



An
Bord
Pleanála

Inspector's Report ABP-301730-18

Development	Single storey (18 sq.m) temporary accommodation home base / sleep - room to be located at northern end of existing external play area of existing childcare facility
Location	Giraffe Childcare, Mount, St. Anne's, Milltown, Dublin 6
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	2457/18
Applicants	Giraffe Childcare
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	Derek & Susan Shortall
Date of Site Inspection	10 October 2018
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located at Mount St. Anne's, Milltown, Dublin 6 where it is part of a large residential development with vehicular access from Milltown Road north of the site. The overall development includes a section facing Milltown Road with direct access from Milltown Road, which includes the subject site. The subject site is accessible to pedestrians from Milltown Road via a path at grade between Maple Hall apartments and the historic building, Church of Saints Columbanus & Gall, at the northern end of the site and, at the southern end between a commercial building and the church. The subject site comprises a secure outdoor play area separated from the rear of the church by a pathway, and a single storey building comprising a childcare / creche facility running parallel to the secure outdoor play area to which it is accessible at a number of locations. Public access to the building is at the southern end.
- 1.1.2. The site addresses Milltown Road as ground level but is below the main ground level of the overall development which is above and immediately to the rear, accessed via steps along the side of the commercial building, and using the vehicular access to the north.
- 1.1.3. The pathway leading to the site between Maple Hall the church also accesses an underground car park at the western end of Maple Hall to the north of the subject site. Maple Hall is mainly an apartment building.
- 1.1.4. The secure outdoor play area is divided into subdivisions corresponding to the internal layout. The creche has 10 childcare rooms ranging from baby to pre-school childcare. There are two external storage units near the southern end of the outdoor play area.
- 1.1.5. The subject site is given as 940m².

2.0 Proposed Development

- 2.1.1. The proposed development is the erection of a single storey (18 sq.m) temporary accommodation home base / sleep - room to be located at northern end of existing external play area of the existing childcare facility.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 8 conditions which include condition no 3 which limits the permission to a period of five years from the date of grant.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. Relevant provisions of the development plan:

- Zoned Z1
- SN17
- Appendix 13

- 3.2.3. The proposed sleep room would be located in the north eastern corner of the existing creche external play area so as to maximise the remaining useable external play area and a 1.046m wide passageway is retained to the existing northern gateway to the creche facility. The temporary accommodation building would be finished in aluminium cladding to match the existing creche building.

- 3.2.4. The objection on file is noted and it is considered that the details provided in the application form are sufficient for a valid application and given the scale and finish it would not detract from the residential amenities of the neighbouring apartments or the visual amenities of the existing creche building and apartment scheme.

3.2.5. Other Technical Reports

- 3.2.6. Engineering Department Drainage Division – no objection subject to conditions.

3.3. Third Party Observations

3.3.1. Third party observations on the file have been read and noted.

4.0 Planning History

2919/06 planning permission granted for amendments to previous development, PL29S.206105 PA Reg Reg 4853/03 including relocated and amended single level creche with associated external play area.

3253/05 planning permission granted for amendments to previous development, PL29S.206105 PA Reg Reg 4853/03.

PL29S.206105 PA Reg Reg 4853/03 planning permission granted to demolish Marian Hall and erect a six block mixed use development featuring apartments, childcare facility, fitness centre, health centre, parking and associated works.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Dublin City Development Plan 2016-2022 is the operative plan. Relevant provisions include:

Zoned Z1 To protect, provide and improve residential amenities. A childcare facility is a permissible use.

Policy SN17: To facilitate the provision in suitable locations of sustainable, fit-for-purpose childcare facilities in residential, employment, and educational settings, taking into account the existing provision of childcare facilities and emerging demographic trends in an area.

