



An
Bord
Pleanála

Inspector's Report PL03.247002

Development	Install portacabin to be used as extension to existing childcare facility and permission to increase the number of car parking spaces and associated site works, at 8 An Rosán Óir, Ballycasey, Shannon, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	16/253
Applicant(s)	Noel and Siobhan Mulderrig.
Type of Application	Permission
Planning Authority Decision	Grant
Appellant(s)	1. Joyce and Norman Green
Observer(s)	1. None
Date of Site Inspection	11/10/16
Inspector	Gillian Kane

1.0 **Site Location and Description**

- 1.1. The subject site is located on the northern side of a spine road in the residential housing area An Rósan Óir. The road leads into the residential estate Ballycasey. An Rósan Óir is a small development of approx. 9 no. detached dwellings on relatively generous plots. The houses are two storey, with the exception of the appellants dwelling which is a dormer bungalow with a stand-alone residential unit to the side.
- 1.2. The subjects dwelling at no. 8 is a two storey detached dwelling with a single storey extension to the side. The area to the front of the dwelling is laid out for car parking, the rear of the dwelling is a mix of hardstanding, lawn and soft play area for children. A high hedge surrounds the dwellings front boundary. To the north of the dwelling is the detached two storey dwelling at 7 An Rósan Óir, to the west is a pedestrian cut-through leading to Ballycasey Crescent and to the south is the residential cul-de-sac Rian na Rí. To the east of the subject site is the appellant's property 9 An Rósan Óir, a dormer bungalow with an open garden and no front boundary. A single storey stand alone annex has been constructed to the east of the dwelling, sharing the same vehicular entrance.
- 1.3. Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

2.0 **Proposed Development**

- 2.1. Permission was sought to install a portacabin of 41sq.m. to house children in sessional day care (09.00 to 16.00 as indicated in application form) to the rear of an existing two storey structure in use as Kids Haven crèche. Permission was also sought to provide for 4 no. car parking spaces to serve the extended crèche.

3.0 **Planning Authority Decision**

3.1. **Decision**

By order dated 06 July 2016 Clare County Council an order of intention to GRANT permission subject to 6 no. conditions issued. Conditions of note:

- 2: Permission shall be valid for a period of 5 no. years from the date of the final grant of permission. The pre-fabricated unit shall be removed and the site reinstated unless authorised by a future planning permission.
- 3: opening hours: 09.00 to 12.00

3.2. **Planning Authority Reports**

The report of the area planner can be summarised as follows: No objection in principle to proposed development having regard to established childcare

facility on site. Regard must be had to impact on traffic and residential amenity. Insufficient details regarding proposed drop off facility for portacabin. Existing hedge interferes with sightlines to the west. Further details required regarding protection of residential amenity of neighbouring property.

3.2.1. Following a request for **Further Information** the applicant provided the following information:

- Existing facility provides full day care from 07.30 to 17.45 Monday to Friday. Proposed facility will provide sessional daycare from 09.00 to 12.00 from September to June. Can change hours to 09.15 to 12.15 if required.
- Existing facility caters for 20 no. children. Proposed facility will cater for 20 no. children in an entirely separate facility.
- Majority of staff live in area and walk to work. 4 no. spaces assigned to staff. Revised site plan submitted showing new pedestrian access point in south-western corner of site. Existing hedges will be cut back to improve sight distance from entrance.
- Remaining outdoor space will be covered by play mats and a large grassed area.

3.2.2. **Planners Report:** Applicant has clarified the nature of the proposed development. Temporary grant of permission recommended.

3.3. **Other Technical Reports**

- **Health & Safety Authority:** Does not advise against grant of permission.
- **Clare Fire Authority:** Development will require a fire safety cert and a disability access cert.

4.0 **Planning History**

- Planning Authority reg. ref. **98/1922:** Planning permission granted for two storey dwelling house.
- Planning Authority reg. ref. **03/236:** Planning permission granted for extension to side to comprise living room and games room.
- Planning Authority reg. ref. **04/1994:** Planning permission granted for a change of use from living and games room to daycare centre. Condition no. 2 restricted the number of children at the centre to 13 no. Condition no. 5 restricted the hours of operation to 07.45 to 18.15 Monday to Friday.
- Planning Authority reg. ref. **06/245:** Planning permission was granted for an extension to the existing childcare facility. Condition no. 2

restricted the number of children at the centre to 13 no. Condition no. 5 restricted the hours of operation to 07.45 to 18.15 Monday to Friday.

- Planning Authority reg. ref. **06/2411**: Planning permission granted for the change of use of the grounds floor of the dwelling to become an extension of the childcare facility. Condition no. 2 allowed an increase in the number of children to 16 no. Hours of operation (condition no 5) remain at 07.45 to 18.15 Monday to Friday.

