



An
Bord
Pleanála

Inspector's Report PL 06D.249202

Development	Continued use of previously approved change of use of part of the ground floor level of an existing house from residential use to use as a crèche/nursery school.
Location	26 Avoca Park, Blackrock, Co. Dublin
Planning Authority	Dun Laoghaire Rathdown Co. Co.
Planning Authority Reg. Ref.	D17A/0549
Applicant(s)	G. Holohan
Type of Application	Retention Permission
Planning Authority Decision	To Grant Permission for Retention subject to conditions
Type of Appeal	Third Party
Appellant(s)	Bernadette Mc Nally and Emer and John Scanlon
Observer(s)	Clare Manning Catherine Mc Cabe
Date of Site Inspection	4 th December 2017
Inspector	Erika Casey

1.0 Site Location and Description

- 1.1. The subject site is located in a cul de sac in an established residential suburb in Blackrock, County Dublin. The site currently accommodates a semi-detached two storey dwelling with a stated area of 176 sq. metres. There is an existing single storey extension to the side and rear of the dwelling. The house is served by a front and rear garden. There is a vehicular access to the front and off street car parking for 2 no. spaces.
- 1.2. The existing childcare facility is limited to two rooms in the house and accommodates no more than 15 children at any one time. The operating hours are 07.30 to 18.30.
- 1.3. The general character of development in the vicinity is of similar suburban low density housing. The houses in the estate are set back from the road with front gardens and off street parking. There is a large turning area to the north of the site.

2.0 Proposed Development

- 2.1 The proposed development seeks retention permission for the continued use of the previously approved change of use of part of the ground floor to a crèche/nursery (Montessori) school (c. 39 sq. metres) The remainder of the dwelling is in residential use and it is understood is occupied by the applicant's parents. The applicant has sought an extension of the current use for a period of 10 months.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 To Grant Retention Permission subject to conditions. Conditions of note include:

Condition 2: That the use for crèche/nursery school purposes shall be restricted to the area hatched on the ground floor plan submitted and the remainder of the dwelling shall be used for the residential use of the applicant.

Condition 3: The number of children to be catered for concurrently shall be restricted to 15 maximum.

Condition 4: Hours of operation restricted to between 7.30 and 6.30 Monday to Friday.

Condition 5: Mobility Management Plan to be submitted.

3.2. Planning Authority Reports

3.2.1. Planning Report (10.08.17):

- The crèche/nursery school is ancillary to the residential use of the dwelling.
- The facility is in close proximity to extensive residential areas with good pedestrian and cycle links.
- The development would not seriously injure the residential amenities of the area.

3.2.2. Other Technical Reports

Transportation Planning (08.08.2017): No objection subject to condition.

Drainage Planning (02.08.2017): No objection.

Environmental Health Service (15.06.2017): No objection subject to condition.

3.3. Prescribed Bodies

- No reports received.

3.4. Third Party Observations

3.4.1 Three third party submissions made. Issues can be summarised as follows:

- The existing Montessori school generates excessive noise levels which impacts on the residential amenities of the area.
- The development generates traffic congestion due to vehicles parking in an ad-hoc manner. This creates a traffic hazard.

4.0 Planning History

Planning Authority Reference D12A/0335

- 4.1 Permission granted in October 2012 on the subject site for the change of use of part of the ground floor of the existing dwelling house from residential use to use as a crèche/nursery (Montessori school). The decision was subject to a number of conditions including condition no. 4 which stated:

“That the Montessori School use shall be operated by a person in occupation of the main dwelling and the use shall cease on or before October 23, 2017, unless permission for its retention has been granted by the Planning Authority or An Bord Pleanála on appeal. Reason: In the interest of residential amenity.”

5.0 Policy Context

5.1. Development Plan

- 5.1.1 The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is zoned *Objective A – To protect and/or improve residential amenity*. Relevant policies of the plan include:

Policy SIC11 Childcare Facilities: *It is Council policy to encourage the provision of affordable and appropriate childcare facilities as an integral part of proposals for new residential developments and to improve/expand existing childcare facilities across the County.*

- 5.1.2 The plan goes on to state that in the interest of sustainability, the Council *“fully supports the development and delivery of accessible, high quality and affordable childcare facilities to address the overall development needs of the County.”*

- 5.1.3 **Section 8.2.4.11 Childcare Facilities:** sets out guidance for parking/access arrangements to childcare facilities. Generally, 1 parking space per staff member and a set down area is required.

