



An
Bord
Pleanála

inspector's Report ABP-304006-19

Development	Change of use of an existing 3 storey vacant / unused creche facility to 2 3 storey semi-detached dwellings
Location	No. 18 & 20 Bracken Drive, Bracken Park, Carpenterstown Road, Castleknock, Dublin 15
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW18A/0190
Applicant	Cosgrove Development
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Cosgrove Development
Date of Site Inspection	21 st May 2019
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located within a newly developed residential area, known as Bracken Park, located to the west of Castleknock Village in Dublin 15. It is located c. 1km south of Blanchardstown Village and c. 0.8km east of Carpenterstown Neighbourhood Centre. The M50 lies 170m to the east and Coolmine train station is located c.1km to the north west. Access to the site is off Carpenterstown Road, c.80m to the south.
- 1.1.2. The overall residential development occupies a site measuring c.4.8 ha and the appeal site, with a stated area of 0.05 ha, comprises a three-storey building and associated gardens and parking, with a similar design and layout to that of the adjoining blocks of semi-detached houses. The building has a stated gross floor area (GFA) of 476 sq.m and was originally granted permission as a crèche. It remains incomplete internally. The site also comprises a secondary plot laid out for car parking, to the east of the estate road, fronting the building.

2.0 Proposed Development

- 2.1.1. The proposed development is described as the change of use of the existing three storey vacant building within the residential scheme (Bracken Park Drive), to provide for two 3-storey semi-detached dwellings and the omission of the previously permitted crèche facility.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission for one reason, which set out that the permitted provision of a cheche facility as part of the 147 residential unit development was supported by objectives PM34, PM74, PM75 and PM76 of the Fingal Development Plan, the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, Circular Letter PL3/2016 regarding

Childcare facilities operating under the Early Childhood Care Education (ECCE) scheme, and the Childcare Facilities Guidelines for the Planning Authorities 2001.

The absence of a purpose built creche to serve the new residential community would result in an unsustainable and poorly integrated new residential community, not supported by local or national policy.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer reflects the decision of the Planning Authority.

The Planning report includes:

- Noting that this is a repeat application.
- Referring to the arguments made in favour of the proposal:

the point is made by the applicant that the purpose-built architect designed creche in the recently completed development is not commercially viable. The supporting documentation indicated that it was placed on the market as a shell of a building. The current condition is a site office which is non-compliant with the permission. There is an unquestionable demand for childcare, arising both within Bracken Park and in the immediate vicinity.

the point is made by the applicant that the change of use would bring a vacant building back to use, and that this is supported by residents. The structure was most recently used as a site office. It is not accepted that the structure has been vacant since 2014. It is not accepted that the change of use is in the interests of the residents.

the point is made by the applicant that the 2018 guidelines indicate a more flexible approach, in which the apartments contained in Bracken Park could be discounted. Application of Section 4.7 of the Guidelines may lead to an increase in the policy support for childcare provision within the development.

the point is made by the applicant that the proportion of 0-4 year olds in the area has been falling in recent census periods. This is not accepted. The extent of occupation of Bracken Park in 2016 is unknown. From small area statistics (two area codes

given) for the 230 households recorded, 136 children were under 12 with the higher proportion under 6.

the point is made by the applicant that there is excessive childcare provision in the area. There is an absence of childcare in the immediate vicinity.

- Principle – Circular Letter PL3/2016, regarding Childcare facilities operating under the Early Childhood Care Education (ECCE) scheme, extends the scheme from one to two years. The population of the area is increasing and the 0-4 year age cohort is also increasing. Objective PM 34 seeks to locate compatible uses together.
- Design Layout - Minimal external alterations would result.

3.2.2. Other Technical Reports

- Water Services: No objection.
- Transportation: No objection.

3.3. Prescribed Bodies

- Irish Water: No objection subject to conditions.

3.4. Third Party Observations

3.4.1. Observations on the file have been read and noted.

4.0 Planning History

300607-18, PA Reg Ref F06A/1109: The Board refused permission (19 June 2018), on foot of the planning authority's decision to refuse, for change of use of existing three-storey crèche to 2 no. three-storey semi detached dwellings.

FW15A/0170: Permission refused (18th Feb 2016) for revisions to development previously permitted under F06A/1109/E2. The proposed development would comprise the change of use of the three-storey crèche facility to 2 no. three-storey houses.

