



An
Bord
Pleanála

Inspector's Report PL06S.248162.

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| Development | Modifications to permitted crèche (Reg.ref.:SD01A/0706/EP) to accommodate 6 apartments and reduced sized crèche. |
| Location | Millrace Green, Swiftbrook, Saggart, Co. Dublin. |
| Planning Authority | South Dublin County Council. |
| Planning Authority Reg. Ref. | SD16A/0457. |
| Applicant(s) | William Neville & Sons Construction |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse Permission. |
| Type of Appeal | First Party |
| Appellant(s) | William Neville & Sons Construction. |
| Observer(s) | None. |
| Date of Site Inspection | 2 nd June 2017. |
| Inspector | Susan McHugh. |

1.0 Site Location and Description

- 1.1. The appeal site is situated a short distance west of Saggart village centre. Access to the site is via Millrace Green which connects to the Mill Road and its roundabout junction via Millrace Avenue (see attachments). The development comprises the first phase of the Millrace residential development on a landholding which was formerly the site of the Swiftbrook Paper Mills.
- 1.2. The appeal site comprises the ground floor of a 3-storey apartment building with occupied residential accommodation above. The ground floor reads externally as individual own door apartments with entrance doors and windows. At the time of site inspection, the units were vacant and in poor condition with evidence of graffiti and broken windows. The communal area of open space to the rear is overgrown.
- 1.3. The property lies within the curtilage of a Protected Structure (RPS no.314) which is located to the east of the site. Located within an area of open space the Protected Structure comprise the existing rag store, entrance gates, chimney, tail race and mill ponds of Swiftbrook Mill.
- 1.4. To the south of the site there is existing surface parking and access road associated with the development. To the west are existing residential units accessed from Millrace Court. To the north there are a number of units accessed from Millrace Walk.
- 1.5. The wider area in which the appeal site lies is characterised by medium density residential development.

2.0 Proposed Development

- 2.1. The proposed development comprises modifications and change of use of an existing permitted development under planning Reg. Ref. S01A/0706/EP. The development will consist of:
 - The provision of a new reduced sized crèche of 268sqm with an associated outdoor play area to the rear. The crèche as previously permitted had a floor area of 816sq.m.

- The provision of six apartments, four 1 bed, one 2 bed and one 3 bed, and associated open space provision, in lieu of the remainder of the previously approved crèche.
- Modifications to the southern elevation to include replacement of an existing door opening with an infill wall at ground floor, and to the eastern window opening with new entrance doors.

2.2. The proposed ground floor crèche provides for four no. classrooms, staff facilities and toilets, office / administrative areas as well as sleeping, dining, indoor and outdoor private play areas for children. The facility overlooks an area of public open space to the front and side of the building.

2.3. Three no. car parking spaces are provided to serve the crèche, and seven no. car parking spaces are provided for the apartments.

2.4. The application for the proposed development is accompanied by the following:

- Planning Report – Describes the nature of the proposed development, the planning history of the site and the applicant’s response to issues raised in pre-application discussions with the planning authority and a justification for the reduction in the size of the permitted crèche and proposed residential units.
- Childcare Planning Report – Describes the method of establishing need, geographical distribution of childcare facilities, emerging population profile and precedent.
- Schedule of accommodation – Demonstrates compliance with government standards for apartments.

3.0 **Planning Authority Decision**

3.1. **Decision**

The decision of the planning authority was to refuse permission, for 3 no. reasons which refer to the following:

1. Contrary to Policy C8(b) of the South Dublin County Development Plan 2016-2022 and Government policy in respect of childcare facilities.
2. The proposed crèche would set an undesirable precedent for other similar reductions in size and changes to permitted crèches.
3. The proposed apartments do not adhere to Section 3.11 and Section 4.10 of the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, (2015) in that the three-bedroom apartment is not dual aspect and a clear distinction has not been made between private and communal open space provision.

3.2. Planning Authority Reports

3.2.1. The **Senior Executive Planner's** report is the basis for the Planning Authority decision. It includes:

- Crèche - notes that the unit is currently vacant, despite efforts by the owner to find an operator for the facility, and the third parties' submission in relation to taking over the facility.
- Childcare Policy - considers in relation to Policy C8(b) of the South Dublin County Council Development Plan, Government policy having regard to the extension of the ECCE scheme, and Circular letter PL3/2016, that a reduction in the size of this facility may result in future need being accommodated in less desirable smaller scale units within individual residential units.
- Residential Layout/Orientation – the building is not considered an 'older building', that apartment no. 6 is the only three-bed unit and is not dual aspect, faces west and overlooks communal open space to the rear. Allowing for separation distances to nearby units, and absence of details of the western boundary treatment would result in limited sunlight reaching the ground floor apartment, and therefore is unacceptable as not in compliance with the Apartment Guidelines.
- Communal Open Space – provided in excess of the requirements but that there should be a clear distinction between private and communal space where they adjoin each other.