- 5.1.4 **Section 8.2.12** of the plan sets out further guidance regarding childcare facilities. It states:

“In assessing individual planning applications for childcare facilities, the Planning Authority will have regard to the following:

- *Suitability of the site for the type and size of facility proposed.*
- *Adequate sleeping/rest facilities.*
- *Adequate availability of indoor and outdoor play space.*
- *Convenience to public transport nodes.*
- *Safe access and convenient off-street car parking and/or suitable drop-off and collection points for customers and staff.*
- *Local traffic conditions.*
- *Number of such facilities in the area. In this regard, the applicant shall submit a map showing locations of childcare facilities within the vicinity of the subject site and demonstrate the need for an additional facility at that location.*
- *Intended hours of operation.*

Applications for childcare facilities in existing residential areas will be treated on their merits, having regard to the likely effect on the amenities of adjoining properties, and compliance with the above criteria. Detached houses or substantial semi-detached properties are most suitable for the provision of full day care facilities. Properties with childcare should include a residential component within the dwelling, and preferably should be occupied by the operator or a staff member of the childcare facility.”

5.2 Other Policy

Childcare Facilities – Guidelines for Planning Authorities 2001

5.2.1 Section 3.3.1 of the Guidelines notes that suitable locations for full day facilities include detached houses/sites or substantial semi-detached properties with space for off street parking and/or suitable drop off and collection points for customers and also space for an outdoor area.

5.2.2 The guidance goes on to state that applications for other types of premises including those located on a cul de sac should be treated on their merits having regard to the principles outlined in relation to parking, drop off points, layout and design of the housing area and the effect on the amenities of adjoining properties.

5.2.3 Section 3.2 of the guidelines sets out the different criteria that should be used for assessing planning applications for childcare facilities.

5.2.4 Section 3.4.2 of the guidelines addresses temporary permissions. It is stated:

“If a temporary permission is granted the permission should be for a period of not less than 5 years. The granting of a temporary permission should occur only once in relation to any individual premises and on the expiry of the temporary permission, a permission or refusal should issue.”

Circular Letter PL3/2016 – Department Environment, Community and Local Government 2016

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

5.3 Natural Heritage Designations

- None applicable.

6.0 The Appeal

6.1. Grounds of Appeal

- States that the public notices are misleading and therefore invalid. They provide an inadequate description of the development as they do not state that permission is sought for a temporary period. Contends that site notice erected on site differed from that submitted.
- Notes that the nature and extent of the operation is not fully detailed in the application, as due to the sessional nature of the business, there is potential for a significant intensification of commercial activity at the site. States that three

sessions per day, each accommodating 15 children, could be facilitated at the premises.

- The development will have an unacceptable impact in terms of traffic and congestion and would endanger public safety. Car parking in the cul de sac is already oversubscribed and the development will exacerbate this. Driver behaviour at drop off and pick up times at the childcare facility is chaotic and causes a traffic hazard. Car parking at the development is limited to one space and there is insufficient turning space to allow a car to reverse in forward gear. Clients of the facility often park illegally blocking other vehicular entrances on the street causing an inconvenience to existing residents.
- The development could generate between 60 and 90 car trips per day. Such potential intensification of use would exacerbate an already treacherous traffic situation. As the development does not provide any suitable drop off and collection point for customers and staff, it is contrary to the Development Plan guidance.
- The Planning Authority Transportation Planning Report is inadequate and contains no critical assessment of the traffic issues associated with the development. Condition 5 imposed which relates to mobility management measures, is vague and unenforceable. Third parties would have no input to compliance with this condition which is contrary to the Aarhus Convention. Notes that the condition is more suited to primary and secondary school developments and that it is not a suitable mechanism for mitigating the significant traffic issues associated with the development. In reality, it will have no impact on the operation of the childcare facility.
- It is stated that the development has a negative impact on the residential amenities of the area due to noise disturbance. This is contrary to the zoning objective. Noise intrusion commences at 7.30am when the facility opens and arises from cars arriving and departing, children crying, conversations etc.
- Notes that the existing permission restricts the use for Montessori school purposes to the area hatched on the ground floor plan. Contends that the use of the front driveway of the dwelling for conversations between the applicant and customers is an extension of the planning unit and constitutes

unauthorised development. States that such teacher/parent interactions are often loud, animated and raucous. Children can be heard singing and reciting the alphabet. This causes great disturbance and distress to the appellants. Audio recording submitted with appeal to demonstrate noise impacts.