PL06F.221463, PA Reg Ref F06A/1109: Permission granted (29th September 2007) for a residential development and a crèche facility.

F06A/109/E2: Permission granted (31st May 2012) for an extension of duration of permission for 5 years.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. The Fingal Development Plan 2017-2023 is the statutory development plan for the area. The site is zoned 'RS' to 'provide for residential development and protect and improve residential amenity'. The following objectives are considered relevant:

Objective PM34 – Locate different types of compatible land uses close together.

Objective PM74 – Encourage the provision of childcare facilities in appropriate locations, including residential areas, town and local centres, areas of employment and areas close to public transport nodes.

Objective PM75 – Ensure that childcare facilities are accommodated in appropriate premises, suitably located and with sufficient open space in accordance with the Childcare (pre-school) Services (No.2) Regulations 2006.

Objective PM76 – Require, as part of planning for new residential and commercial developments, that provision be made for appropriate purpose built childcare facilities where such facilities are deemed necessary by the Planning Authority.

5.2. National Policy

5.3. Childcare Facilities – Guidelines for Planning Authorities' (June 2001)

- 5.3.1. This provides the relevant national policy reference for development such as that proposed. The Guidelines advocate a more proactive role by Planning Authorities in the promotion of increased childcare provision, whilst protecting amenities. Section

2.4 provides that ‘for new housing areas, an average of one childcare facility for each 75 dwellings would be appropriate’.

5.4. **Circular PL3/2016** (March 2016)

5.4.1. This refers to the Government’s policy towards increasing access to childcare and consideration of the need to review the ‘Childcare Guidelines’. This Circular also addresses the need to expedite pre-planning consultation, planning applications and Section 5 declarations relating to childcare facilities.

5.5. **Childcare (Pre-School Services) Regulations 2006**,

5.5.1. This sets out standards for operation of childcare facilities; Tusla is responsible for ensuring compliance with these Regulations.

5.6. **Guidelines for Planning Authorities on Sustainable Residential Development for Urban Areas (Cities, Towns and Villages)** May 2009

5.6.1. This includes the following under Section 4.5:

‘When considering planning applications, in the case of larger housing schemes, the guidelines recommend the provision of one childcare facility (equivalent to a minimum of 20 child places) for every 75 dwelling units. However, the threshold for such provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas, in consultation with city/county childcare committees’

5.7. **Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities**, March 2018,

5.7.1. This includes the following under Section 4.7:

‘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.'

5.8. Natural Heritage Designations

- 5.8.1. The nearest Natura site is South Dublin Bay and River Tolka Estuary SPA site code 004024, located c 11km from the subject site.

5.9. EIA Screening

- 5.9.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Stephen Little & Associates have submitted this appeal on behalf of the First Party. The appeal was accompanied by a letter of support signed by 51 residents of the estate and area. The grounds includes:

- Proposed development would result in a sustainable use by bringing a vacant building back into use.
- The crèche facility is not commercially viable following an extensive marketing period seeking an occupier.
- A creche is not a viable proposition at this location.
- The development has been constructed and, with the exception of the creche, is now fully occupied.

- They note objective PM24 to identify and secure the regeneration of areas in need of renewal.
- The subject units have not been in use as a site office on a full time basis and the intermittent use ceased in November 2018.
- Under PI221463 / F06A/1109 a creche facility was developed. It has remained unoccupied.
- Residents support the change of use.
- The permitted creche has been designed to cater for the number of units already permitted on the site: 49 children and 9 adults, therefore a minimum floor area of 131.86 sq m. The permitted creche of 476 sq m was deemed to be acceptable by FCC at the time. Creche operator expectations of the usability of creche facilities has changed: more generally the provision across one floor, ground floor access preferable. The modifications required and provision of space over 3 floors make the permitted creche unviable resulting in a lack of interest.
- A creche has been permitted within a 1.5km radius.
- In view of Section 4.7 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, March 2018, there is an argument to discount the 70 apartments, notwithstanding that they are a mixture of 2 and 3 bedrooms, leaving 78 houses which is at the limit for requiring childcare provision.
- There are 34 childcare facilities (860 spaces) within a 1.5km radius, and one permitted in a development under construction 0.75km away.
- Previous childcare assessments carried out are referred to with reference to the cyclical nature of childcare provision
- Examples of change of use applications are put forward as precedents i: DCC Reg Ref 2671/18; and PL29S.242556 (Dublin City Council Reg Ref: 2971/13).