3.2.2. Other Technical Reports

Roads Department - no objection.

Water Services - recommends further information.

Environment, Water and Climate Change - no objection subject to conditions.

Environmental Health Officer - no objection subject to conditions.

3.3. Prescribed Bodies

A submission from **An Taisce** refers to:

- On examination of the file wish to state that the application should be assessed with regard to impact on the amenity of the areas and the relevant provisions of the South Dublin County Council Development Plan.
- Care should be taken to see that the works do not interfere with the Protected Structures on site.

Irish Water - recommends further information.

Inland Fisheries - recommends no objection.

3.4. Third Party Observations

3.4.1. There are three observations on file from the following parties:

- Saggart Village Residents Association
- Jacqueline & Alexandrio Dicolla
- Laurence and Baiba O'Connor

3.4.2. Issues which can be summarised under the following headings:

- The existing road network in the village is inadequate. The area is experiencing an increase in population and additional residential units would further increase the population without adequate infrastructure.

- Pedestrian safety for children accessing the playground from narrow road leading to Millrace Green.
- Parking provision already inadequate and additional parking will cause problems. There is no parking provision for apartments.
- Additional traffic will cause traffic safety issues as existing road is too narrow so cars will only be able to reverse.
- There is a need for a crèche with new developments in the area.
- Given the original planning permission for a crèche, despite attempts to rent the building for that purpose, and difficulty contacting the auctioneer and builder, would question the commitment of the builder to develop the service.
- Remaining space after apartments are built will be unsuitable for a crèche.
- Original permission was for incubator units to support start up enterprise ventures from local residents. This application reneges on the commitment of the developer to contribute to the development of community initiatives in favour of profit.
- Site notice cites only the original planning reference S01A/0706/EP and not the current planning application reference.

3.5. Planning History

PA S01A/0706 and ABP Ref. PL.06S.130874

This is the 2003 parent permission for the Mill Race residential development of c. 325 dwellings comprising a mix of houses, duplex units and apartments. Condition 16 referred to the provision of the subject crèche, floor area 816 sq.m. (file attached).

Two further planning permissions were granted in July 2005, **PA SD05A/0167** for minor amendments in relation to the reconfiguration of external stair cases and car parking spaces, and July 2006, **PA SD05A/0945** for 7 no. bin storage enclosures.

The 'parent permission' was extended under **PA S01A/0706/EP** in June 2008. Planning permission was granted subject to 2 conditions, the latter requiring the development to be completed no later than 28th April 2010.

Subsequently, permission was granted in October 2013, **PA SD13A/0037** for works in and around the Mill Gates, and under **PA SD13A/0037** for the omission of 2 link roads between Crossforge development and Millrace Green; the construction of 3 sections of pedestrian footpaths and revisions to traffic calming measures.

4.0 Policy Context

4.1. National and Regional Policy Documents

4.1.1. National and regional policy documents which form the strategic context for the proposed development include:

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009.
- Delivering Homes, Sustaining Communities, 2007.
- Quality Housing for Sustainable Communities, 2007.
- Sustainable Urban Housing: Design Standards for New Apartments, 2015.
- Design Manual for Urban Roads and Streets, 2013.
- Guidelines for Planning Authorities on Childcare Facilities, 2001.

4.1.2. These are referred to as necessary in my assessment below.

4.2. South Dublin County Council Development Plan 2016-2022

4.2.1. The site is zoned 'RES: To protect and/or improve residential amenity'. Land to the north, east and south is zoned Open Space 'OS: To preserve and provide for open space and recreational amenities'.

4.2.2. The appeal property lies to the east of and within the curtilage of a Protected Structure (RPS 314) and is partly located within an area of archaeological potential 021-034. (see attachments).

4.2.3. Chapter 2 of the Plan focuses on housing and sets out the planning authority's policies in respect of providing sustainable residential development. Reference is

made to the government's policy documents, including those referred to above. Chapter 3 deals with community infrastructure, including early childhood care and education. Chapter 8 deals with green infrastructure and Chapter 11 with implementation. Specific policies of the Plan are referred to as necessary in my assessment below.