- States that the Planning Authority's assessment of the proposal is inadequate as it does not fully assess the issues raised by third parties particularly in relation to impacts in respect of noise, disruption and privacy nor does it address the potential issue of intensification. The decision does not place any time restriction on the operation of the childcare facility and in this regard, is ultra-vires. Notes that the existing permission expired on the 23rd of October 2017 and thus the development is unauthorised.
- Refers to precedent decisions issued by the Board and states that the current proposal should be refused having regard to these previous appeals which were refused on the grounds of scale, traffic hazard and residential amenity.
- Considers that the development is a material contravention of the development plan as it fails to meet the zoning objective by reason of its scale, noise, disturbance, lack of safe access and convenient off street car parking and/or suitable drop-off and collection points for customers and staff.

6.2. Applicant Response

- The current application seeks to extend the life of the childcare facility by 10 months. The applicant is at an advanced stage of arranging an alternative premises and the purpose of the application is to secure a modest extension of the permission until such time that the alternative premises is available. The applicant is happy to accept a condition limiting the timescale of the permission.
- The development accords with the relevant policies of the County Development Plan. It is the only childcare service in the estate and is an important community facility. The facility only accommodates one ECCE session per day and there are never more than 15 children present at any one time. A number of letters of support for the development, including immediate neighbours are submitted with the appeal response.

- Vehicular traffic associated with the development is limited and there are no issues with parking. Many of the children arrive by foot, thus keeping traffic impacts to a minimum. Furthermore, a number of the children are siblings and arrive/depart together. There are two parking spaces at the subject property as well as on street spaces. There is ample space for turning movements. The Council's Transportation Section had no concerns regarding the application.
- Notes that condition 5 is more appropriate to other types of educational establishments and has been applied without due consideration. It is not relevant to a small crèche and should be omitted.
- There is a small amount of noise as children arrive and leave. This is mainly children talking and is hardly offensive. The issues raised by the appellants are greatly exaggerated.
- The audio recordings included in the appeal submission are considered intrusive. They are the normal sounds of a residential area and clearly do not represent a problem to residential amenity.
- With regard to concerns about potential intensification of use through the provision of further sessional places, the facility only offers a morning session. No afternoon session is proposed and they are happy to accept a condition precluding such.
- The application is for retention permission and therefore is valid, even if the period expires prior to the making of the final decision. The discrepancies in the site notices is considered a minor matter. There is no requirement for a public notice to state the period for which permission is sought.
- The two precedent cases referred to are irrelevant and have no issues in common with the current proposal.

6.3. Planning Authority Response

- It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.4. Observations

Clare Manning, 7 Avoca Road, Blackrock and Catherine Mc Cabe 95 Avoca Park, Blackrock

- Both observations are in support of the proposed development.
- Note that there is a shortage of this type of childcare facility in the area.
- State that the location of the facility is ideal as it is within a large residential community and can be easily accessed by foot.
- The crèche/Montessori school is a valuable community facility.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

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

7.2. Procedural

7.2.1 Concerns have been raised by the appellant regarding the validity of the application due to discrepancies in the site notices erected and submitted and that the notices do not state the time period for which the use is proposed for retention.

7.2.2 Section 3.4 of the Development Management Guidelines 2007 sets out guidance regarding the public notices. It is stated:

“The purpose of the notices, that is, the newspaper notice (Article 18 of the Planning Regulations) and the site notice (Article 19), is to inform the public of the proposed development and alert them as to its nature and extent.....In recent years the amount of detail in the public notice has increased continuously to the extent that

such notices frequently include every detail of the proposed development, rather than comprising a brief description the proposed development.....The public notice should therefore be drafted so as to give a brief indication as to the nature and extent of the proposed development and is not required to go into excessive detail.”