6.2. Planning Authority Response

- 6.2.1. The planning authority has responded to the grounds of appeal, which response includes:

- No new information.
- The marketing of the creche is a central and much repeated grounds.
- It is stated that the creche was developed. This cannot be supported on inspection. Elements of the subject buildings sought and consented to in the granted permission, which would differentiate it from the adjacent residential buildings have not been implemented. No creche has been developed on the subject site. The development is currently non-compliant.
- Marketing a building shell is significantly different to marketing a creche.
- Policies seeking regeneration in areas of renewal are inappropriate.
- The small area statistics used in the planner's report have not been referenced and the appeal analysis continues to rely on inappropriate ED data.
- The guidelines aim to increase the provision of high quality, purpose built childcare facilities.
- The precedents relate poorly to the subject case.

7.0 **Assessment**

7.1.1. The issues which arise in relation to this appeal are: appropriate assessment and the principle of the development, 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. Principle and Planning Policy

- 7.3.1. There is strong policy support for childcare facilities to serve new residential areas. Objective PM76 of the county development plan requires that, as part of planning for new residential and commercial developments, provision should be made for appropriate purpose-built childcare facilities, where such facilities are deemed necessary by the Planning Authority. This was clearly provided for as part of the overall permission for the residential development where 148 residential units were permitted and have since been built in the Bracken Park developments
- 7.3.2. Since the Childcare Facilities – Guidelines for Planning Authorities, 2001 it has been a requirement that a development which contains more than 75 dwellings should provide a crèche unit and subsequent guidelines continue this requirement unless it can be demonstrated that there is reasonable justification not to require the provision.
- 7.3.3. The 2018 apartment guidelines is referred to in the grounds of appeal. Section 4.7 cited in the grounds includes that ‘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’. The grounds contends that there is an argument to discount the 70 apartments, notwithstanding that they are a mixture of 2 and 3 bedrooms, leaving 78 houses, which they state would be at the limit for requiring childcare provision.
- 7.3.4. In my opinion this provision of the 2018 guidelines refers to apartments which by their size or location are unlikely to be suitable for family use. The 70 apartments in this development are two and three bedroom apartments and in this residential estate, it cannot be said that the apartments are unsuitable for family use or that they are unlikely to be used by families. In my opinion this residential development requires childcare provision.
- 7.3.5. There is reference to the unsuitability of the premises for use as a creche and to the preference of operators for a facility where the accommodation is provided across one floor. It is unclear why the developer’s original intention to provide the childcare facility in the form of a one and two storey flat roof contemporary building was altered, when the need to relocate the building arose at further information stage (F06A/1109). It is worth noting that the as-developed building layout and the use of a

house numbering scheme which identifies the building by two numbers facilitates its change of use to use as two dwellings. It would be incorrect to state that the building cannot be made suitable for use as a creche/childcare facility. I concur with the inspector's assessment in the previous appeal, which file 300707-18 is attached to the subject file, that there is ample room in the building and its surrounding site to meet the requirements of the childcare regulations¹. I note the planning authority's assessment that a creche has not yet been developed on the subject site. It is worth noting that the interior of the premises is yet to be completed, and this is a possible reason for the stated lack of uptake by the market.

8.0 Recommendation

- 8.1.1. In the light of the above assessment I recommend that planning permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

Permission was previously granted on lands containing the appeal site for 148 number residential units and a crèche facility. The crèche facility was to be provided as part of the social infrastructure on the basis of the residential scheme including more than the 75 dwelling threshold, as set out under the provisions of the Childcare Facilities, Guidelines for Planning Authorities, June 2001. The development of the crèche facility is supported by Objectives PM74, PM75 and PM76 as set out in the current Fingal Development Plan, the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009), and Circular Letter PL3/2016 (March 2016) regarding Childcare Facilities operating under the Early Childhood Care Education (ECCE) Scheme (Planning System support for childcare post September 2016 – Implementation of the Childcare Facilities Guidelines for Planning Authorities 2001). It is considered that the proposed development would result in an absence of a planned crèche facility to serve the

¹ Childcare (Pre-School Services) Regulations 2006

new residential development and would result in a poorly-integrated new residential community, which would not be supported by local or national policy. The proposed development would, therefore, be contrary to the proper planning and sustainable development for the area.

Planning Inspector

24 May 2019

Appendix 1 Photographs

Appendix 2 Extracts from Fingal Development Plan 2017-2023