Appendix 13 Guidelines for Childcare Facilities, includes - a requirement for childcare facilities to be provided in conjunction with residential development and nominating other locations where childcare facilities are suitable. With regard to adequacy of premises it states minimum clear floorspace requirements per child related to the child's age, set out in tabular form, based on HSE publications; and refers to clear floorspace: areas available for children's work, play and movement which should not include furniture, surplus to the requirements of the child, or permanent fixtures. Extraneous areas such as kitchens, halls, toilets, sleeping, and other ancillary areas are deemed to be separate. Adequate and suitable facilities for a pre-school child to play indoors and outdoors during the day should be provided, having regard to the number of pre-school children attending the service, their age and the amount of time they spend in the premises.

5.2. Natural Heritage Designations

5.2.1. South Dublin Bay and River Tolka Estuary SPA 004024, c4km from the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

The third party appeal against the decision to grant permission has been submitted by Derek & Susan Shortall, 17 Maple Hall. The grounds includes:

- It is an invalid application:
 - The registered number of the company and the name of company directors are not included.
 - The application form incorrectly states Petra Management Ltd as the owners and fails to disclose the proper owners.
 - The application form fails to disclose the number of child care spaces and total floor area.
 - The application form incorrectly states that the development does not involve a protected structure or its curtilage, where the existing creche, although separate, is situated on a common site/lands which include the

former Mount St Anne's convent and the protected structure, the Church of Saints Columbanus & Gall, a Victorian period Church, which stands at the nearest point less than 4 feet from the site. The proposed development being approx. 30 feet distant.

- It contravenes previous permission by encroaching on outdoor play space.
- It contravenes planning regulations as there are two very unsightly temporary structures within the site which appear to constitute unauthorised development.
- It contravenes planning regulations as it is situated at the front and will be visible from Milltown Rd. and will impinge negatively on the existing award-winning architectural design of the creche facility and the apartments adjoining it and on the protected structure on common lands, and in particular Ss Columbanus & Gall's Church.
- It contravenes planning regulations as it will expand the functioning capacity of the existing premises beyond what was originally granted, contemplated or is reasonable.
- The premises can be reconfigured internally to facilitate any additional requirements.
- It contravenes planning regulations as the temporary nature of the structure will cause unreasonable and unlawful noise.
- Any significant development of the applicant's business, such as proposed, should take place in a separate premises.
- The proposed structure is not conducive to the highest/appropriate standards of health & safety due to the nature of the structure.
- The proposed development would hinder escape from the creche and grounds. Other than the main entrance at the southern end, the only usable exit is where the development is proposed. While not completely blocking the gate it would seriously hinder the ability of children and staff to exist safely and quickly.

- The development would be beside a large open doorway into the adjacent car park putting occupants at risk in the event of a fire in the car park.
- The double door exit from the southern end of the grounds is blocked on a permanent basis by two structures on the site, which are referred to in the grounds as unauthorised.
- The application does not state a finite period during which the structure will remain.
- The creche facility has been the subject of several emergency week-end call outs to deal with sewerage blockages making an increase in the number of children contrary to planning regulations/rules and or good planning practice and or previous planning permission.
- It will involve a significant increase in the number of cars travelling to, parking and travelling from the creche facility.

Photographs are attached to the grounds.

6.2. Applicant Response

Simon Clear & Associates Planning & Development Consultants has responded on behalf of the first party to the third party appeal. The response includes:

- The additional temporary accommodation will preserve the current occupancy of the facility and not result in an increase in the number of children attending. The additional sleep room is necessary for the childcare facility to remain compliant with Tusla Sleep and Rest Regulations.
- Sections of the planner's report are cited.
- Responding to contention in the grounds of appeal that the application should have been invalidated, the planning application was validated by DCC and its validity is not an issue for ABP. They request that these issues are dismissed.
- With reference to the statement that the proposed development encroaches on outside space for existing client children using the creche, the proposed development is located at the northern end which is currently used primarily as an access area between the car park and the creche. It has been located

to have minimal impact on the outdoor play area and access arrangements to the facility. Access will remain largely as at present. Wobbler Homebase (5) will have access to the outdoor play area through the existing internal corridor and it will not be necessary to go through the proposed sleep room to gain access to the outdoor play area.