7.2.3 As has been acknowledged by the appellant, the guidelines specifically note that the purpose of public notices is to inform the public of the proposed development and that third parties then may examine the files in detail at the planning office and if they so wish, lodge an observation. It is noted that the planning application cover letter in relation to the development explicitly states that the application is for the continued use of the Montessori school for a further period of 10 months until the end of August 2018. Furthermore, a letter of consent submitted by the applicant’s parents, also states that they would only consent to the operation of the facility for a temporary period. It is therefore clear in my view, that the applicant was not seeking permission for the permanent operation of the facility, and this was made very clear in the application documentation.

7.2.4 I am satisfied that the nature and content of the site and newspaper notice submitted with the application was sufficient and that third party rights were not prejudiced with the regard to the detail and content of the public notices. There is in my view no basis for invalidation of the application on these grounds.

7.2.5 The appellants also state that the application is invalid because the Council were ultra vires in granting a permission for an indefinite period of time, even though the applicant applied for the continuation of use for a period of one year only. I do not consider this a ground for invalidation. The Planning Authority have the discretion to apply conditions as they deem appropriate including those that relate to the life of a permission.

7.3 Principle of Development

7.3.1 The subject proposal comprises a modest crèche/Montessori facility in an existing semi-detached dwelling in Avoca Park, Blackrock. The facility has been operation for five years and is supported by many residents of the estate as is evident from the number of letters of support and observations submitted in relation to the application.

7.3.2 The subject site is zoned objective A and the use ‘childcare service’ is open for consideration under this zoning objective. The Development Plan generally

encourages the development of such facilities in residential areas where they can be easily accessed by the community they serve and notes they are particularly suited to large detached or semi-detached properties.

- 7.3.3 The subject crèche is located in a large semi-detached dwelling and is within easy walking distance of a large residential community. The Dun Laoghaire Rathdown County Childcare Committee lists all childcare facilities in the County. This confirms that there are no other crèche or Montessori operators in Avoca Park. The recent circular issued by the Department of Environment, Community and Local Government in 2016 notes the need to provide additional childcare places. I am satisfied in this regard, that the development provides an important local community facility and the principle of such a development is acceptable at this location.
- 7.3.4 The applicant has applied for permission for a modest extension of the life of the permission. This is to enable the facility to operate until the end of the term year and to allow time to secure an alternative premises. A letter of consent from the applicant's parents clearly states that permission to operate the facility for the subject property is only permitted until August 2018.
- 7.3.5 It is noted that the Planning Authority did not impose a condition restricting the timeframe of the permission. Reference was made to section 3.4.2 of the *Childcare Facilities – Guidelines for Planning Authorities 2001* in the Planning Authority's Planning Report. This states that the granting of a temporary permission should occur only once in relation to any individual premises and on the expiry of the temporary permission, a permission or refusal should issue. It is assumed on this basis that no condition was attached by the Planning Authority restricting the use to a further temporary period.
- 7.3.6 It is noted that the Guidelines for Childcare facilities were published in 2001 and are somewhat out of date. The recent circular Letter from the Department PL3/2016 notes this, and states that the guidelines are likely to be reviewed. In this regard, I am of the view that each application should be considered on its merits and proposals for an extension of a temporary permission must be considered on an individual basis having regard to the particular circumstances.
- 7.3.7 In this case, the applicant has explicitly stated that they are happy to accept a condition restricting the use to a period of 10 months. The appellant has also

objected on the basis that such a condition was not imposed by the Planning Authority. It is reasonable in my view to permit the facility to continue at this location until the end of the term year. In this context, I am satisfied that notwithstanding the advice set out in the guidelines, it is appropriate in this instance to impose a condition to extend the temporary permission. The imposition of such satisfies the requirements of the applicant and addresses many of the concerns of the appellants.

