



An
Bord
Pleanála

Inspector's Report

ABP 302781-18

Development

Permission for alterations and change of use of an existing vacant building from permitted crèche to 6 no. residential units with all associated site works, including an additional storey to the existing 2 storey building.

Location

Clare Village, Malahide Road, Ayrfield, Dublin17.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

3583/18.

Applicant

Rosselwave Ltd.

Type of Application

Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party -v- Refuse.

Appellants

Rosselwave Ltd

Observers

Clare Valley Management Co.
Patrick Davis.

Date of Site Inspection

8th December, 2018.

Inspector

Rachel Kenny

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority’s Decision	4
4.1. Decision	4
4.2. Assessment by Planning Authority.....	5
4.3. Observations.....	6
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	7
7.0 Development Plan Policy.....	10
8.0 Assessment.....	10
8.1. Principle of development.....	10
8.2. Residential amenities of existing and future occupants.....	11
8.3. Childcare provision.....	11
8.4. Appropriate Assessment	12
9.0 Conclusions and Recommendation	12
10.0 Reasons and Considerations.....	12

1.0 Introduction

ABP 302781-18 relates to a first-party appeal by Rosselwave Limited against the decision of Dublin City Council to issue notification to refuse planning permission for alterations and change of use of an existing vacant building from permitted crèche to 6 no. residential units with all associated site works, including an additional storey to the existing 2 storey building located within the Clare Village Apartment Development, off the Malahide Road, Ayrfield, Dublin 17. The grounds of appeal argue that the original design of the crèche was poorly considered and due to its location and layout and restrictions on access and drop off to the development that it is not a viable or attractive location for the permitted use. It is stated that there has been considerable precedence for the principle of a change of use from a crèche to residential use in the city during a housing crisis. The appeal argues that the development would not injure the residential amenities of the existing or future residents. It is also offered that prior to any development works being carried out the owner's management company and the residents will be fully consulted.

2.0 Site Location and Description

- 2.1. The subject site at Clare Village is located within an apartment complex containing 364 units arranged in 5 blocks. (119 of which are social housing units managed by the approved housing body Tuath). The main entrance to the development is from a roundabout to the north just a few hundred metres east of the Malahide Road. The development was originally permitted in 2003 and all the apartment blocks including the crèche building were completed by 2008
- 2.2. The crèche building is located in the centre of the development and is directly accessed from the basement/ lower ground floor level and also by steps from the concourse/ level. It has a site area of 984.72m². The current crèche is a 1-2 storey building with an area of 235m² and is vacant and has never been occupied.

3.0 Proposed Development

The application seeks permission for the construction of an additional floor at 1st floor level, provision of balconies, subdivision of external patio space to serve as private open space for the units. Change of use is sought to convert the crèche into 6 no apartments. This comprises 2 x 4 bed units of 146 and 168 m² and 4 x 2 bed units c 98m². In addition, it is proposed to install a lightweight access bridge and gantry at ground floor level.

4.0 Planning Authority's Decision

4.1. Decision

- 4.1.1. Dublin City Council's decision dated 22nd October, 2018 issued notification to refuse planning permission for two reasons as outlined below.
- 4.1.2. *1. Having regard to the zoning objective for the site, i.e. Z1 – 'to protect, provide and improve residential amenities', it is considered that the siting, scale and massing of the existing apartment blocks in relation to the proposed development will be overbearing to its outlook and also in tandem with the adjoining concourse levels, will generate an undue level of observation over the subject scheme, thus providing for a limited level of residential amenity for future occupants of the development. The proposed development would, therefore, be contrary to the provisions of the Development Plan Section 16.10 and to the proper planning and sustainable development of the area.*
- 4.1.3. *2. Having regard to the provisions of the current Dublin City Development Plan and to the provisions of the Planning Guidelines on Childcare Facilities issued by the Department of the Environment and Local Government in June 2001, it is considered that the change of use of the crèche unit to residential units in a residential complex substantially in excess of 75 units would result in the loss of residential amenity to the existing and future residents of the residential complex and to the vicinity. The proposed development would also set an undesirable precedent for other similar developments. The proposed development would seriously injure the amenities of*

the apartment complex and of the vicinity, would be contrary to the Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

4.2. Assessment by Planning Authority

4.2.1. The case planner noted the argument set out by the applicant that the childcare needs of the development are catered for in the wider Clare Hall area, however noted that the Dublin City Childcare Committee was not consulted notwithstanding advice at pre-planning stage to do so. The planner noted that the applicant carried out their own study instead. The planner also commented on the lack of information from the applicant as to what efforts they had made to bring a crèche into operation.

The planner considered that the density of the scheme in the context of the overall scheme would not be an issue and in accordance with the Z1 zoning. The design and finishes of the proposed building were considered acceptable and in accordance with S.28 guidelines and the CDP. The mix of units was considered acceptable however some concern over room sizes in the mid terrace were expressed.