5.0 **Policy Context**

5.1. **Clare County Development Plan 2011-2017**

Section 5.3.5 of the Clare development plan states that a community's social, cultural and physical needs are facilitated in locations and amenities such as health centres, day centres, childcare facilities, schools, colleges, museums, libraries, public halls, places of worship, cemeteries and sports fields. Clare County Council facilitates and supports the development of these facilities. **Objective CDP5.5** states that it is an objective of the Council to work with and support communities in the delivery of the Clare Childcare Strategy.

Section A1, 7.3 states that where an extension to an existing childcare facility is proposed the Planning Authority will require the provision of a lay-by or drop-off site parking for parents dropping off and picking up children. Staff parking must be provided for on-site. 1 no. car parking space is required per employee and 0.25 spaces per child and 1 no. bicycle space is required per employee.

5.2. **Shannon and Environs LAP 2012- 2018**

The subject site is zoned 'Commercial' in the land use zoning map of the Shannon and Environs LAP. Appendix 1 of the LAP states that commercially zoned lands shall be taken to include the use of land for commercial and business uses including retail, office, service industry, warehousing and the facilitation of enterprise / retail park / office park type uses, as appropriate. Crèche / childcare facilities are open for consideration uses in commercial zones. The LAP states that open for consideration uses may be permitted where the local authority is satisfied that it is in compliance with the zoning objectives, standards and requirements as set out in the County Development Plan and by other Government bodies / sections and will not conflict with the permitted existing or adjoining land uses in accordance with the proper planning and sustainable development of the area.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of third party appeal can be summarised as follows:

- It would appear that permission for the subject crèche was temporary (reg. ref. 04/1944 expired on 16.12.2009). There is no record of a further grant of permission. A subsequent permission (reg. ref. 06/2411) is noted on the Council file as having expired on 22.02.2012. It is submitted that the proposed development is therefore unauthorised with a history of non-compliance regarding planning contributions.
- An application to use the first floor as day care (reg. ref. 08/1021) was withdrawn but the first floor is in use by the crèche.
- It is submitted that the proposed portacabin with a net floor area of 35sq.m. is inadequate to support 20 no. children. The minimum area required is 40sq.m. The level of detail provided is inadequate; no information on disability access ramps, footpaths and drainage services.
- Photographs on social media indicate the facility is catering for up to 35 children. Full details should have been requested by the Planning Authority.
- The revised site layout plan shows 13 no. spaces and not 14 as indicated. Four spaces are to be reserved for staff, leaving 9 no. spaces for parents, no spaces for visitors and no spaces for the sessional parents. It is submitted that the Irish climate is such that the claim that a majority will walk is questioned. It is submitted that the proposed car parking layout is inadequate.
- Access to and from the site should be re-assessed with a traffic management plan. The school bus operated by the crèche is not reflected in the parking layout nor is the turning area for cars.
- It is submitted that the noise generated by the existing facility already causes concern. The noise associated with 20 no. children impacts the ability of the appellants to enjoy their garden.
- The appellants sister Ms S Egan lives in a stand-alone unit on the grounds of the appellant's home. Ms Egan has special needs and is affected by loud noise and piercing noises (medical letter submitted). She is housebound from 8.00 to 17.30 due to the noise. The proposed additional 20 no. children will compound this. Ms Egan will not be able to understand why the garden is out of bounds for her.
- The applicant's response to the FI request regarding open space did not provide any detail, only stated that space will be lost due to the proposed portacabin. It is stated that over half the garden will be lost to the new road, turning area and 6 no. parking spaces. This new development will reduce the amenity of the appellant's garden.

- It is submitted that the residential element of the subject site is gradually being eroded.

6.2. **Planning Authority Response**

6.2.1. The response of the Planning Authority to the third party appeal can be summarised as follows:

- Planning permissions 06/245 and 06/2411 are not temporary permissions. The date the appellant refers to is the length the permission is extant. The subject development is authorised development.
- A file has been sent to the enforcement section regarding the alleged use of the first floor for childcare.
- Details regarding the number of children cared for in the facility were provided by the applicant and are understood by the Planning Authority to be accurate. Circular PL3/2016 advises Planning Authorities to exclude consideration of matters relating to childcare standards, including standards for internal floor space.
- The Planning Authority is satisfied with the proposed car parking arrangement.
- Details regarding hours of operation submitted to the Planning Authority by the applicant are understood to be accurate. The submission of the appellant regarding the special needs of one of the residents of the appellant's property was not brought to the attention of the Planning Authority during the application.
- In accordance with circular PL3/2016 the Planning Authority is required to exclude consideration of matters relating to childcare standards, including standards for internal floor space and provision of outdoor play space.

