



An
Bord
Pleanála

Inspector's Report ABP-300681-18

Development	Change of use from vacant crèche to 1 no. residential duplex unit with ground floor terrace, first floor balcony, elevation alterations and ancillary site works.
Location	Coldcut Park, junction of Coldcut Road and Cloverhill Road, Ballyfermot, Dublin 22
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD17A/0372
Applicant(s)	Irish Residential Properties Reit PLC
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Irish Residential Properties Reit PLC
Observer(s)	None
Date of Site Inspection	15 th May 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The site is located in Coldcut Park which is a relatively recent residential development of 93 units comprising a mix of townhouses, duplex units and apartments. It is located at the junction of Coldcut Road and Cloverhill Road in Ballyfermot, Dublin 22. The M50 bounds the development to the west, with the Liffey Valley shopping centre to the north-west. Residential development is located to the north and east of Coldcut Park. Ballyfermot United Sports Club is located to the south with Wheatfield prison further south. A residential development and Cherry Orchard Hospital lie to the east and south-east of the site.
- 1.2. The appeal site within Coldcut Park is at the most north-easterly point of the development. It is fit out as a crèche on the ground and first floor, with a duplex residential unit above. The crèche is currently vacant. An area of surface car parking for drop-off is located to the south of the subject apartment block in which the vacant crèche lies.

2.0 Proposed Development

- 2.1. Permission is sought to change the use of the crèche to a 3 bedroomed residential duplex unit with private open space at ground floor and a balcony at first floor with minor elevation changes. There is sufficient parking spaces as 6 spaces were originally provided for the crèche. It is proposed to provide 2 spaces for the residential unit and 4 spaces for visitor parking.
- 2.2. It is proposed to provide an open plan kitchen and living area, bedroom and w.c. at ground floor. Two further bedrooms and bathrooms are proposed at first floor. The overall floor area is noted as being 120sq.m.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for 1 reason:

The proposed change of use would result in the loss of a permitted childcare facility, which would materially contravene Community Infrastructure Policy

C8(a) and (b), as set out in the South Dublin County Development Plan 2016 – 2022 and the provisions of the Childcare Facility Guidelines for Planning Authorities, DEHLG (2001). It would also be contrary to Government Policy to increase access to childcare, having regard to the extension of the ECCE scheme and the associated demands on childcare facilities with effect from September 2016, and its further extension in 2017, and would set an undesirable precedent for the further loss of permitted childcare facilities. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. In summary, it states:

- The site is located in land use zoning objective 'RES – to protect and/or improve Residential Amenity'.
- Notes it is government policy to increase access to childcare having regard to the extension of the ECCE scheme.
- Acknowledges examination of local need/provision carried out by applicant in support of the application, but considers caution must be exercised in drawing conclusions. Notes the Development Plan states that pre-school childcare needs are difficult to assess on a long-term basis but there is a recognised need for planned provision in new communities where no infrastructure exists.
- Considers the subject site is an example of planned provision and considers that preventing the loss of permitted facilities is part of a proactive role.
- The permitted childcare use is in accordance with policies C8(a) and (b) of the Development Plan.
- The proposed change of use would result in the loss of a previously permitted childcare facility and would create a precedent.
- Notes the applicant cites viability as a reason for the change of use, but considers this is not a material planning consideration.

- Considers proposal unacceptable in policy terms.
- Considers proposal acceptable in terms of residential and visual amenity.
- Concludes that proposal would be a material contravention of policy C8(a) and (b); result in the loss of a permitted childcare facility; contrary to the provisions of the Childcare Facility Guidelines; contrary to government policy to increase access to childcare; and, set an undesirable precedent.
- Planner recommends refusal of permission.

The decision is in accordance with the Planner's recommendations.

3.2.2. Other Technical Reports

- **Environmental Services Department:** Referred to Irish Water
- **Roads Section:** No objection
- **HSE Environmental Health Officer:** No objection subject to conditions.