Concern was expressed about the lack of analysis of impacts of the scheme on daylight of adjoining apartments and of the impact of other units on the proposed development. The ground floor habitable space was considered to have very restricted levels of access to sunlight and daylight. It was considered that the proposal to provide planting at this level could lead to increased overshadowing.

Overlooking and the level of privacy for the proposed units and the lack of sufficient usable private open space and a concern that the proposal may be overwhelmed by the surrounding apartment block was cited. The measures to mitigate against overlooking were questioned.

The noise environment and the proximity of the underground car park were raised as concerns.

The quantum of private open space on balconies in particular was questioned and the consequent lack of usability and that these may become storage areas. The

communal open space was considered inadequate in that it will be subject to constant overlooking from surrounding development.

The Traffic and Parking Dept raised queries about the parking provision and how the assignment of car spaces would be managed.

4.2.2. In conclusion it was considered that the scheme was unacceptable and that the level of residential amenity afforded to future residents would be contrary to the provisions of the Development Plan and furthermore that the loss of the crèche would essentially be a loss to the residential amenity of the complex and the wider area and would set an unacceptable precedent for similar applications. Refusal was recommended on those grounds.

4.2.3. **Internal and referral Reports**

- A report from the Roads Dept. sought further information.
- Drainage Dept. had no objections
- It was considered that no AA issues arose.

4.3. **Observations**

4.3.1. A number of observations were submitted, including the current observations to the Board objecting to the proposed development. The grounds on all observations have been read and noted.

5.0 **Planning History**

5.1. The relevant parent planning history file is outlined below.

5441/03. Permission was granted by DCC and subsequently by ABP for 386 residential units comprising 64x 1 bed 281x 2 bed and 41x 3 bed apartments in 3 separate buildings in a range of 3 to 6 storeys in height, a single storey crèche (c235m²). A total of 487 car spaces together with ancillary facilities are located in the basement level accessed off permitted entrance (0989/01).

6.0 Grounds of Appeal

6.1. The decision of Dublin City Council to issue notification to refuse planning permission for the proposed dwellinghouse was the subject of a first-party appeal by Rosselwave Limited. The grounds of appeal are outlined below:

Ground 1.

- The appellant considers the reason for refusal very unusual given the Z1 zoning which is predominately a residential zoning.
- Specifically, the appellant states that the scale issue was as relevant for the crèche as for apartments and that this should be taken into account as the principle has been accepted already
- On mass the appellant considers that the proposed increasing height of the building would lead to a form which will sit better with its surroundings and give a better balance to the massing and scale of the overall development.
- On amenity, the appellant suggests that the screened walkway will provide screening to the lower level gardens. All living and bedroom accommodation will be south facing for maximum residential amenity with acceptable separation distances to existing blocks. An appendix is attached with approximate distances).
- The appellant considers that the level of overlooking and observation is minimal. Existing screen walls around the courtyard and the proposed development will allow for additional landscaping and trees in the large planter bed at lower ground floor level and patio divisions screens are proposed to mitigate overlooking. No overlooking will occur from the concourse level due to a buffer created by hedging and metal grating.
- The appellant considers that the principle of residential is accepted under the zoning as indicated by the DCC case planner and that the scheme meets the DCC residential standards in terms of sizes, private open space areas, storage, communal open space, and all units are dual aspect and ideal for families in the middle of a housing crisis.

Ground 2.

- **Numbers** -current guidelines discount 1 and 2 bed units from calculations for crèches. The current scheme therefore falls below the threshold of 75 qualifying units which triggers the need for a crèche.
- **Time / ageing**- residents' children have now passed the age where the crèche would be of use to them and most would have children in primary school or beyond
- **Viability**- the building is too small and too isolated to be viable.
- **Access**- this is considered a significant challenge to the provision of a crèche. No drop off facility exists. It is therefore limited to the internal development market of 386 residents. The location is a fundamental flaw in the overall scheme design. There would be no loss of amenity if the crèche is replaced by apartments. It has lain idle for 10 years.
- **Design** – The design of the existing crèche does not comply with current guidelines and would not sustain a viable crèche.
- **Location**- the location of the crèche in the centre of the development runs counter to good design and makes it difficult to attract outside families, causes traffic congestion and needs to be accessible to be viable. the market is too limited with only 386 residents
- **Precedent**- several cases are cited from local authorities and ABP over the recent past where permission has been granted for change of use of crèches.

The appellant comments on the observations made by third parties as follows;

- The appellant has not made contact yet with the OMC regarding the lease to seek consent. This will be done post decision.
- The sunlight and daylight observations are refuted
- The new development will allow for passive supervision of the play areas.
- The parking provision for the crèche is 10 spaces and the provision of the 6 residential units would be 9 spaces so there is no concern.