- With reference to the statement re. unauthorised development, unauthorised development and enforcement are not matters for ABP and this point should be dismissed.
- With reference to the statement that it will impinge negatively on the existing award-winning architectural design of the creche facility and the apartments adjoining it and on a protected structure, on common lands, the planner's report is quoted which states that given the scale and finish it would not detract from the residential amenities of the neighbouring apartments or the visual amenities of the existing creche building and apartment scheme. The first party considers this to be a fair recognition of the scale.
- With reference to the statement that it will increase the capacity of the creche and that the existing premises can be reconfigured internally to facilitate any additional requirements, the proposed development will not result in an increase in the number of children attending rather it is proposed in order to remain compliant with Tusla regulations. If an existing room was to be converted it would cause displacement of approx. 22 ECCE sessional children resulting in a decline in the number of childcare places available.
- With reference to the statement that the nature of the temporary structure will cause unacceptable and unreasonable and unlawful noise, the proposed development is for a sleep room and will not create unacceptable and unreasonable and unlawful noise. It will not increase the number of children attending and will not increase noise.
- With reference to the statement that any significant development of the applicant's business, such as proposed, should take place in a separate premises, it is proposed to increase the floor area by 18m² or 2.8% of the existing floor space. Not a significant development.

- Regarding the emergency exit, the proposed development will not block the exit gate, in the event of fire. The fire escape from Wobbler Homebase (5) is through the internal corridor to the outdoor play area. The fire escape is not into the car park but into a common walkway which leads to the car park. An alternative escape route from Wobbler Homebase (5) is via the main building to the main entrance. Unlawful structures blocking an exit, referred to in the grounds, are not matters for ABP.
- Regarding the period during which the structure will remain on site, condition no 3 limits the permission to a period of five years.
- The remaining points are referred to as irrelevant as the proposed development will not result in an increase in the number of children attending.

6.3. Planning Authority Response

6.3.1. The Planning Authority has not responded to the third party appeal.

7.0 Assessment

7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, environmental impact assessment, validity of the application, impact on residential amenities, visual/design impact, the capacity of the facility, fire and safety, and other issues and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

7.3. Environmental Impact Assessment

7.3.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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.

7.4. Validity of the Application

- 7.4.1. The validity of the application has been challenged by the third party. The first party states that this is not a matter for the Board but the planning authority who validated the application.
- 7.4.2. The issues raised are that the registered number of the company and the name of company directors are not included on the application form; Petra Management Ltd is incorrectly stated as the owners and there is failure to disclose the proper owners, on the application form; the application form fails to disclose the number of child care spaces and total floor area; and the application form incorrectly states that the development does not involve a protected structure or its curtilage, where the existing creche, although separate, is situated on a common site/lands which include the former Mount St Anne's convent which the protected structure and the Church of Saints Columbanus & Gall, a Victorian period Church, which stands at the nearest point less than 4 feet from the site, the proposed development being approx. 30 feet distant.
- 7.4.3. These matters relate mainly to the application form and not the Planning Regulations. A letter accompanying the application states that the owners 'Mount St Annes Owners Management Company Limited by Guarantee' consent to the making of the application. Petra Management Ltd are named in the footer. In my opinion this adequately addresses ownership. Question No 11 on the application form is in relation to development which includes the provision of child care facilities requesting the number of child care spaces. The response of 'not applicable' covers the subject situation where there are no spaces involved. Floor area is stated elsewhere on the form as 18m². Question No 17 on the application form requires the applicant to state if development involves a protected structure or a proposed protected structure or its curtilage. The response correctly states 'no'.
- 7.4.4. In my opinion there is no reason to question the validity of the application.

7.5. Impact on Residential Amenities

- 7.5.1. The third party has concerns regarding noise, that the nature of the temporary structure will cause unacceptable and unreasonable and unlawful noise. The first party response is that the proposed development is for a sleep room will not increase the number of children attending and will not increase noise. The area where the proposed structure is to be located is currently used as an outdoor play area, therefore, in my opinion, the proposed development will decrease noise experienced adjoining the property to the north.