3.3. Prescribed Bodies

- **Irish Water:** No objection

3.4. Third Party Observations

None

4.0 Planning History

- **Reg. Ref. SD14A/0047:** Permission refused in May 2014 for the conversion of the crèche to a residential unit (similar to current application). Reason for refusal referred to Development Plan policy (2010 – 2016 Plan) which permitted a change of use of purpose built childcare only to a community use that would be temporary in nature.
- **ABP Ref. PL06S.225991, SDCC Reg. Ref. SD07A/0596:** Permission was granted by the Board in April 2008 for 18 no. 1 bedroomed apartments in lieu of 9 no. 3 bedroomed duplex apartments, following the Council's decision to refuse permission.

- **Reg. Ref. SD05A/0354:** Permission was granted in October 2006 by the Council following an appeal which was withdrawn, for the development of 122 apartments. 84 units were permitted as well as the crèche.

To the south of the site:

- **ABP LV3280, Reg. Ref. SD15A/01015:** Permission was granted by South Dublin County Council in July 2016 for the development of a new single-storey changing facility for Ballyfermot United Sports & Social Club, including new vehicular and pedestrian access gates to the club grounds from the new access road and parking for 37 cars and 2 buses, and residential development of 43 no. 2-storey dwellings. The Board granted a third party Leave to Appeal in March 2016.

5.0 Policy Context

5.1. South Dublin County Development Plan 2016 – 2022

- 5.1.1. Section 3 of the Plan refers to Community Infrastructure. Section 3.10 specifically refers to Early Childhood Care and Education.

It states:

Pre-school childcare needs are difficult to assess on a long term basis as the nature of demand evolves over time based on factors such as the population profile of an area, market conditions, government policy and the level of state intervention. Notwithstanding this, there is a recognised need for planned provision in new communities where no infrastructure exists. South Dublin County Council will seek to facilitate the provision of good quality and accessible childcare infrastructure at appropriate locations by combining area-based requirements in new communities with market-led provision in more established areas.

Policy C8 (a) states:

It is the policy of the Council to support and facilitate the provision of good quality and accessible childcare facilities at suitable locations in the County.

Policy C8 (b) states:

It is the policy of the Council to require the provision of new childcare facilities in tandem with the delivery of new communities.

5.2. Childcare Facilities Guidelines for Planning Authorities 2001

5.2.1. Section 2.4 states:

New communities/Larger new housing developments. Planning authorities should require the provision of at least one childcare facility for new housing areas unless there are significant reasons to the contrary for example, development consisting of single bed apartments or where there are adequate childcare facilities in adjoining developments. For new housing areas, an average of one childcare facility for each 75 dwellings would be appropriate. (See also paragraph 3.3.1 and Appendix 2 below). The threshold for provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas.

Appendix 2 states:

The threshold for provision should be established having had regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas. Any modification to the indicative standard of one childcare facility per 75 dwellings should have regard to: 1. The make-up of the proposed residential area, i.e. an estimate of the mix of community the housing area seeks to accommodate. (If an assumption is made that 50% approximately of the housing area will require childcare then in a new housing area of 75 dwellings, approximately 35 will need childcare. One facility providing a minimum of 20 childcare places is therefore considered to be a reasonable starting point on this assumption. Other assumptions may lead to an increase or decrease in this requirement.) 2. The results of any childcare needs analysis carried out as part of a county childcare strategy or carried out as part of a local or action area plan or as part of the development plan in consultation with county childcare committees, which will have identified areas already well-served or alternatively, gap areas where there is underprovision, will also contribute to refining the base figure.

5.3. Sustainable Urban Housing: Design standards for New Apartments 2018

5.3.1. Section 4.7 of the new Guidelines states:

Notwithstanding the Planning Guidelines for Childcare Facilities (2001), in respect of which a review is to be progressed, and which recommend the provision of one child-care facility (equivalent to a minimum of 20 child places) for every 75 dwelling units, the threshold for provision of any such facilities in apartment schemes should be established having regard to the scale and unit mix of the proposed development and the existing geographical distribution of childcare facilities and the emerging demographic profile of the area. One-bedroom or studio type units should not generally be considered to contribute to a requirement for any childcare provision and subject to location, this may also apply in part or whole, to units with two or more bedrooms.

