



An
Bord
Pleanála

Inspector's Report PL10.248511

Development	Extension to ground floor bedroom and change of use of bedroom to childcare use with all associated site works.
Location	36 Maudlin Court, Thomastown, County Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	P17/1
Applicant(s)	Valerie Butler
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Robert Wemyss
Observer(s)	None
Date of Site Inspection	3 rd Aug 2017
Inspector	Susan McHugh

1.0 Site Location and Description

- 1.1. The appeal site is located within an established residential estate approx. 0.5km to the north of Thomastown village and to the east of the R448 Maudlin Street.
- 1.2. The site is accessed via Maudlin Court which connects to Maudlin Street. St Mary's National School is located approx. 100m to the south of the appeal site. The area is well served by local shops located in the village and approx. 0.5km to the north of the appeal site.
- 1.3. No. 36 Maudlin Court, is a large detached two storey dwelling, located on a corner site, at the end of a cul de sac and is currently unoccupied. The appeal site faces onto a turning area and planted green area of public open space to the east which serves the residents of this residential estate.
- 1.4. The existing dwelling has a single storey element located along the southern side gable which comprises of a bedroom and bathroom. The existing bedroom includes glazed sliding doors to the front elevation and two small windows to the bathroom and lobby to the rear. There is an existing timber garden shed located to the side of this and the southern boundary of the site.
- 1.5. The site is bounded by mature laurel hedging along the front east facing boundary and a 2m high wall finished in peddle dash along the side and rear south and west facing boundaries. The existing concrete driveway provides for one car parking space.
- 1.6. The green area to the east includes two parking bays located opposite the adjoining house no. 37 and house no 45 Maudlin Court. There is also a parking bay located to the rear of the site with a continuous footpath running along the southern boundary which connects to the appeal site and Maudlin Court.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a single storey extension to the side of the existing ground floor bedroom and bathroom. The area of the extension is stated as being 17.40 sq.m.

- 2.2. Permission is also sought for change of use of the existing bedroom and bathroom to provide for a childcare use which combined with the proposed extension results in an overall floor area of 36.54sq.m. The proposed development comprises a lobby, classroom and toilet. A new access ramp and entrance door is proposed to the lobby on the front elevation. While the existing full length glazed doors are to be replaced with a large window and signage. A bathroom window is proposed along the side south facing elevation. To the rear an existing bathroom window is to be replaced with a rear entrance door and the second window is to be widened.
- 2.3. The proposed extension will have a hipped roof with external finishes and selected concrete roof tiles to match existing.
- 2.4. It is proposed to relocate the existing timber shed to the rear of the house along the north western corner.

3.0 **Planning Authority Decision**

3.1. **Decision**

The Planning Authority decided to grant permission subject to 6 conditions.

Of relevance to this appeal are the following conditions;

Condition No. 3. – Hours of operation confined to between 09.30hr and 12.30hrs Monday to Friday.

Condition No.4. – No more than 11 children shall attend the playschool facility at any one time.

Condition No. 5 – 2 additional on-site parking spaces shall be provided prior to the opening of the playschool.

3.2. **Planning Authority Reports**

- 3.2.1. The **1st Senior Executives Planner's** report dated **21/02/2017** is the basis for the Planning Authority decision. It includes:
- Notes third party submission in respect to omission of Appendix 3 of the planning application form and while not considered a validation issue recommends that further information is requested.

- Recommends that details in relation to the number of children to attend the proposed childcare / playschool facility be submitted.
- Recommends that revised proposals to address the issue of car parking be submitted.

The **2nd report** dated **18/04/2017** following FI notes the location of the proposed development in close proximity to an existing primary school and the provision of 2 additional parking spaces. The report considers that the issues raised have been addressed satisfactorily and recommends a grant.

3.2.2. Other Technical Reports

- **Roads** – The first verbal report required further information in relation to car parking to meet development plan standards. The second verbal report with the Area Engineer agreed that a condition be attached requiring agreement in relation to the dropping of the footpath and kerb to the front of the site.
- **Environment** – No objection subject to conditions.
- **HSE** – TUSLA now responsible for preschools.