- It is in the interests of the residents and the OMC that a viable use is found for the crèche building.
- A semi derelict crèche is not an amenity
- Concerns raised about density are not relevant
- The crèche site location makes any commercial use unviable.

6.2. Response from Dublin City Council

6.2.1. The Planning Authority did not comment further.

6.3. Observations.

6.3.1. A number of observations were received and will be summarised below by theme.

The observers support the decision of the planning authority to refuse permission.

- The appellant is a lessee and therefore cannot carry out works
- The proposed development will be out of keeping with the established character of the development and will lead to a loss of daylight and visual amenity and loss of privacy to Ennis, Quilty Doolin and Corofin Houses
- Loss of children's play area.
- No resolution of parking. it is anticipated that 10 existing spaces will not be sufficient for new apartments.
- Concerns over public safety during construction phase.
- Extra pressure on water supply to the area.
- Change of use from social amenity to residential units is unacceptable and at odds with the Deed of Covenant especially given the lack of childcare facilities in the area.
- Queries over the applicant's legal rights to carry out the works.

7.0 Development Plan Policy

7.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022.

The subject site is zoned 'Z1' to protect, provide and improve residential amenities.

7.2. Natural Heritage Designations

The subject site is not located within any designated site and it is considered that no AA issues arise.

8.0 Assessment

I have read the entire contents of the file, visited the site and its surroundings, have had particular regard to the issues raised in the grounds of appeal and the planning history. I consider that the pertinent issues in determining the current application and appeal are as follows:

- Principle of development.
- Residential amenities of existing and future occupants.
- Childcare provision.
- AA.

8.1. Principle of development

8.1.1. The subject site is zoned 'Z1'- the objective of which is *'to protect, provide and improve residential amenities.*

8.1.2. The objective is to ensure that any new development would have a minimal impact on and enhance existing residential amenity. The principle of residential development at this location is therefore accepted subject to normal planning

considerations in terms of the proper planning and sustainable development of the area. These considerations will be addressed below.

8.2. Residential amenities of existing and future occupants

The first reason for refusal states that the proposed development would result in a scheme which due to the siting, scale and massing of the existing apartment blocks would be overbearing to its outlook and that given its design it would be subject to an “undue level of observation” thereby diminishing the residential amenity of future occupants. I would concur with this analysis and consider that having observed the scale and context of the units, the proposed development would appear to be sandwiched between several blocks and will have limited and poor outlook and reduced residential amenity for its future residents.

The development was originally designed around the centralised crèche building with play areas and open space and it is considered that the proposal to introduce a block of 6 apartments at this location cannot be achieved without serious loss of residential amenity. Refusal is recommended on that basis.

8.3. Childcare provision.

I would also have significant concerns about the proposed development in terms of change of use of the only onsite childcare facility for 364 apartments.

Notwithstanding its vacancy over the past number of years it's unclear as to what efforts have been made to seek a tenant and to comply with the conditions set out in the parent permission. It is considered that the proposed development would lead to the irreversible loss of an important social amenity to the existing residents and would diminish the quality of their residential amenity and would be contrary to the provisions of the Dublin City Development Plan and would be contrary to the proper planning and sustainable development of the area. It would also set an unwelcome precedent for other large scale apartment developments in the vicinity and wider area.

8.4. Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity 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.

9.0 Conclusions and Recommendation

Arising from my assessment above I consider the decision of Dublin City Council to refuse permission should be upheld in this instance as it is considered that the proposed development will adversely impact on the residential amenities of the existing and future residents of the apartment complex. The nature and layout of the existing development will lead to excessive overlooking of the proposed apartments.

It is considered that the proposed development would lead to the loss of an important childcare amenity for the overall development and would therefore seriously injure the residential amenities of the area and would therefore, be contrary to the proper planning and sustainable development of the area.

10.0 Reasons and Considerations.

1. Having regard to the zoning objective for the site, i.e. Z1 – ‘to protect, provide and improve residential amenities’, it is considered that the siting, scale and massing of the existing apartment blocks in relation to the proposed development will be overbearing to its outlook and also in tandem with the adjoining concourse levels, will generate an undue level of observation over the subject scheme, thus providing for a limited level of residential amenity for future occupants of the development. The proposed development would, therefore, be contrary to the provisions of the Development Plan Section 16.10 and to the proper planning and sustainable development of the area.

2. Having regard to the provisions of the current Dublin City Development Plan and to the provisions of the Planning Guidelines on Childcare Facilities issued by the Department of the Environment and Local Government in June 2001, it is considered that the change of use of the crèche unit to residential units in a residential complex substantially in excess of 75 units would result in the loss of residential amenity to the existing and future residents of the residential complex and to the vicinity. The proposed development would also set an undesirable precedent for other similar developments. The proposed development would seriously injure the amenities of the apartment complex and of the vicinity, would be contrary to the Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

Rachel Kenny,
Director of Planning.

10th December 2018.