



An
Bord
Pleanála

Inspector's Report ABP-301575-18

Development	Permission for the change of use from the crèche permitted by Ref. No 04/29030 and An Bord Pleanala Ref. No PL 28.211784 to 4 no. apartments, modifications to the permitted façade including the provision of ground floor patio facing onto Bleasbys Street, and all associated site works
Location	City Square, Bleasbys Street, Watercourse Road, Cork.
Planning Authority	Cork City Council.
Planning Authority Reg. Ref.	18/37772
Applicant(s)	Conway Connection
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Conway Connection
Observer(s)	None
Date of Site Inspection	6 th September 2018.
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1.1. The site with a stated area of 0.087 hectares is located between the city centre and Blackpool to the north of the river and within the environs of the St. Mary's Pro-Cathedral. The site is located approx. 40m to the west of Watercourse Road and 85 m west of the N20, the national route connecting the north Cork region and Limerick to Cork City.
- 1.1.2. The area surrounding the site is characterised by a mix of uses but is primarily residential in character, with the lands surrounding the site having been developed for residential uses. The site is accessible via Bleasby's Street, a narrow two-way street which connects Watercourse Road and the R846. The site is bounded to the north by Bleasby's Street which comprises a mix of residential on its southern side and commercial uses to its northern side. An auto repair garage is located on the opposite side of Bleasby's Street (north). The site is bounded to the east by Watercourse Road encompassing Watercourse Road Garda Station and 3 storey town houses and to its west and south by residential units comprising apartments and townhouses.
- 1.1.3. The subject appeal site comprises the ground floor of the larger residential City Square development. Permission was granted under Reg. Ref. 04/29032 for a mixed use residential, community facilities and commercial development, ranging in height from 2-5 storeys and consisting of 96 no. residential units including 17 no. 1 bedroom apartments, 40 no. 2 bedroom apartments, 20 no. 2 bed duplex units, 2 no. 3 bedroom houses, 9 no. 3 bedroom duplex units and 8 no. 3 bedroom apartments. The proposed change of use relates to the ground floor creche that was constructed as part of this development, located in the 3 storey block with rear under-croft car parking addressing Bleasby's Street. Part of the unit extends to the south and forms a private courtyard, the creche has never been fitted out or occupied. The unit remains a shell.

2.0 Proposed Development

2.1. The proposal comprises permission for:

- Change of use from the crèche permitted by Ref. No 04/29030 and An Bord Pleanála Ref. No PL 28.211784 to 4 no. apartments,
- Modifications to the permitted façade including the provision of ground floor patio facing onto Bleasby's Street,
- All associated site works
- GFA of existing building and proposed works is 484.27sq. m

3.0 Planning Authority Decision

3.1. Decision

Planning permission refused for one number reason as follows:

1. The proposed development would be contrary to paragraph 2.4 appropriate locations for childcare facilities of the Childcare Facilities Guidelines for Planning Authorities (2001) and would **materially contravene** Objective 7.7 Childcare Facilities of the Cork City Development Plan 2015 – 2021, where the provision of childcare facilities in developments of more than 75 dwelling units is required. It 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 Planners Report sets out that it is evident that more than 75 of the units are in excess of one-bedroom dwellings, therefore it is considered that the provision of a creche facility is still a requirement for this development. The location within a neighbourhood centre is also one of the locations, where it is considered desirable to retain this resource and where vacant units are under pressure for conversion to residential use.

Drainage Report: No objection subject to condition.

Road Design: No Objection

Environment: No objection subject to condition.

3.2.2. **Other reports:**

Irish Water: No Objection.

3.3. **Third Party Observations**

None.

4.0 **Planning History**

On the Subject Appeal lands

Reg. Ref. 14/35957 Three-year Permission Granted (08/05/2014) to allow the use of 30 no. car parking spaces within the existing underground car park at City Square, Watercourse Road, Blackpool, Cork, to be used by an existing public service provider.

Reg. Ref. 13/35714 Permission Refused (30/09/2013) to use a section of the existing underground car park as a temporary public car park to consist of 100 public car parking spaces. The car park is to be entered via the existing entrances on Watercourse Road and Bleasby's Street at City Square, Watercourse Road, Blackpool, Cork

Reg. Ref. 08/33636 Permission Granted (25/02/2009) for the subdivision of convenience retail unit (unit 11) permitted by TP 04/29030 & PL28.211784 to form a 157m² retail unit and a 360m² convenience retail unit at City Square, Watercourse Road, Cork. The proposed development includes alterations to the facade and all ancillary site development works.