3.3. Prescribed Bodies

Irish Water – No objections.

3.4. Third Party Observations

There was one third party submission on file from Robert Wemyss and the issues raised can be summarised as follows:

- Application does not appear valid as the required information (under Appendix3) is not included.

4.0 Planning History

There are no relevant applications associated with the subject site.

5.0 Policy Context

5.1. National Policy

5.1.1. National policy documents which form the strategic context for the proposed development include:

- Guidelines for Planning Authorities on Childcare Facilities, 2001.

5.2. Development Plan

5.2.1. The operative plan is the Kilkenny County Development Plan 2014-2020.

Section 5.8.1 deals with childcare facilities.

Section 11.7.9 deals car parking standards.

5.2.2. Thomastown Local Area Plan 2009-2020

The appeal site is zoned '**Existing Residential**': 'To protect and improve residential amenities and to provide for new residential development appropriate to the scale and character of the settlement' in the Thomastown Local Area Plan.

A playgroup or crèche are listed as permissible uses under this zoning objective.

Map 4 Development Framework Plan identifies a proposed strategic footpath/cycle link along the southern boundary of the site linking existing residential areas and open space to the east with the adjoining residential areas to the west.

5.3. Natural Heritage Designations

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

6.0 The Appeal

6.1. Grounds of Appeal

The third party appeal was submitted Robert Wemyss. The grounds of the appeal can be summarised as follows:

- Nature and extent of development - It was not possible for properly informed observations or submissions to be made on the application within the timeframe allowed by Kilkenny County Council as the particulars of the nature and extent of the proposed change of use did not accompany the submitted application.
- Material changes in response to FI – Details submitted in relation to car parking are material and there was no opportunity afforded for observations to be made in response.
- Insufficient car parking – Granting planning permission for the proposed development which comprises an existing dwelling and new childcare facility and members of staff with a total of three car parking spaces contravenes Section 11.7.9 of the Kilkenny County Development Plan 2014-2020.
- Traffic hazard – The off-site car parking spaces indicated on the drawings submitted in response to the FI request serves as turning areas for the cul de sac and would generate conflicting traffic movements through the Maudlin Court Estate.
- Impact on viability of existing childcare facilities – There are three established childcare facilities located within the Maudlin Court Estate, granting permission for a fourth in close proximity to the others without considering the impact on their business viability would be contrary to the proper planning and sustainable development of the area.
- Childcare Legislation – The planning permission does not reference any compliance with relevant Childcare Legislation/Regulatory Bodies or Fire Safety Certification.

6.2. Applicant Response

The applicant's response to the third party appeal can be summarised as follows;

- Appendix -3 of the planning application form in relation to commercial development was not completed in error.
- The information submitted as part of the planning application was not misleading.

- Considers that Appendices 1 to 3 of the Kilkenny County Council Planning Application Form comes under Article 22(A)(1) of the Planning and Development Regulations and failure to complete Appendices 1 to 3 comes under Article 22(A)(2) of the Planning and Development Regulations and therefore the planning application cannot be invalidated if any of these Appendices are not completed.
- Failure to provide information referenced in Section 5.8.1.1 of the Kilkenny County Development Plan 2014-2020 are not grounds for invalidating a planning application.
- The applicant and her family will be returning to live in No. 36 Maudlin Court.
- Proposal is consistent with the zoning objective for the site, and is a permitted use.
- The applicant will be the only person working in the playschool and it is proposed to provide a total of 3 car parking spaces with 2 new spaces.
- All of the traffic associated with the playschool will be drop-off/pick-up type traffic, it is considered that the proposed and existing car parking arrangement is adequate. However, if required, an additional car parking space can be provided. No car parking spaces are to be provided in the turning areas as indicated by the appellant.
- The applicant confirms that one of the other established childcare facilities is owned by her and is located at No. 68 Maudlin Court. This facility will be closing this summer as the property is to be sold, and the applicant is relocating and downsizing her existing business from a facility which caters for 16 children to 11 children.
- The applicant notes that the appellant and his partner own one of the other childcare facilities at No. 9 Maudlin Court and considers the appeal vexatious.
- The applicant has been contacted by Tusla and if granted planning permission will register the childcare facility and comply with all relevant childcare legislation and regulations.