5.4. Natural Heritage Designations

The Glenasmole Valley SAC (Site Code 001209) is c.10km south of the site. The Rye Water/Carlton SAC (Site Code 001398) is c. 7km to the west.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party appeal against the decision of the Planning Authority to refuse permission has been lodged. In summary, it states:

- Notes location of crèche to the rear of the development accessed via a pedestrian access route running from the vehicular drop-off area and hidden from public view. Pedestrian access route necessitates passing several adjoining residential units. Location of outdoor play area is sited very close to private open space associated with adjoining residential units. Contend that these issues have contributed to the ongoing vacancy of the unit since its construction.
- Refers to pre-application meeting and notes that advice is given without prejudice, but that tone of advice was at significant variance to the

subsequent planning assessment and undermines the purpose of the pre-application process.

- A detailed rationale was submitted at application stage addressing planning history and assessment of childcare provision in the area and future demand. The proposal was quickly deemed unacceptable in principle by another Planning Officer regardless of the submitted analysis. There was no consistency of approach.
- Current Development Plan no longer includes policy SCR33 (grounds of refusal for the 2014 application) which required that a change of use of purpose built childcare could only be to a community use for a temporary period. Thus, primary issue raised in previous refusal no longer exists.
- Consider current proposal is not a material contravention of the Plan. The proposed change of use of a vacant crèche to a residential use is not a material contravention – residential use is Permitted in Principle.
- Do not accept it is a material contravention of policies C8(a) or (b). Taking (b) first, this is clearly intended for the provision of new childcare facilities to serve new residential communities. Such a development scenario does not apply in this case.
- Policy C8(a) is a general policy provision designed to support and facilitate childcare provision. It is not considered that this policy taken in isolation is an appropriate planning tool for the assessment of whether a permitted crèche unit that has lain vacant since being originally permitted with no realistic likelihood of accommodating childcare, should remain as such for an indeterminate future period.
- If the childcare unit was in active use policy C8(a) may be of relevance, however, in this case, there is no loss of actual existing childcare provision arising – the unit has been vacant for c.10 years with no interest from childcare providers.
- Consider Planning Authority has erred by stating that the application is a material contravention of the Plan. The Planning Authority may disagree with the application but that does not equate to a material contravention.

- Proposal does not contravene the Childcare Facilities Guidelines. Strongly disagree with the contention that the Guidelines should be referenced in the manner they have been by the Planning Authority, where a childcare facility has remained unoccupied for many years.
- Consider that the reference to a 'pro-active role by the Planning Authority' in the context of childcare provision is to ensure that the issue is considered, assessed and appropriately located. Guidelines do not include any provisions for childcare facilities built on foot of previous permissions that have remained vacant to remain in permitted childcare use indefinitely, regardless of other planning considerations or the adverse long term planning impacts of vacancy.
- Guidelines explicitly acknowledge that other case-specific assumptions may lead to an increase or decrease in requirements. Threshold for provision should be established having regard to the existing geographical distribution and emerging demographic profile of the area. Accordingly, applicant carried out a detailed exercise using a catchment area of 1.25km. The land use profile of the area was also assessed in order to estimate the likely level of new residential development and population growth in the area.
- Review confirmed there are 12 childcare facilities within 1.25km catchment. Demographic profile was assessed and it is noticeable that there has been a decrease in the population cohort 0-4 years. Draft Apartment Guidelines state with respect to childcare that provision should be established having regard to the scale and unit mix, geographical distribution of facilities and emerging demographic profile and that studio and one-bedroom units should not generally be considered to contribute to a requirement for childcare.
- Having regard to the above, consider that there is insufficient demand for a crèche facility within the development itself. There are 93 units comprising 43 no. 1 and 2 bedroom apartments that have very limited childcare requirements. Of the remaining units, it is estimated that 50% (25 no.) are likely to have childcare requirements which is insufficient to warrant crèche provision on site, which is borne out by the ongoing vacancy.

- With respect to surrounding land use, consider area is unusual. There are significant areas of non-residential lands comprising significant institutional/medical/educational/recreation and large scale industrial uses. It is considered unlikely that the use of these lands will change in the short to medium term. Effectively the catchment will not accommodate any significant new residential development.
- Have demonstrated using an evidenced base approach that there is no requirement or likely future demand for a crèche. Consider a distinction should be drawn between seeking permission to avoid the provision of a crèche and the circumstances pertaining to this proposal. A 10 year gap is sufficient to determine if a need for a crèche would have materialised on site, particularly where the unit was built and is ready for an occupier.
- With respect to the ECCE scheme, the proposed change of use will not adversely affect access to childcare provision as no facility exists. Consider that the likelihood of the crèche becoming operational solely on foot of the ECCE scheme that has been in place since 2009 remains virtually nil.
- Conclude that proposed residential unit exceeds design requirements, there were no third party objections, and previous grounds for refusal no longer apply. It is poorly located from an accessibility point of view, lain vacant since being permitted and is detracting from the amenities of the remainder of the scheme. There is sufficient facilities in the area and unlikely to be an increase in demand having regard to the land use profile of the area.

