



An
Bord
Pleanála

Inspector's Report ABP 306606-20

Development	Retention of a Montessori school on the ground floor to cater for a maximum of 16 children.
Location	45 Holywell Green, Feltrim Road, Swords, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F19A/0542
Applicant	Michelle Keegan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant	Michelle Keegan
Observer(s)	None
Date of Site Inspection	22 nd June 2020
Inspector	Brendan Coyne.

1.0 Site Location and Description

1.1. The site (0.01 ha) is located at the end of two no. cul-de-sac's, Holywell Meadow and Holywell Green within the Holywell estate in Swords, Co. Dublin. The site contains an end-of terrace 2.5 storey 3-bedroom dwelling (90 sq.m.) which is currently in use as a sessional Montessori school at ground floor level. The stated floor area of the Montessori school is 43.6 sq.m. Internally, the Montessori provides a kitchen, toilet and open plan Montessori child-care / activity area. Residential accommodation is provided at upper floor levels. The rear garden of the premises contains 2 no. domestic timber sheds with floor areas of 19 sq.m. and 9 sq.m. respectively. The rear garden area is paved and covered with a soft durable membrane for safety purposes. A path to the side of the dwelling provides external access to the rear garden. A low-level metal railing defines the front boundary of the site. A footpath adjoins the front boundary and a small green area is located directly opposite the site, to the east. Defined car parking spaces are provided at the turning ends of the 2 no. adjacent cul-de-sac's, some of which are designated disabled car parking spaces. Car parking spaces are provided on both sides of these roads, on approach to the appeal site. There are no parking restrictions along these roads. The character of the surrounding area in Holywell estate is residential. The Holywell estate is accessed off the R125 road, c. 0.7 km to the north-west of the site. The M1 motorway is located adjacent to the east of the site. Swords town centre is located c.2km to the north-west.

2.0 Proposed Development

2.1. RETENTION Permission sought for the following;

- Change of use of the ground floor of the dwelling to a Montessori school and after-school childcare facility.
- The Montessori school is sessional and caters for a maximum of 16 no. children within each session.
- The floor area of the childcare facility is 43.6 sq.m.

3.0 Planning Authority Decision

3.1.1. Fingal County Council refused permission for the development seeking retention permission. The 2 no. reasons for refusal were as follows;

1. The Montessori development seeking retention planning permission is located at the termination of a cul-de-sac with limited designated car parking and no potential for forward only movements and has the potential to generate significant increase in traffic and associated reversing manoeuvres which would endanger public safety by reason of traffic hazard.
2. The development if permitted would set an undesirable precedent for other similar developments, which would cumulatively be harmful to the amenities of the area and be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.3. Planning Report:

Basis for the Planning Authority's decision. Includes:

- The development seeking retention permission is consistent with the RS zoning objective of the area.
- The residential component of the dwelling is substandard. The floor area of the kitchen and living room at 14.22 sq.m. is significantly below the standard required in Table 12.2 of the Development Plan, for a two storey 3 bed 5-person dwelling.
- Proposed works involve the omission of shed 'Building 03', thereby providing 42.8 sq.m. private amenity space for the dwelling / Montessori school. While this is below the standard required in the Development Plan, it is acceptable by reason that the applicant could reduce the area of private amenity space to 25 sq.m. in accordance with exempted development provisions in the Planning and Development Regulations 2001 (as amended).

- The applicant has submitted a letter from the resident of No. 43 Holywell Green, showing support for the Montessori facility and indicating that the facility does not adversely impact their residential amenity.
- Having regard to the residential nature of the area, the provision of limited childcare facilities could be acceptable. However, due to the inability to provide forward movement drop-off and pick-up parking, the development seeking retention permission represents a traffic hazard.
- Having regard to the Childcare Facilities Guidelines (2001), the subject site is not in a suitable location due to local traffic conditions.
- There is limited detail regarding kitchen / storage within the main dwelling, the use of the sheds in the rear garden, environmental health, private amenity space provision and the location of the site within Zone C Outer Airport Noise.

