



An
Bord
Pleanála

Inspector's Report

ABP-305891-19

Development	Extension to Creche
Location	Fortfield Square, College Drive, Terenure, Dublin 6W
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0227
Applicant(s)	Daisy Chain Montessori Childcare Ltd
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Fortfield Square Management
Observer(s)	None
Date of Site Inspection	13 th February 2020
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.0514 ha comprises part of the ground floor of a 3-storey residential development known as Fortfield Square and is located on the southern side of College Drive, Terenure. The site comprises an established creche known as “Daisy Chain Montessori & Childcare”. An outdoors childrens play area is located to the rear (south) of the creche. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

2.1. Permission is sought for a single storey 26.5sqm extension to the rear of the existing creche (237sqm). The application was accompanied by a letter from Sean Gallagher giving consent to Daisy Chain Montessori & Childcare Ltd to make a planning application.

2.2. Further information was submitted on 20th September 2019 and may be summarised as follows:

- At present there are 13 staff members. One additional staff member will be required.
- At present the centre holds 51 children AM and 55 PM. It is proposed to have 62 children AM and 67 children PM.
- The additional 10 children AM will be between 2.8years and 5 years. The additional 12 children PM will be aged between 5yrs to 10yrs.
- The required space for 11 sessional children is 22sqm. The outdoor space is 102.65sqm and is sufficient.
- 10 no bicycle parking spaces provided in accordance with the standards.
- Drawings detailing access, car parking and drop off facilities for both staff and customers.

2.3. The submission was accompanied by a letter from Daisy Chain Montessori & Childcare in relation to staff travel modes.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. SDCC issued a notification of decision to grant permission subject to 6 no conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their first report sought further information in line with the recommendations of the SDCC Roads Report (see below) in relation to details of numbers of existing staff and children; proposed staff and children; proposed age profile of the children; adequate provision of indoor play space and open space / outdoor play facilities; adequate provision of bicycle parking in accordance with Table 11.2 of the Development Plan and plan drawings detailing access, car parking and drop off facilities for both staff and customers. Further information was requested on the 2nd September 2019.
- The **Case Planner** in their second report and having considered the further information recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by SDCC reflects this.

3.2.2. Other Technical Reports

Planning Application

- **Roads Department** – Noted that no details have been provided on numbers of existing staff and children; proposed staff and children; proposed times and number of sessions to be operated at the crèche. Recommended that further information be sought.
- **Environmental Health Officer** – Stated that the proposal is acceptable subject to conditions relating to construction phase / demolition phase and air quality.
- **Water Services** – No objection subject to conditions relating to surface water and flood risk.

Further Information

- **Roads Department** – Stated that the modest increase in children at the creche will not have an adverse effect on traffic and parking at the creche.

3.3. Prescribed Bodies

- **Irish Water** – No objection subject to conditions set out in the report relating to water and wastewater connections.

3.4. Third Party Observations

- 3.4.1. There is one third-party observation recorded on the planning file from (1) Fortfield Square Management CLG (appellant). The issues raised relate to legal interest, construction impact and parking.

4.0 Planning History

- 4.1.1. There was a previous planning appeal on this site that may be summarised as follows:
- **PL06S.202152 (Reg Ref SD02A/0427) -**

5.0 Policy Context

5.1. Development Plan

- 5.2. The operative Development Plan is the **South Dublin County Development Plan 2016-2022**. The site is **Zoned RES** where the objective is *to protect and / or improve residential amenity*.