6.2. Planning Authority Response

The Planning Authority confirmed their decision and consider that the issues raised in the appeal have been covered in the Planner's Report.

6.3. Further Responses

- 6.3.1. The South Dublin County Council Childcare Committee were provided an opportunity to comment. No comment was forthcoming.

7.0 Assessment

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 issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Material Contravention
- Undesirable Precedent
- Appropriate Assessment

7.1. Material Contravention

- 7.1.1. In the first instance, it is clear that from a land use zoning perspective, the proposal to change the use from a crèche to a three-bedroom duplex within the development of 93 units is acceptable in principle. I am also satisfied that the design of the duplex unit is in compliance with the minimum standards for residential units and will not address the actual design further.
- 7.1.2. The Change of Use planning application was refused permission by the Planning Authority for one reason that referenced a number of childcare policies and Guidelines, as well as concern with setting an undesirable precedent. I intend to address each aspect of the reason for refusal to determine if the proposed change of use is, or is not, in compliance with the various policies and objectives or could set a precedent.
- 7.1.3. The reason for refusal states that the proposal would be a material contravention of Community Infrastructure Policy C8(a) and (b) of the South Dublin Development Plan. These policies refer to the provision of childcare facilities.
- 7.1.4. Policy C8(a) states that it is the *policy of the Council to support and facilitate the provision of good quality and accessible childcare facilities at suitable locations in the County*. The applicant considers that this is a general policy and should not be taken in isolation. I agree with the applicant that this should not be assessed in isolation or that a crèche must be provided for every 75 units regardless of external factors. Fundamentally, I am of the opinion that the Childcare Guidelines, which I will

address further below, provide for flexibility in terms of the location and requirement for childcare facilities.

- 7.1.5. Having visited the site, I consider that the accessibility of this crèche is questionable. It is located to the rear of the development where users of the facility would be required to walk by a number of residential units to gain access to the crèche – there is no other access to the unit. There is no other pedestrian access from the main road. While this is not a problem in itself, it may cause noise nuisance and privacy issues for the residents of those units.
- 7.1.6. Having regard to the crèche location away from the vehicular entrance and to the rear and not easily accessible from outside the development, it is likely that any users of a potential facility would be internal to the residential development only. I note that there were no third party objections submitted at any stage of the planning process to the proposed change of use, which would imply that the internal local population's needs are being met elsewhere.
- 7.1.7. The applicant provided information on the availability of crèches within a 1.25km radius. The applicant identified 12 no. existing facilities within this 1.25km radius. During my site visit, I noted advertisements for well-known childcare providers within the general area. The applicant also provided a demographic analysis of the area which indicates that there has been a decrease in the 0-4 age group cohort. The applicant considers that this indicates that there will be decreasing demand for childcare in the catchment area.
- 7.1.8. I draw the Board's attention to the location of this entire development. The development has been established for c.8-10 years but is somewhat an isolated, standalone and impermeable development. The development is surrounded by busy roads on three sides. The M50 forms its western boundary, the R833 Coldcut Road which crosses over the M50 forms its northern boundary, and the Cloverhill Road forms its eastern boundary. The Whitethorn housing development on the other side of the Cloverhill Road is bounded by high hedgerows, as are the Palmerstown housing estates to the north. As well as the housing estates being isolated from each other due to roads and high hedgerows, the roads themselves are busy and not conducive for pedestrians to cross between.