7.4 Impact on Residential Amenity

- 7.4.1 It is contended by the appellants that the development has a significant adverse impact on the residential amenities of the area, particularly due to noise intrusion from cars, children singing and chanting in the crèche and from conversation between parents on the public street.
- 7.4.2 Concerns are also raised that activities at the facility may intensify due to the sessional nature of childcare services and that up to 45 children could potentially be in attendance each day.
- 7.4.3 The applicant has provided clarity regarding the nature and extent of the operation and the number of children in attendance at any time. Concerns regarding potential intensification of use are in my view conjecture and have no foundation or basis.
- 7.4.4 The appellants house is separated from the crèche facility by a public road and is thus a significant distance away from the development. Noise intrusion by vehicles in my opinion is part and parcel of any suburban residential estate where cars would regularly depart and arrive. In relation to noise from the children, this again is likely to be limited due to the small scale nature and operation of the facility and the fact that only 15 children would be in attendance at any one time.
- 7.4.5 It is noted that a number of other residents, including those immediately adjacent to the facility have submitted letters stating that there is no excessive noise pollution from the development. I have listened to the audio recordings submitted with the appeal response and do not consider the noise levels of the activities recorded to be particularly loud, obtrusive or raucous as stated by the appellant. In any event, it is noted that as the noise recordings have not been carried out by an acoustic expert with calibrated equipment, their accuracy cannot be verified. The site visit to the development was undertaken at 8.30am and again no particularly noisy activities were observed.

- 7.4.6 The appellant has also stated that the use of the front driveway by parents interacting and having a conversation with each other is an extension of the planning unit and thus unauthorised development. I consider such a statement unfounded. A brief social interaction between individuals outside the premises is a normal part of daily living and does not constitute an extension of the existing Montessori use.
- 7.4.7 In relation to potential overlooking and impacts on privacy, it is noted that the appellants dwelling is not located directly opposite the development. Again due to the separation distances involved and the fact that the appellant's property has a large screen hedge to the front, no adverse overlooking impacts occur.
- 7.4.8 I am satisfied, that having regard to the limited scale of the crèche facility, that it does not give rise to any adverse impacts to the residential amenities of adjacent properties in terms of noise or loss of privacy.

7.5 Parking and Traffic

- 7.5.1 Significant concerns have been raised by the appellant regarding ad-hoc parking and traffic generated by the proposed development. It details that there is a lack of safe access and no suitable drop off or collection point for customers and staff. The appellants also state that the potential to intensify the crèche facility will exacerbate the existing situation.
- 7.5.2 Avoca Park is an existing cul de sac. There is ample on street car parking spaces and a very large turning circle to facilitate turning movements. The subject crèche provides two off street parking spaces. As detailed above, the facility currently only accommodates 15 children at one time, some of whom are siblings. Given the location of the development within an existing residential estate, many of the clients access the crèche by foot. Documentary evidence from a number of the users of the facility is submitted in support of this. Furthermore, arrival and departure times are likely to be staggered due to differing working patterns of parents using the facility.
- 7.5.3 During the site visit, a number of children were observed arriving and departing by foot. There was ample room for cars to manoeuvre and 2 car parking spaces available in the front drive of the property. No treacherous driving conditions as noted by the appellant were observed. I am satisfied that any potential traffic disruption caused by the facility is likely to be very limited and over a short period of time. It is noted that Dun Laoghaire Rathdown County Council Roads Department

had no objection to the proposal. As detailed above, potential to intensify the activities at the crèche are unfounded. I am satisfied therefore having regard to the location and limited scale of that the development that it will not give rise to any material significant or adverse traffic and parking impacts, has sufficient facilities for drop off and collection and will not detract from the residential amenities of the area.

7.5.4 With regard to condition 5 imposed by the Planning Authority which requires the preparation of a travel plan, having regard to the small scale of the development and the fact that permission to extend the life of the permission is sought for a limited period of time, I am satisfied that the imposition of such a condition is not warranted in this instance.

7.6 **Appropriate Assessment**

7.6.1 Having regard to the nature and scale of the proposed development comprising the extension of the life of a permission for a crèche facility in an existing residential dwelling on serviced land within an established urban area, and the distance to the nearest European site, 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. It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 **Reasons and Considerations**

9.1 Having regard to the limited nature and extent of the proposed development, it is considered, that subject to compliance with the conditions set out below, the proposed development for retention would not seriously injure the residential amenities of the area and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development for retention 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 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. This is a temporary permission only, and shall expire 1 year from the date of this order, unless by that time permission for its retention has been granted by the Planning Authority or by An Bord Pleanála on appeal.

Reason: In the interest of residential amenity.

3. The number of children to be accommodated within the premises shall not exceed 15 number at any time on any day or 15 number in any session.

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

4. The proposed childcare facility shall not operate outside the period of 0730 to 1830 hours Monday to Friday inclusive, and shall not operate on Saturdays, Sundays or public holidays.

Reason: In the interest of residential amenity.

Erika Casey
Senior Planning Inspector

5th December 2017