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within a designated Natura 2000 site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development in an established urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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. The third-party appeal has been prepared and submitted by Fortfield Square Management CLG and may be summarised as follows:

- Fortfield Square is a multi-unit development and is managed under the Multi-Unit Development Act 2011 (MUD ACT).
- The undated letter of consent accompanying the Planning Application was signed by Sean Gallagher only and none of the other named Lessees. The Lessees do not have the permission of the Lessor nor the authority to grant consent to Daisy Chain Montessori and Childcare Limited to make the Plannign Application.
- The proposed expansion to the Creche Unit will include breaking into the external structural load bearing walls, removal of the boundary to facilitate construction of the proposed extension and the construction of a building on the uncovered part of the open play area is in clear breach of the lease. Pursuant to the Lease, FSM is responsible for the repair and maintenance of the external envelop of the building including walls, windows and roof. The submission of a Planning Application in advance of the Lessees, obtaining the consent of the Lessor (FSM) to any alteration is premature.
- In relation to Condition and Reason 2 Drainage – Irish Water of the permission granted by SDCC. The proposed development will connect to the water supply, foul and surface water under the ownership of FSM. These services have not been transferred to Irish Water. The applicant requires the agreement of the FSM to connect to these services under the terms of the Lease with the Crèche and not Irish Water.
- In relation to Condition and Reason 3 – Construction Noise and Hours of the permission granted by SDCC Fortfield Square is predominantly a residential development comprising apartments, duplexes and houses. A residential home for retired persons adjoins the crèche premises. The commencement of

construction activities at 07.00 hours on weekdays would be the cause of unacceptable levels of noise pollution to residents early in the morning for the duration of the construction.

6.1.2. The appeal was accompanied by the following

- Copy of sections of the lease between Jackie Green Construction Ltd, Fortfield Square Management Limited and the Gallagher's (x5)

6.2. First Party Response

6.2.1. The first party response has been prepared and submitted by JS Architects Ireland and may be summarised as follows:

- The making of a planning application is not referred to in the extract from the lease accompanying the submission. The Lease to Sean Gallagher and others is a "Purchase Lease" for 999 years from 11th July 2008 at the nominal rent of €1.00 (if demanded). The letter of consent from Sean Gallagher was written with the prior knowledge and agreement of all other co-owners.
- It has not been demonstrated that the making of Planning Application has in any way prejudiced their rights under the lease. The granting of a planning permission does not in itself entitle the application to construct the works granted permission.
- The issues raised in relation to the lease are not planning matters that relate to the proper planning and development of the permission. Consent to build can only be meaningfully sought once it is known what is permitted through the planning process.
- It is not intended to make a bigger opening other than the door opening that exists in the room at present. Therefore, there is no structural alteration to the existing façade apart from the weathering detail where the new joins the existing. It is clearly an addition to the premises and it would technically alter the external appearance of the block but it has approval through the Notification of Decision to Grant planning permission issued by the Local Authority and does not materially impact on the appearance of the building.
- It is not intended to have any additional sanitary facilities or water supply in the extension. There will be no increase in the demand from the creche and there will

be no additional facilities connected to Irish Water other than those that already exist.

- The hours of construction are determined by the Local Authority not by the applicant. At the construction stage, due consideration can be given to the needs of the local resident to minimise disruption. This would form part of the consent process to build as noted in the lease.

6.3. Planning Authority Response

- 6.3.1. SDCC confirms its decision and states that the issues raised in the appeal have been covered in the planner's report.

6.4. Observations

- 6.4.1. No observations recorded on the appeal file.

6.5. Further Responses

- 6.5.1. No further responses recorded on the appeal file

7.0 Assessment

- 7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Legal Interest
- Drainage
- Construction Impact
- Appropriate Assessment
- Other Issues

7.2. Principle

- 7.2.1. Under the provisions of the South Dublin County Development Plan 2016-2022 the site is Zoned RES where the *objective is to protect and / or improve residential amenity* and where childcare facilities are open for consideration. I also refer to Section 11.3.11 Early Childhood Care and Education of the Development Plan that sets out several criteria that the Planning Authority will have regard to in the assessment of proposals for childcare and educational facilities. Having regard to the established and operational montessori and childcare facility on site I am satisfied that the site is suitable for the type and size of facility proposed; that there is adequate availability of indoor and outdoor play space and that there is adequate access, car parking and drop off facilities for staff and customers. Overall, I am satisfied that the site is suitable for the proposed extension and that the principle of the development is acceptable at this location.
- 7.2.2. With regards to number of children in montessori I note the further information submitted together with Condition No 6 of the notification of decision to grant permission where the number of children to be accommodated in the creche shall not exceed 62 children (AM session) and 67 children (PM session) during the approved hours of operation in any one day. In the interest of residential amenity and to limit the scale of development it is recommended that should the Board be minded to grant permission that a similar condition be attached.