- If permission is granted a fire safety certificate application will be obtained from the Building Control Authority as required under the Building Control Act, 1990.

6.3. **Planning Authority Response**

The planning authority had no further comments to make on the appeal.

6.4. **Observations**

There are no observations with reference to the appeal.

7.0 **Assessment**

7.1. 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
- Validity of the application
- Traffic safety / parking
- Appropriate Assessment

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

7.2.1. The site is zoned 'Existing Residential' as per the Thomastown Local Area Plan with a stated objective to 'To protect and improve residential amenities and to provide for new residential development appropriate to the scale and character of the settlement'. A playgroup or crèche are listed as permissible uses under this zoning objective. Based on development plan policy for the 'Existing Residential' zoning, residential and playgroup uses are compatible land uses under this zoning objective and are therefore consistent with the zoning objective for the area.

7.2.2. Section 5.8.1 relating to Childcare Facilities in the Kilkenny County Development Plan contains Objective 5H which states that 'The Council will facilitate the provision of childcare and early childhood education facilities in a sustainable manner in appropriate locations which include the following: larger new housing estates, industrial estates and business parks, in the vicinity of schools, neighbourhood and district centres and adjacent to public transport facilities'.

7.2.3. The development management standards for childcare facilities as out set out in the County Development Plan include the following:

- *'The suitability of the site/premises for the type and size of facility proposed, taking into consideration the effects on the existing amenities of the area.*
- *Adequacy of vehicular and pedestrian access and parking provisions, which may be required to include satisfactory and safe collection /drop-off areas where appropriate, for both customers and staff where it is merited by the scale of the development and the resultant intensity of vehicular movements.*
- *Provision of an adequate outdoor play area within the curtilage of all full day care facilities. This outdoor play area shall be located to have minimum impact on the amenity of surrounding properties, particularly in residential areas and should also be separate from car parking and service areas.*
- *The design of the structure and capability of it being assimilated satisfactorily in to the built environment.*
- *Ease of accessibility for all.'*

7.2.4. The appellant has indicated that there are already three established childcare facilities in the area. However, the applicant has noted that one of the other facilities is already in her ownership and that she plans to relocate and downsize her existing business, while also noting that one of the facilities is owned by the appellant and his partner. Notwithstanding this I consider that the nature of the subject site located within an established residential area, and in close proximity to a local school and neighbourhood shops is a suitable location for a small scale childcare facility and would not be in conflict with planning policy.

7.2.5. I am satisfied that the applicant has demonstrated that the sessional nature and small scale of the proposed child care facility is appropriate in meeting the needs of

the local community. I am further satisfied that the commercial scale of the proposed development which is ancillary to the primary use of the dwelling and which is to be occupied by the owner of the childcare facility is acceptable. I am also satisfied that the proposed use will not detract from the residential amenities of the area.