4.3. Natural Heritage Designations

4.3.1. There are no natural heritage designations in the immediate vicinity of the site.

5.0 The Appeal

5.1. Grounds of Appeal

The 1st Party appeal was submitted by Simon Clear & Associates Planning and Development Consultants on behalf of William Neville & Sons Construction. The grounds of the appeal can be summarised as follows:

- Context –A large childcare facility was constructed in 2003 on the ground floor of a 3 storey apartment building with occupied apartments above. However, no viable operator was found for the facilities. The applicants now have a lease in place with an operator for the reduced floor area crèche.
- Government Policy – The 1st reason for refusal is a long description of recent government policy relating to Early Childhood Care & Education Scheme (ECCE) and the possible implications of the proposed development for compliance with that policy, however as worded it is not a valid reason for refusal.
- Need - The particular community established in this part of Saggart is 15 years in place and the start-up need for pre-school services has passed and will not recur within this community.
- Scale - It is not proposed to eliminate the childcare facility, but to reduce it to a more practical size to meet the needs of the local community, which is more compatible with the protection of residential amenities, and the size meets the needs of the service providers.

- Residential amenity - It is disputed that small scale domestic pre-school provision has more potential for negative impact on residential amenity than larger scale purpose built crèches located in condominiums.
- Existing crèche facilities - It has been demonstrated that there is an existing sufficiency of professional crèche facilities in the area to deal with the current demographics of what is becoming an established community.
- Undesirable precedent - The 2nd reason for refusal which is based on the 1st reason also renders it an invalid reason, as it has been extrapolated that the proposed reduction in the size of the crèche would set an undesirable precedent for other similar reductions.
- Dual aspect apartment – The 3rd reason for refusal refers to a 3-bedroomed apartment not being dual aspect. The guidelines have been interpreted negatively in the planning authority. Requirements for dual aspect may be relaxed where it is proposed to refurbish an older building, but the planning authority did not consider the existing building in that context.
- Ground floor apartment No. 6 – Sets out the specifics of this unit and contends that it will be awash with afternoon and evening sunlight into the kitchen/living area and each of the three bedrooms.
- Six apartments proposed – Meet and exceed the standards for apartments.
- Boundary details/ open space – Drawings submitted indicating details of the Communal Open Space area and the Private Open Space areas serving the three apartments that face towards the communal open space. A western elevation drawing shows the boundary fencing detail, viewed from the internal communal open space in relation to the boundary fence detail

5.2. Planning Authority Response

- The planning authority confirmed its decision and considered that the issues raised in the appeal have been considered in the planner's report.

5.3. **Observations**

There are no observations with reference to the appeal.

6.0 **Assessment**

6.1. 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 issues can be dealt with under the following headings;

- Principle of the proposed development/planning policy
- Precedent
- Residential Amenity
- Appropriate Assessment

6.2. **Principle of the proposed development/planning policy**

- 6.2.1. The site is zoned 'RES' as per the South Dublin County Council Development Plan, with a stated objective to 'To protect and/or improve residential amenity'. Childcare facilities are open for consideration under this zoning. Based on development plan policy for the RES zoning, residential and crèche uses are compatible land uses under this zoning and are therefore consistent with the zoning objective for the area.
- 6.2.2. Policy C8(b) of the South Dublin County Council Development Plan states that 'it is the policy of the Council to require the provision of new childcare facilities in tandem with the delivery of new communities'.
- 6.2.3. The planning authority's first reason for refusal also refers to current Government policy to increase access to childcare and cites the extension of the ECCE scheme and Circular letter PL3/2016 which refers to 'Childcare facilities operating under the Early Childhood Care and Education Scheme (ECCE)'. This Circular states that arising from the changes being introduced, the number of children availing of the scheme will double by 2017. The proposal was also considered to potentially result

in future need being accommodated in less desirable smaller-scale units which have more potential for negative impact on residential amenity.

- 6.2.4. Having regard to the planning policy cited, I would consider it relevant to examine the background to the proposal.
- 6.2.5. It would appear that the crèche has never operated. The applicants have indicated that the unit has not proved viable to a child care service provider due to its scale. They have also indicated that there are adequate crèche facilities within the area and, because of the age cohort that has evolved, there is no demand in the neighbourhood to sustain a large scale crèche. In order to find a viable use for the vacant area the applicant commissioned a report on the need for childcare facilities in the immediate area in May 2016, and submitted an updated version of this report with the application.
- 6.2.6. I consider that permitting the change of use to residential, while still maintaining a smaller crèche, would not be at odds with planning policy. I am satisfied that the applicants have demonstrated that the scale of the revised crèche is more appropriate in meeting the needs of the local community as they have evolved. The applicants have also indicated that they now have a lease in place with an operator for the reduced area crèche.
- 6.2.7. Planning policy encourages a range of providers including playgroups, crèche, Montessori and other facilities. It clearly envisages a range of facilities of various scales. In this context, I concur with the applicants that there is little basis to the contention that small scale provision would necessarily have any less desirable impacts on residential amenity.