PL 28.211784 / Reg. Ref. 04/29030 Permission Granted (10/11/2005) for demolition of all existing structures to facilitate a mixed use residential, community facilities and commercial development, ranging in height from 2-5 storeys and consisting of 96 no. residential units including 17 no. 1 bedroom apartments, 40 no. 2 bedroom apartments, 20 no. 2 bed duplex units, 2 no. 3 bedroom houses, 9 no. 3 bedroom duplex units and 8 no. 3 bedroom apartments. The proposed development also includes a public library of 966sq m, a **504 sq m crèche**, a first floor medical centre of 282 sq m, a convenience retail unit of 529 sq m, 5 no. retail units with net retail areas of 105 sq m, 83 sq m, 71 sq m, 74 sq m, and 77 sq m, and a 84 sq m café/restaurant. Parking provided in a basement which will extend under Allinett's Lane and continue under Hillgrove Lane to join with the underground car park proposed on the adjacent site. The proposed development includes provision for a public plaza to Watercourse Road, the upgrade of Allinett's Lane and Hillgrove Lane, including amendment to the width of the latter and all associated site development works.

PL28 .211783 / Reg. Ref. 04/29029 Permission Granted (10/11/2005) for demolition of all existing structures to facilitate a mixed use residential, office and commercial development. The proposed development will range in height from 1 – 5 storeys and will consist of 57 no. residential units including 8 no. 1 bedroom apartments, 2 no. 1 bedroom duplex units, 27 no. 2 bedroom apartments, 10 no. 2 bedroom duplex units, 3 no. 3 bedroom houses, 4 no. 3 bedroom duplex units and 3 no. 3 bedroom apartments. The proposed development also includes 1 no 510 m² office, 267 m² bank, 2 no. retail units with net retail area of 63.5 m² and 78 m². Parking for the development will be provided in a basement car park which will continue under Hillgrove Lane and join with the underground car park proposed on the adjacent site. The proposed development also makes provision for the upgrade of Hillgrove Lane, including amendment to the width and for all associated site development works.

5.0 Policy Context

- 5.1.1. Sustainable Residential Development in Urban Areas, 2009
- 5.1.2. Quality Housing for Sustainable Communities, 2007
- 5.1.3. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2018 (Apartment Guidelines)
- 5.1.4. Childcare Facilities Guidelines for Planning Authorities, 2001
Paragraph 2.4 Appropriate Locations for Childcare Facilities
- 5.1.5. Development Plan

The site is governed by the policies and provisions contained in the Cork City Development Plan 2015-2021. The appeal site is situated on lands zoned for Neighbourhood Centre, where it is policy of the Council: 'To protect, provide for and / or improve the retail function of neighbourhood centres and provide a focus for local services.'

The site is also located in the Blackpool ACA. Objective 9.32 Development in ACAs, states that:

Development in ACAs should take account of the following;

- Works that impact upon features within the public realm such as paving, railings, street furniture kerbing etc. shall not be generally permitted;
- Acceptable design, scale, materials and finishes for new developments;
- Original materials and methods of construction should be retained. For example, timber barge boards, windows and doors should not be replaced with PVC, original roofing material types should be retained along with original forms and locations of openings etc.;
- Features of historic or architectural value should not be removed.

Objective 7.7 Childcare Facilities

Cork City Council will support the provision of high quality childcare facilities throughout the city suited to the needs of the given area and will:

- i) Require purpose built childcare facilities as part of proposals for new residential developments of more than 75 dwelling units. However, where it can be clearly established that existing facilities are sufficient, alternative arrangements will be considered;
- ii) Consult with the Cork City Childcare Company and the HSE on planning applications where childcare facilities are proposed;
- iii) Require employers with more than 500 members of staff to provide childcare facilities as part of planning applications for significant new and extended development.

5.2. **Natural Heritage Designations**

The relevant European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001059) located in excess of 5 Km to the east.

5.3. **Grounds of Appeal**

The first party appeal is summarised as follows:

- The creche unit has been completed in excess of 10 years and despite numerous attempts and consultations with the HSE an operator has never been interested in establishing a creche on the site.
- A preplanning meeting was held in respect of the proposed change of use. Guidance given that a case must be made for the change of use was followed.
- A creche assessment of the area was carried out which indicated that there was capacity in existing childcare facilities
- The decision to refuse is a rigid interpretation of the Guidelines and the City Development Plan 2015 and is incorrect.
- Where it has been clearly demonstrated that a creche is not required to meet the childcare requirements of an area, it is not necessary to provide one or retain an empty unit in perpetuity.