- 7.1.9. I agree with the applicant with respect to the unusual land uses in the broader area. There are a number of large institutional (Prison, Hospital) and commercial developments (Liffey Valley Shopping Centre) which are unlikely to present many opportunities for new large residential areas. Even if large land banks do become available for residential use, it is likely that they will be self-sufficient in terms of childcare facilities.
- 7.1.10. Thus, while it is the policy of the Council to support and facilitate the provision of good quality and accessible childcare facilities at suitable locations in the County, I am of the view that the subject site is not a particularly suitable or accessible location as required by policy C8(a). Therefore, I am satisfied that the proposed change of use would not materially contravene policy C8(a).
- 7.1.11. Under policy C8(b) the Council seeks to require the provision of new childcare facilities in tandem with the delivery of new communities. The crèche facility by virtue of the fact that it was incorporated within a residential block was provided at the outset in accordance with policy C8(b). The crèche shell was delivered in tandem with the delivery of the new community established in Coldcut Park. The applicant states that there has been no interest at all from potential service providers. Having regard to the passage of time (c.8-10 years), I accept that if there was a commercial interest or community need, this would have been established by now.
- 7.1.12. The applicant built the unit in accordance with the policy and therefore cannot be deemed to be in contravention of this policy. In essence, I am of the view that the applicant did not materially contravene policy C8(b) at the outset, and I do not consider that the proposed change of use materially contravenes this policy either.
- 7.1.13. With respect to the Childcare Facility Guidelines for Planning Authorities, as referenced by the Planning Authority in the reason for refusal, I am of the view that the proposal is not a material contravention of those guidelines. The guidelines state that Planning Authorities should require the provision of childcare facilities for new housing areas unless there are significant reasons to the contrary for example, development consisting of single bed apartments or where there are adequate childcare facilities in adjoining developments.
- 7.1.14. I do agree with the Planning Authority that caution must be exercised in drawing conclusions on childcare needs, and that pre-school childcare needs are difficult to

assess on a long-term basis. I also agree that there is a need for planned provision in new communities where no infrastructure exists. However, this development is no longer a new housing area, and incorporates a significant number of one and two bedroom units. As stated in the new Apartment Guidelines *One-bedroom or studio type units should not generally be considered to contribute to a requirement for any childcare provision and subject to location, this may also apply in part or whole, to units with two or more bedrooms.*

- 7.1.15. Having regard to the location of the development and the type of units, I am satisfied that there are adequate childcare facilities in adjoining developments.
- 7.1.16. I am of the view that the proposed change of use is not contrary to Government Policy to increase access to childcare, having regard to the extension of the ECCE scheme. The ECCE scheme was extended in 2016 and having regard to the number of facilities within a 1.25km radius, and the lack of third party objection, I am satisfied that the need is being met elsewhere.
- 7.1.17. In conclusion, I am satisfied that the change of use is not a material contravention of the Development Plan policies, the Sustainable Urban Housing: Design standards for New Apartments 2018 policies with respect to childcare, or the Childcare Facilities Guidelines for Planning Authorities 2001, and I do not agree with the Planning Authority that this is a reason for refusal of permission.

7.2. **Precedent**

- 7.2.1. The Planning Authority referenced the undesirable precedent the proposal would set in the reason for refusal. I share the Planning Authority's concerns in this regard. However, I consider this particular case to be unique. Having regard to the isolated location of the residential development and the institutional/commercial land uses in the broader area, I am satisfied that there is unlikely to be a significant demand for a facility from outside of this development. As referenced above, there has been no third party objection at any stage of the planning process which would imply that there is no great demand internally, and would also imply that the resident's needs are being met elsewhere.
- 7.2.2. Having regard to the unique circumstances of this residential development, I am satisfied that this change of use would not set an undesirable precedent.

7.3. 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 development, 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

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

9.0 Reasons and Considerations

Having regard to the location of the residential development of Coldcut Park, to the pattern of development in the area, and to the availability of alternative childcare facilities within the wider area, it is considered that, subject to compliance with the conditions set out below, the proposed change of use would not seriously injure the residential amenities of the area. It is considered that the proposed change of use would not be a material contravention of the South Dublin County Development Plan 2016 – 2022 policies on childcare, namely policy C8(a) and C8(b) or the Childcare Facilities Guidelines for Planning Authorities 2001. 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, 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 external finishes of the proposed development shall be the same as those of the existing residential block in respect of colour and texture.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the 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.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 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 from the planning authority.

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

5. 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.

Ciara Kellett
Inspectorate

18th May 2018