private dwellings will place similar or reduced loadings on the existing wastewater treatment system, therefore, the application of this policy is not relevant in this instance.

8.4. Childcare provision, compliance with national guidance and plan policies

8.4.1 The appellant has highlighted the adequacy of childcare provision in the immediate vicinity and the wider Killarney Town area. Kerry Childcare Committee have provided information on the existing childcare provision in the vicinity. The applicant has also proposed an alternate location in the overall housing scheme for a childcare facility, this application was refused by the planning authority and is currently on appeal (PL08.247054). Given that the existing childcare facility, the subject of this appeal, is at present vacant, I conclude that demand for its use is limited. It would appear that there has been no market demand for additional crèche places and so therefore I conclude that the loss of this facility would not impact upon the overall childcare demand in the area.

8.4.2 If demand for a childcare facility should materialise in the future, I note that the County Development Plan is supportive of such development. Objective SC-23 seeks to permit such applications for a change of use subject to the retention of the character and residential amenities of the area. Such a proposal would of course require a planning application.

8.4.3 It is noted that Section 28 planning guidelines - 'Childcare Facilities Guidelines for Planning Authorities 2001', require the provision of a childcare facility in new housing estates of over 75 dwellings. The housing estate has been in place for a number of years and so too has the crèche. The appellant states that a crèche has not been operated from the subject site and the facility has been vacant for a period of time. I consider that for the purposes of the guidelines and for that matter Objective SC-22 of the County Development Plan, the provision of a childcare facility has already been met by the developer, notwithstanding the fact that it may never have operated as such. It is unreasonable to require the maintenance of a vacant childcare facility in a housing estate which is now well established and for which the market has

demonstrated no need for. I note that other objectives in the County Development are supportive of permitting childcare facilities in existing residential areas. In addition, I consider that the application before the Board is not part of a large scale residential development and so therefore Objective SC-8 and SC-18 are not relevant.

8.4.4 Lastly, the Kerry County Development Plan 2015-2021, outlines a number of policies with regard to the provision of childcare facilities throughout the county, which echo the guidance provided by 'Childcare Facilities Guidelines for Planning Authorities 2001'. The policies are supportive of a number of approaches with regard to the provision of childcare facilities, which include the provision of purpose built structures as well as the use of existing dwellings at appropriate locations. As the building has already been provided as a childcare facility, I consider that the change of use from a childcare to residential use is therefore not contrary to County Development Plan policy. In addition, the applicant has already accorded with Council Policy by providing the existing childcare facility, which has remained vacant.

8.5. Residential/Visual Amenity

8.5.1 The building which is currently set out internally as a childcare facility, has an outward appearance as a pair of semi-detached houses. The principal difference is the lack of any formal front boundary between properties and the resultant expanse of car parking space to the front of the building. The scale and design of the building matches that of other dwellings in the estate. In addition, it is noted that the applicant proposes to demarcate the front boundary with a two metre wide grassed margin, this will visually separate the front parking forecourt and is acceptable. From a visual amenity perspective, there will be no impact from the change of use of this building to two dwellings.

8.5.2 In terms of residential amenity, the proposed first floor bedroom rear windows are between 19 and 20 metres from the opposing first floor bedroom windows of houses to the south east, specifically number 25 Pairc Chumin. It is however, noted that throughout the estate, separation distances between first floor opposing windows fall below the County Development Plan standard of 22 metres, without an appreciable loss of privacy or undue overlooking. In addition, it should be noted that childcare operations can be carried out in the subject building as it stands. Therefore, I do not anticipate that there would be any undue loss of residential amenity should the use change to residential.

8.6. **Wastewater Treatment**

8.6.1 The observer has raised a concern with regards to the operational functionality of the existing wastewater treatment system, which will serve the proposed development. In concurrent appeals (PL08.247054 and PL08.247790) I have expressed my concern that the existing system may not be operating effectively. I noted that the ground condition around the tank associated with the wastewater treatment system was waterlogged. In addition, I noted heavy vehicle tracks leading to the treatment system tank, which may indicate the periodic or regular extraction of the contents of the tank. Finally, I noted a perceptible and unpleasant odour in and around the vicinity of the treatment system and all of these issues lead me to conclude that the system may not be operating effectively. Notwithstanding all of this evidence, I take the view that the existing childcare building can operate and be served by the existing wastewater treatment system without planning permission. A change to residential use would most likely result in a reduced loading to the existing wastewater treatment system and diminish any environmental impacts which may or may not be ongoing.

8.7. **Appropriate Assessment**

8.7.1 It is noted that the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) is located approximately 430 metres to the south east. Having regard to the nature and scale of the proposed change of use development to convert from an existing childcare use to a residential use within an established village environment, no Appropriate Assessment issues arise and it is not considered that the change of use development in itself (note section 8.6 above) would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

I recommend that permission be granted, subject to conditions for the reasons and considerations as set out below.

10.0 Reasons and Considerations/ Reasons

11.0 Having regard to the provisions of the Kerry County Development Plan 2015-2021, the Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019 and to the nature and scale of the development it is proposed to change the use of from childcare to residential and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity. The development it is proposed to change the use of would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

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.

Reason: In the interest of clarity

2. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

3. Site development and building works shall be carried out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

4. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Stephen Rhys Thomas
Planning Inspector

3 November 2016