6.3. **Further Responses**

6.3.1. The applicant has responded to the third party appeal, details of which can be summarised as follows:

- All conditions of the parent and subsequent planning permission have been complied with. The allegation of unauthorised development is incorrect.
- An application to change the use of the first floor of the property into childcare (Planning Authority reg. ref. 08/1021) was withdrawn in 2008 due to economic circumstances. An early years sessional Montessori is operated at the facility from 09.00 to 12.00 since 2004. No complaints have ever been received from neighbouring properties. The proposed portacabin is considered to be an appropriate location for the Montessori.

- Details of the appellant's sister's (Ms. S. Egan) sensitivity to noise have never been brought to the attention of the applicant. Ms Egan leaves her property in the morning and does not return until after 15.00, therefore will not be at home during the proposed pre-school hours. When permission to build a unit for Ms Egan was sought, the appellants were aware that the neighbouring property operated as a crèche. The subject property and the neighbouring appellant's property are 1 mile due south of an arrival route to Shannon Airport. The loud and piercing sounds of approx. 100 aircraft movements 24 hours a day are considerably more significant than the noise of 20 no. children. A primary school with c. 300 pupils is a 5 min walk from the two properties.
- The applicant can categorically state that there has never been an incidence of flooding on the subject property. The proposed development will fully comply with drainage requirements.
- The subject property is not the principal primary residence of the applicants. Mr N. Mulderrig uses the upper floor of the property to during shift work. Other rooms are used as an office and a rest area for staff. It is incorrect to state that there is no residential use of the property.
- The subject crèche has permission for 20 no. children. In excess of 20 no. children are on the register to reflect part time, after school and other atypical arrangements. No more than 20 no. children are on the ground floor at any given time. The childcare sector is highly regulated and subject to unannounced inspections. The Kids Haven crèche has always achieved full compliance.
- Regarding the appellants comments about photos posted on social media, it is stated that the outdoor charity event hosted by the applicants invited other children to the premises and is no reflection of the number of children cared for in the crèche.
- The Child & Family Agency Tusla have indicated to the applicant that the proposed development is sufficient to accommodate 20 no. children. The facility will be fully wheel chair accessible and will comply with all regulations.
- The hours of operation of the proposed sessional care ensure that there will be no crossover between traffic for the existing and proposed facilities. A crèche vehicle is available for use, notwithstanding that the majority of children attend on foot.
- The proposed car park is in the same location as the existing car park and therefore the same distance from the appellant's property. The proposed spaces no.s 9-14 will be further from the appellant's property. The proposed development will reduce the outdoor play area and therefore reduce the number of children playing outside at any one

time. The proposed sessional day care will require a 20 min break only. No complaints have ever been received regarding traffic generated by the crèche.

- The subject development is one of only two such businesses in Shannon. At least three of the facilities noted by the appellant are no longer in business. All other facilities noted by the appellant are in private houses with no additional parking spaces. Clare County Childcare Committee have identified the need for 375 no. childcare ECCE spaces.
- The subject crèche provides services to resettled Syrian families seeking refuge, allowing parents to attend English classes. The crèche also provides care to children from families working with the HSE and St Vincent de Paul.
- The subject crèche has operated to a high level with fully trained staff. A number of references in support of the business are submitted with the response.
- A letter from the Clare County Childcare Committee is submitted with the response. The details are the same as the letter submitted to the Board (see 8.3.2 below).

6.3.2. **Clare County Childcare Committee:** Kids Haven is a full day care service registered with Tusla. It is one of only two such services in Shannon and offers the Government schemes: ECCE, CCSP, CCSR and TEC. The committee states that there are 375 children eligible for ECCE in 2016/2017 in the Shannon area and that the subject crèche is only of only two services in the area. The letter states that the subject business is the only service in Shannon offering CCSR which caters for the resettlement of Syrian families.

7.0 **Assessment**

7.1. I consider the key issues in determining this appeal are as follows:

- Principle of Development
- Impact on Residential Amenity
- Traffic and Parking
- Appropriate Assessment

7.2. **Principle of Development**

Permission is sought to accommodate 20 no. children in a single storey portacabin to the rear of an existing crèche. The proposed portacabin will provide sessional childcare from 09.00 to 12.00 for 20 during the term September – June. The subject site is zoned for commercial use in the Shannon and Environs LAP. I note that childcare facility is permitted in principle in commercial zoned lands in the county development plan whereas it is 'open for consideration' in the LAP. It is clear from the LAP land use

zoning map that the subject facility, as the sole commercially zoned plot of land in a large residential housing area, is recognised as a commercial business in the wider residential area. I am satisfied that this demonstrates an acceptance of the principle of the commercial nature of the subject site by the Planning Authority. The LAP states that open for consideration use must be in accordance with the zoning objectives, standards and requirements as set out in the County Development Plan. Given the designation of childcare as permitted in principle in commercial zones in the CDP, I am satisfied that the principle of the proposed development is in accordance with the county development plan.