6.3. **Precedent**

- 6.3.1. The second reason for refusal notes that the development would set an undesirable precedent for other similar reductions in size and changes of use of permitted crèches. In this regard, I would note that each application is assessed on its own merits. In this case the floor space has remained vacant over a considerable period of time in an otherwise occupied residential block. It is considered more favourable that the building be occupied and associated open space be maintained, while also allowing an active frontage to the building.

6.3.2. I am satisfied that the change of use in this instance does not set an undesirable precedent.

6.4. Residential Amenity

6.4.1. The third reason for refusal notes that the proposed apartments do not adhere to Section 3.11 and Section 4.10 of the Sustainable Urban Housing : Design Standards for New Apartments. -Guidelines for Planning Authorities, (2015) in that the three-bedroom apartment is not dual aspect; and a clear distinction has not been made between private and communal open space.

6.4.2. The applicant suggests that the Guidelines have been interpreted negatively by the planning authority in relation to dual aspect apartments and where requirements may be relaxed where it is proposed to refurbish an older building. I would concur with the applicant that when retrofitting residential development into existing buildings there are associated constraints.

6.4.3. I consider, having examined the specifics of the three-bedroom Apartment No. 6, which exceeds the requirements in terms of its size, private open space, and benefits from a westerly orientation and access to communal open space, that it will receive adequate sunlight. Although it is not ideal that it is not dual aspect I am satisfied that the apartment will provide an adequate amenity for future residents, and is acceptable.

6.4.4. The layout for the development granted under PA S01A/0706 ABP Ref. PL.06S.130874 and PA S01A/0706/EP provided for a communal area of open space in the centre of the development. It is now proposed to subdivide this area of communal open space to serve the crèche and the apartments. The boundary comprises a concrete post and timber fence.

6.4.5. It is proposed that three no. ground floor apartments (Apt. no.'s 1, 4 and 6) will have private open space that face towards the communal open space. The boundary to the private open spaces will comprise a timber fence and planted edge as detailed on Drawing No. 3.3-802-FI submitted on appeal by the applicant. Drawing No. 3.3-803-FI also submitted on appeal details the western elevation of the screening between the private open spaces of Apt. no.'s 4 and 6. This comprises a 1.8m high

stained and treated timber fence, and a similar boundary treatment to the communal open space which is between 1.2 and 1.3m in height.

- 6.4.6. I consider that the details submitted will provide adequate privacy to the units proposed and addresses the concerns of the planning authority. The proposed screening is acceptable and will protect the residential amenity of the future occupants.
- 6.4.7. I conclude, having examined the plans and schedule of accommodation, that overall the six no. apartments meet the requirements of the Guidelines and are acceptable.

6.5. **Appropriate Assessment**

- 6.5.1. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

7.0 **Recommendation**

- 7.1. I recommend that permission for the proposed development be granted, subject to conditions, as set out below.

8.0 **Reasons and Considerations**

Having regard to the planning history of the site, its zoning for residential development in the South Dublin County Council Development Plan 2016-2022, the fact that the existing floor space within an existing apartment block has remained vacant for a considerable period of time, it is considered that the proposed change of use from a large scale crèche to residential and a reduced sized crèche would be in accordance with the zoning of the site, would not result in any serious injury to the amenity of properties in its vicinity and would provide a viable use for a vacant unit.

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 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 received by An Bord Pleanála on the 14th March 2017, except as may 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 childcare facility shall not operate outside the period of 0800 to 1900 hours Monday to Friday inclusive except public holidays, and shall not operate on Saturdays, Sundays or public holidays. Prior to the operation of the crèche the operator shall submit to the planning authority for written agreement details of the proposed signage for the crèche.

Reason: In the interest of residential and visual amenity.

3. The number of children to be accommodated within the premises shall not exceed 36 at any time on any day.

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

4. 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.

5. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

6. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

7. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 1000 to 1600 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 for the planning authority.

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

8. The developer shall pay to the planning authority a financial contribution of 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.

Susan McHugh
Planning Inspectorate

8th June 2017.