7.3. Validity of the application

- 7.3.1. The appellant has queried the validity of the application on the basis that information in relation to the nature and extent of the proposed change of use and specifically with regard to the size and nature of the proposed facility, number and age range of children, number of staff and car parking arrangements was not submitted with the application as originally lodged with the planning authority. The appellant refers to Part 4 Article 22 of the Planning and Development Regulations 2001 as amended which states '*a planning application for any development consisting of or mainly consisting of the making of any material change in the use or any structure or other land, or for the retention of any such material change of use, shall be accompanied by, (i) a statement of the existing use and of the use proposed together with particulars of the nature and extent of any such proposed use,*'.
- 7.3.2. Notwithstanding the fact that validation is a matter for the PA, the Board considers the application 'de novo'. I have considered the viewpoint of the appellant and am of the opinion that there was sufficient material on file to describe the nature and extent of the proposed development. The appellant was correct in identifying in his submission to the planning authority that the information required in Appendix 3 of the application form had not been furnished to the local authority. However, I would not accept as stated in the appeal that the application was invalid as information was not submitted as set out in Section 5.8.1.1 of the Kilkenny County Development Plan.
- 7.3.3. I would concur with the applicant's interpretation of Part 4 Article 22(A)(1) and Article 22(A)(2) of the Planning and Development Regulations. Part 4 Article 22(A)(1) states that '*the planning authority may require the applicant to submit with the planning application specified additional information*'. Part 4 Article 22(A)(2) states that '*no planning application shall be invalidated under Article 26 for failure to submit with the application or particulars requested under sub-article (1)*'.

7.3.4. The appellant also cites that there was insufficient time to make comments on the response to the further information request which raised issues which were material. I have examined the request for further information and the response received by the PA and I do not consider that the information submitted constituted a material change. The objectors comments have been considered in the context of this appeal and in my assessment I concur with the planning authority and the applicant and am satisfied that the application is a valid application.

7.4. Traffic safety/parking

7.4.1. The appeal site is located at the end of a cul de sac and faces onto a turning area for cars. There are also three parking bays for cars in the vicinity, two of which are located alongside the area of open space opposite house no 37 and house no. 45, and another to the rear of the appeal site. These can accommodate approx. 3 cars each.

7.4.2. The applicant indicated in response to FI that two additional parking spaces would be provided in addition to the existing car parking space to the front of and within the curtilage of the existing house to serve both the existing house and proposed development. In addition, the applicant indicated two areas immediately adjacent to the appeal site namely within the turning area of the cul de sac and the parking bay opposite house no.37 as suitable drop-off/pick-up parking areas. The appellant contends that off-site car parking spaces indicated on the drawings submitted in response to the FI request serves as a turning area for the cul de sac and would generate conflicting traffic movements through the Maudlin Court Estate. I would however concur with the PA that on the basis that the turning area is used only as a drop-off/pick-up area the proposed development would not result in a traffic hazard.

7.4.3. Having established by way of FI that the car parking requirement for the proposed development in terms of staff etc. is 3.5 spaces, the PA were satisfied given the sessional nature of the playschool that the parking provision was acceptable.

7.4.4. The appellant asserts that there is insufficient parking to serve the existing house and proposed playschool. However, the applicant has clarified in their response to the appeal that as they will be the owner occupier of the house and sole operator/employee of the playschool that the car parking provision is sufficient. I

consider that the car parking provision on site is sufficient and meets Development Plan standards and subject to a condition that the two car parking spaces shall be provided prior to the opening of the playschool as set out in the planning authority's condition no. 5 is acceptable.

7.5. Appropriate Assessment

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.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the zoning for existing residential in the Thomastown Local Area Plan 2009-2020 and the Kilkenny County Development Plan 2014-2020, and that childcare facilities are permissible within this zoning objective and the limited nature and extent of the proposed childcare use ancillary to the main dwelling house on the site, it is considered that the proposed extension and change of use to a sessional playgroup would be in accordance with the zoning for the site, would not seriously injure the amenities of property in the vicinity and would not result in a traffic safety hazard or obstruction of road users. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 24th day of 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 09.30 to 12.30 hours Monday to Friday inclusive except public holidays. Prior to the operation of the childcare facility the operator shall submit to the planning authority for agreement in writing details of the proposed signage.

Reason: In the interest of residential and visual amenity.

3. The number of children to be accommodated within the premises shall not exceed 11 at any time on any day.

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

4. The two no. additional on-site car parking spaces shall be provided prior to the opening of the playschool.

Reason: In the interest of public safety and orderly development.

5. Water supply and drainage arrangements, including 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. 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.

Susan McHugh
Planning Inspectorate

8th August 2017