7.3. Legal Interest

- 7.3.1. I note the concerns raised in relation to the lease agreement and the lack of consent to make a planning application and / or carry out works. There are two tests in this regard; firstly, whether the applicant has sufficient legal interest to make an application and secondly whether the applicant has sufficient legal interest to carry out the works. The first issue is lower test and having regard to the information on file and accompanying documentation I am satisfied that sufficient legal interest has been demonstrated to make a planning application. With regard to the second test I refer to Section 34 (13) of the 2000 Planning and Development Act (as amended) where it states that a person is not entitled solely by reason of a permission to carry out any development. Therefore, should planning permission be granted and should the

appellant or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant

7.4. Drainage

- 7.4.1. I note the appellants submission that the applicant requires the agreement of the FSM to connect to the water supply, foul and surface water and that these services are under the terms of the Lease with the Crèche and not Irish Water. The applicant states that it is not intended to have any additional sanitary facilities or water supply in the extension and that there will be no additional facilities connected to Irish Water other than those that already exist. Having regard to the information available I agree with the applicant that the increase in numbers that the extension caters for is relatively small and will have no significant material effect on the existing connections. I would also reiterate that a person is not entitled solely by reason of a permission to carry out any development. Section 34 (13) of the 2000 Planning and Development Act (as amended) refers.

7.5. Construction Impact

- 7.5.1. I note the concerns raised with regard to the proposed construction works and associated hours of operation. There will inevitably be disruption during the course of construction, however this will be a short term impact and such can be minimised to acceptable levels with appropriate standard working / construction procedures such as controlling construction hours, dust minimisation etc. Overall I am satisfied that these matters can be dealt with by way of suitably worded conditions requiring the submission of a construction management plan for agreement. With the attachment of such a condition I do not consider that the construction phase of the development would give rise to an unreasonable impact on neighbouring properties in this instance.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development and its distance 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.

7.7. Other Issues

- 7.7.1. **Development Contributions** – South Dublin County Council has adopted a Development Contribution Scheme under Section 48 of the Planning and Development Act 2000 (as amended); the South Dublin County Council Development Contribution Scheme 2016 – 2020 refers. I have reviewed the categories of development that will be exempted, or partly exempted, from the requirement to pay development contributions under the Scheme. While “*not for profit childcare facilities shall be exempt*” commercial childcare facilities are not exempt from payment. Accordingly, it is recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

8.0 Recommendation

- 8.1. It is recommended that permission be **GRANTED** subject to the reasons and considerations set out below

9.0 Reasons and Considerations

- 9.1. Having regard to the site’s location on serviced urban lands to the rear of an existing creche facility and to the policy and objective provisions in the South Dublin County Development Plan 2016-2022, the nature, scale and design of the proposed development, to the pattern of existing and permitted development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of traffic and pedestrian safety. 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 as amended by the further plans and particulars submitted on the 20th day of September 2019, 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 number of children to be accommodated in the creche shall not exceed 62 children (AM session) and 67 children (PM session) during the approved hours of operation in any one day.

Reason: To limit the scale of the development in the interest of residential amenity.

3. 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.

4. The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health

5. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity

6. The site and building works required to implement the development shall be carried out only between the hours of 0800 to 1800 Monday to Fridays,

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 adjoining property in the vicinity

7. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

8. 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 the 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

Mary Crowley

Senior Planning Inspector

2nd March 2020