- There are 9 creches within a 10 min pedestrian catchment which provides for up to 387 places
- Only two of the creches are at capacity and there are 84 no. spaces available within the existing local creches.
- This capacity is available despite the fact that the 143 units developed at City Square are occupied and have been since the completion of the scheme.
- The location of the unit makes it suitable for residential development.
- Incorrect to state that the proposed development materially contravenes Objective 7.7 Childcare Facilities of the City Development Plan. The Plan clearly states: 'where it can be clearly demonstrated that existing facilities are sufficient alternative arrangements will be considered.'
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018 is of relevance to the subject appeal case. On the matter of one-bedroom units.
- Regard should be had to the location of the development within an area with a mature demographic profile and an abundant level of existing childcare spaces
- The development if permitted would provide much needed residential accommodation.
- The semi-private open space proposed will serve the 4 apartments only.
- The proposed development would improve the overall housing provision in the area, without impacting on the integrity of the existing streetscape and complies with policies and objectives set out in the Cork City Development Plan.
- The planning authority did not have an issue with the design or layout of the apartment units.

The Appeal is accompanied with:

- Appendix 1 – Creche Assessment

5.4. **Planning Authority Response**

- Response received it states: No further comments to make.

6.0 **Assessment**

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

- **Principle of the change of Use**
- **Material Contravention**
- **Environmental Impact Assessment (EIA)**
- **Appropriate Assessment (AA)**

6.2. **Principle of the Development on the Site**

6.2.1. The sole draft reason for refusal by the planning authority considers that the proposed development would be contrary to paragraph 2.4 appropriate locations for childcare facilities of the Childcare Facilities Guidelines for Planning Authorities (2001) and would materially contravene Objective 7.7 Childcare Facilities of the Cork City Development Plan 2015 – 2021, where the provision of childcare facilities in developments of more than 75 dwelling units is required. I intend to look at the issue of principle of the change of use in this section and the material contravention issue in the succeeding section of this report.

6.2.2. Paragraph 2.4 of the Childcare Facilities Guidelines for Planning Authorities (2001) states:

Appropriate locations for childcare facilities would include:

- '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.

Authorities could consider requiring the provision of larger units catering for up to 30/40 children in areas of major residential development on the basis that such a large facility might be able to offer a variety of services – sessional/drop in/after-school, etc’.

- 6.2.3. The appeal site forms part of the wider City Square mixed-use development which was permitted under TP reference numbers 04/29029 / ABP Ref.PL 211783 and 04/29030 / ABP PL. 211784. In total 57 residential units were permitted under TP 04/29029 / ABP PL. 211784 (10, 1 bed units; 37, 2 bed units and 10, 3 bed units). I note the planning authority report on file which states that the hard copy for the file TP 04/29030 is missing, therefore it is not possible to check exactly how many units were permitted. 96 residential units were applied for, however an apartment Block was omitted by way of condition (Condition 2 of the Board Decision PL28.211784), which may have reduced the number to 86, resulting in a total of c. 143 as stated by the applicant. I have checked e.plan on the p.a. website and the Boards website, however, the notification of decision to grant does not specifically state the number of residential units permitted.
- 6.2.4. The first party submits that the creche was provided as part of a larger development on the site for circa 143 residential units and was designed to accommodate 75 children. It is submitted that there has never been sufficient interest by a creche operator to lease or purchase this space with the result that it has remained vacant in excess of 10 years despite attempts to find an operator.
- 6.2.5. The p.a. assessment refers to paragraph 4.7 of the 2018 Sustainable Urban Housing: Design Standards for New Apartment Guidelines for Planning Authorities which states that: ‘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.'

6.2.6. While the p.a. considers that the 2018 Guidelines apply to new and not existing apartment developments and that, in any case, more than 75 of the units are in excess of one-bedroom dwellings, therefore the provision of a creche facility is still a requirement for this development, I am of the opinion that the first party have put forward a compelling argument to the contrary.

6.2.7. The creche assessment submitted with the planning application and appeal sets out that there is a total of 19 creches identified within a five-minute drive time of the site. That there are 9 creches located within a 10 minute walking distance time. It is contended that of the 9 creches identified that only two are operating at full capacity for the current academic year. The 9 creches have a total of 84 no. places available between them for 2017/2018 academic year. This represents a 22% availability of places within the identified 10 minute walk time. It is submitted that the findings on these facilities in the Blackpool region are generally representative of the trend for previous years, with no significant increase in demand for childcare places. The creche assessment contends that a large proportion of the population in the Blackpool area travel between 15 min and 45 min for work each day and that it is likely that a sizable proportion of both the existing and future populations will use childcare services outside of the immediate area.