7.6. Visual Impact / Design Impact

- 7.6.1. The third party has concerns regarding the visual impact of the proposed development which will be visible from Milltown Rd. and will impinge negatively on the existing award-winning architectural design of the creche facility and the apartments adjoining it and on the protected structure, the church of Saints Columbanus & Gall.
- 7.6.2. The first party response refers to the planner's report.
- 7.6.3. The site is visible from Milltown Rd. but is set well back from the road and is visible only through a gap between buildings at the road's edge. One of those buildings is the protected structure.
- 7.6.4. The proposed development is a small structure in respect of which a temporary permission has been sought and condition no. 3 of the decision restricts the duration to 5 years. Given the temporary nature and small scale of the proposed development I consider that adverse impact on the design / layout of the creche or limited impact on visual appearance, as viewed from the street, is acceptable.

7.7. Capacity of the Facility/Standards

- 7.7.1. The third party is concerned that the proposed development will expand the functioning capacity of the existing premises beyond what was originally granted, contemplated or is reasonable. Other related concerns are that the premises can be reconfigured internally to facilitate any additional requirements and that any significant development of the applicant's business, such as proposed, should take

place in a separate premises. It is stated that the development contravenes previous permission by encroaching on outdoor play space.

7.7.2. The first party states that there will be no increase the number of children attending and that the additional sleep room is necessary for the childcare facility to remain compliant with Tusla Sleep and Rest Regulations. They state that if an existing room was to be converted it would cause displacement of approx. 22 ECCE sessional children resulting in a decline in the number of childcare places available.

7.7.3. The Child and Family Agency TUSLA is responsible for inspecting pre-schools and implementing the relevant legislation, therefore the capacity of the facility and the extent of the outdoor play space required is a matter for that body. I am satisfied that the proposed development arises from TUSLA requirements for additional sleep space rather than from increasing the number of children currently attending.

7.8. Fire & Safety

7.8.1. The third party is concerned that the proposed structure is not conducive to the highest/appropriate standards of health & safety due to the nature of the structure; that it would hinder escape from the creche and grounds; and that it would be beside a large open doorway into the adjacent car park putting occupants at risk in the event of a fire in the car park.

7.8.2. The first party in response states that the development will not block the exit and refers to available exits from the building.

7.8.3. This extension, to a single storey building, has several exits and is regulated by other agencies and, in my opinion, does not give rise to fire or safety concerns. The underground garage exit is currently located in proximity to the outdoor play area and therefore there will be little additional impact on fire safety arising from the provision of a structure, as proposed, within this outdoor area.

7.9. Other Issues

7.9.1. The third party is concerned that there have been emergency call outs to deal with sewerage blockages and refers to an increase in the number of children in this

regard; also that it will involve a significant increase in the number of cars travelling to, parking and travelling from the creche facility.

- 7.9.2. I am satisfied that the proposed development will not increase the number of children attending the facility and therefore these issues do not require to be considered.

8.0 Recommendation

- 8.1.1. In the light of the above assessment I recommend that planning permission be granted in accordance with the conditions listed hereunder, for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the nature of the development which is a small temporary extension to an existing childcare facility, intended to achieve compliance with TUSLA requirements, it is considered that the proposed development would not unduly impact on the residential or visual amenities of the area, would provide necessary additional sleep space on a temporary basis to facilitate compliance with childcare sleep and rest requirements, and 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 permission shall be for a period of 5 years from the date of this order.

Reason: To enable the planning authority to review the development in the light of the circumstances then prevailing.

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 0700 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 of €420 (four hundred and twenty euro) 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. The application of any indexation required by this

condition 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.

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.

Planning Inspector

16th November 2018

Appendices

- 1 Photographs
- 2 Extracts from the Dublin City Development Plan 2016-2022