I note Circular PL3/2016 sent to all Planning Authorities and An Bord Pleanála which refers to the significant rise in demand for early childcare services for the ECCE scheme. The circular requests Planning Authorities to exclude matters relating to childcare facility standards outlined in Appendix 1 of the Childcare Facilities Planning Guidelines 2001 including the minimum floor area requirements per child.

Section 7.5 of the Development Management Guidelines state that a temporary permission will rarely be justified where an applicant wishes to carry out development of a permanent nature that conforms with the provisions of the development plan. The guidelines state that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for a temporary permission can never be that a time limit is necessary because of the adverse effect of the development on the amenities of the area. If the amenities will certainly be affected by the development they can only be safeguarded by ensuring that it does not take place. Given that the proposed development to be retained is acceptable in principle and that concerns regarding noise pollution have been addressed, should the Board decide to grant permission, it is recommended that a temporary life should be not attached to the decision.

7.3. Impact on Residential Amenity

The appellants state that the proposed facility will adversely affect their residential amenity due to increased noise and increased traffic. The proposed portacabin is to be located approx. 18m from the boundary between the applicant and appellant properties, approx. 30 m from the appellants dwelling and approx. 40m from the appellant's sisters stand alone unit. The proposed sessional childcare from 09.00 to 12.00 will involve one 20 minute break during that time. This will involve 20 no. children using the outdoor space beside the appellant's private open space for recreation. The applicant has stated that break times will be staggered and that no more than 20 children will be in the garden at any one time. The noise level for the

appellants therefore will not increase in volume but will increase in frequency – with one additional 20 minute break.

The subject and adjoining site are located in a busy residential area, with a school, a hotel and a heavily trafficked regional road within the immediate environs. Shannon Airport, a 24 hour international airport is approx. 4km from the subject site. I am satisfied that the additional noise arising from the proposed development is not significant in the context of the wider environment.

7.4. Traffic and Parking

Section A1, 7.3 states that where an extension to an existing childcare facility is proposed the Planning Authority will require the provision of a lay-by or drop-off site parking for parents dropping off and picking up children. Staff parking must be provided for on-site. 1 no. car parking space is required per employee and 0.25 spaces per child and 1 no. bicycle space is required per employee. Drawing no. P-02A-L submitted to the Planning Authority following the request for further information shows 7 no. spaces to the front of the existing crèche and a further 6 no. spaces along the eastern boundary to the rear. A new pedestrian access is proposed along the western boundary, leading directly to the proposed portacabin. On the date of my site visit, only 2 no. car spaces were occupied leaving ample room for cars arriving for collection. Further, several spaces were available on street. The proposed car parking layout is acceptable. Should the Board be minded to grant permission, a condition should be attached restricting staff parking to the rear of the site only. This shall ensure that the most accessible spaces are available for drop offs / collection at peak time thereby reducing the possibility of congestion at the front entrance.

7.5. Appropriate Assessment

Having regard to the nature and scale of the proposed development and / or the nature of the receiving environment, and / or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

I have read the submissions on file, visited the site, and have had due regard to the provisions of the Clare City Development Plan 2011 - 2017, the Shannon and Environs LAP 2012-2018, the planning history on the subject and adjoining sites and all other matters arising. It is considered that, subject to compliance with the conditions set out below, the proposed development would not injure the amenities of the area and would be in accordance with

the proper planning and sustainable development of the area. I recommend permission be GRANTED subject to the following conditions:

9.0 **Reasons and Considerations**

Having regard to the zoning objective for the site and policies and objectives as set out in the current Clare City Development Plan and the Shannon and Environs LAP, to the pattern of development and planning history of the area, and to the nature and scale of the development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate form of development at this location, would be acceptable in terms of traffic safety and convenience and would not seriously injure the amenities of the area or of property in the vicinity and. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

10.0 **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 10th day of June 2016 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. The proposed sessional childcare facility shall not operate outside the period of 09.00 to 12.00 hours Monday to Friday inclusive between the months of September to June except public holidays, and shall not operate on Saturdays, Sundays or public holidays.

Reason: In the interest of residential amenity.

3. The number of children to be accommodated within the portacabin shall not exceed 20 no. at any time on any day.

Reason: To limit the development in the interest of residential amenity.

4. Staff parking shall be restricted to those spaces proposed on the eastern boundary to the rear of the site – numbered 9-14 on drawing no. P-02a-L submitted to the Planning Authority on 10th June 2016.

Reason: In the interest of traffic safety

5. 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.

6. Notwithstanding the provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no additional advertisement signs other than those indicated on the lodged drawings (including any signs installed to be visible 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.

Reason: To protect the visual amenities of the area.

7. 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.

Gillian Kane
Planning Inspector

18 October 2016