6.2.8. I consider the absence of a report or comment on file, from the Cork County Childcare Committee is of some significance. The Childcare Committees were set up to encourage the development of Childcare locally and their input to the need for childcare locally would have lent considerable weight to the first party's agreements. I note that Objective 7.7 Childcare Facilities of the Cork City Development Plan states: 'Cork City Council will support the provision of high quality childcare facilities throughout the city suited to the needs of the given area and will:

ii) Consult with the Cork City Childcare Company and the HSE on planning applications where childcare facilities are proposed'. It does not appear that the file was referred, by the p.a., for consultation to the Cork City Childcare Company or the HSE.

- 6.2.9. I tend to agree with the first party's arguments that there is no identified demand for childcare places in the area and until a critical mass of population is reached, this is unlikely to change. It is strongly contended that the continued use of a vacant creche which has not had market demand in the past 5 /10 years, is a realistic reminder of its inappropriate location. On the other hand, the change of use to 4 apartments would allow for an underutilized building in the City to provide for much needed residential accommodation.
- 6.2.10. Regard being had to the foregoing I believe each application must be dealt with on a case by case basis and given the length of time the unit has remained vacant, the 2018 Sustainable Urban Housing: Design Standards for New Apartment Guidelines for Planning Authorities which sets out that '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', that change of use from unoccupied creche premises to 4 apartments is acceptable in principle at this location.

6.3. **Material Contravention**

- 6.3.1. As stated above, the draft reason for refusal by the planning authority considers that the development 'would materially contravene Objective 7.7 Childcare Facilities of the Cork City Development Plan 2015 – 2021, where the provision of childcare facilities in developments of more than 75 dwelling units is required'.
- 6.3.2. In such circumstances, section 37 (2)(b) of the 2000 Act states that the Board may only grant permission where it is considered that:
- i. The proposed development is of strategic or national importance,
 - ii. There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
 - iii. Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

iv. Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

6.3.3. Objective 7.7 Childcare Facilities of the Cork City Development Plan states: 'Cork City Council will support the provision of high quality childcare facilities throughout the city suited to the needs of the given area and will:

i) Require purpose built childcare facilities as part of proposals for new residential developments of more than 75 dwelling units. However, where it can be clearly established that existing facilities are sufficient, alternative arrangements will be considered.'

6.3.4. I consider that the applicant has made a reasonable and rational case that existing childcare facilities in the area are sufficient given; lack of commercial interest in the vacant creche unit, availability of childcare places within a 10 minute walking distance of the appeal site, the emerging demographic profile of the area and therefore a change of use from unoccupied creche premises to 4 apartments would not materially contravene Objective 7.7 Childcare Facilities of the Cork City Development Plan 2015 – 2021. In particular, given the wording of the objective and the case put forward by the applicant. I therefore consider that exemption (ii) set out in Section 37 (2)(b) applies in this instance and the Board, should they be mindful to, may grant planning permission in this instance.

6.4. **Environmental Impact Assessment (EIA)**

6.4.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.5. **Appropriate Assessment (AA)**

6.5.1. The closest European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058).

- 6.5.2. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest Natura 2000 sites. 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

- 7.1.1. I recommend that planning permission should be Granted subject to the following conditions.

8.0 Reasons and Considerations

- 8.1.1. Having regard to the long-term vacancy of the unit, availability of childcare places within a 10 minute walking distance of the appeal site, the emerging demographic profile of the area and the need for residential accommodation it is considered that subject to compliance with the conditions set out below, the proposed development would not be contrary to paragraph 2.4 appropriate locations for childcare facilities of the Childcare Facilities Guidelines for Planning Authorities (2001) and would not materially contravene Objective 7.7 Childcare Facilities of the Cork City Development Plan 2015 – 2021. 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, 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. That this permission authorises 4 residential units, only. Each proposed residential unit shall be used as a single dwelling unit.

Reason: In the interests of development control

3. Details of the materials, colours and textures of all the external finishes to the proposed residential units shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual 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. That all necessary measures be taken by the contractor, including the provision of wheel wash facilities, to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

6. (a) The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

(b) Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 14.00 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 the interests of public safety and residential amenity

7. The development shall comply with the requirements of the Engineering and Transportation Division of Cork County Council:

- a) Gates / doors shall be recessed and or be incapable of opening outwards, steps and access ramps shall be recessed or contained within the curtilage of the proposed development, in order not to impede or obstruct the public road or footpath.

Reason: In the interest of traffic safety.

Fiona Fair
Planning Inspector
02/10/2018