3.4. Other Technical Reports

3.4.1. **Transportation Planning Section:** The Report states the following:

- The outstanding issue of a traffic hazard by reason of inadequate set-down facilities remains outstanding.
- The reduction in the number of children attending the facility is immaterial.
- With the provision of a suitable set-down facility the number of children would only be limited by the size of the creche and the required standards for a child-care facility.
- No application can rely on the use of third-party parking to address the deficits of the application. This is an arrangement that would continue only at the good will of the third-party and only as long as would suit the third-party. Any change of circumstances or the sale of third-party property may lead to this arrangement become defunct and unenforceable.
- The development seeking retention permission is located at the end of a turning head, the size and geometry of which, dictates that reverse manoeuvres are required to turn a car round and exit the estate. This would be the case if the turning head remained as designed however, additional parking spaces have been

delineated in the turning head (contrary to the parent planning permission for the overall estate development) effectively removing the turning head.

- The space between vehicles is less than the required 6m for perpendicular parking spaces to facilitate ease of access, in effect complicating the turning manoeuvres.
- Leaving the cul-de-sac without having to reverse in some format is not possible.

On the basis of the above, the Transportation Planning Section recommends that the development seeking retention permission be refused on grounds of creating a traffic hazard.

3.4.2. **Water Services Department:** No objections.

3.4.3. **Parks Division:** No objection subject to conditions.

3.4.4. **Environmental Health:** No objection subject to conditions.

3.4.5. **Environmental Health Air & Noise Unit:** No objections.

3.5. **Prescribed Bodies**

3.5.1. ***Dublin Airport Authority:***

- The site is located within the newly adopted noise variation Zone C.
- No objection subject to Conditions regarding internal noise levels and noise mitigation measures.

3.5.2. ***Irish Aviation Authority:*** No observations made.

4.0 **Planning History**

4.1.1. **P.A. Ref. F18A/0501** Permission REFUSED in Oct. 2018 for the retention of a Montessori school on the ground floor of the dwelling and for use of an ancillary timber building in the rear garden. The Reason for Refusal was as follows;

1. The Montessori development seeking retention planning permission is located at the termination of a cul-de-sac with limited designated car parking and no potential for forward only movements and has the potential to generate significant increase in traffic and associated reversing manoeuvres which would endanger public safety by reason of traffic hazard.

4.1.2. **P.A. Ref. F18A/0050** Permission REFUSED in March 2018 for the retention of a change of use of the ground floor of an existing dwelling house to a Montessori and retention of two number ancillary external buildings also acting as Montessori rooms, together with all associated site development works on part of the site. The 3 no. Reasons for Refusal were as follows;

1. The Montessori development seeking retention planning permission is located at the termination of a cul de sac with limited designated car parking and no potential for forward only movements and has the potential to generate significant increase in traffic and associated reversing manoeuvres which would endanger public safety by reason of traffic hazard.
2. In the context of the restricted nature of the application site the development seeking retention planning permission which would result in limited residential accommodation for a three bedroom housing unit, lack of direct access to a kitchen, substandard private open space provision and lack of access to said open space during the operating hours of the facility. As a consequence the development proposed for retention would materially contravene the zoning objective pertaining to the area, i.e. RS, 'Provide for residential development and protect and improve residential amenity'.
3. The development in its current form would set an undesirable precedent for other similar development.

5.0 Policy and Context

5.1. Development Plan

Fingal Development Plan 2017 – 2023 is the statutory plan for the area. The following provisions are considered relevant:

Zoning: The site is zoned 'RS – Residential' with the objective to 'provide for residential development and protect and improve residential amenity'.

The zoning vision is to 'ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity'.

Relevant Use Classes - Permitted in Principle include Childcare Facilities and Residential.

5.1.1. **Section 3.6 Childcare Facilities.** Policies include;

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.

Chapter 12 Development Management Standards

Section 12.4 Design Criteria for Residential Development

Section 12.8 Childcare Facilities. Policies include;

Objective DMS94 Any application for childcare facilities shall have regard to the following:

- Suitability of the site for the type and size of facility proposed.
- Adequate sleeping/rest facilities.
- Adequate availability of indoor and outdoor play space.
- Convenience to public transport nodes.
- Safe access and convenient off-street car parking and/or suitable drop-off and collection points for customers and staff.
- Local traffic conditions.
- Intended hours of operation.

Objective DMS95 Residential properties with childcare shall retain a substantial residential component within the dwelling, and shall be occupied by the operator of the childcare facility.

Appendix 4: Technical Guidance Notes – Definitions of use classes:

‘Childcare Facilities’ are defined as the *‘Use of a building, or part thereof, for the provision of full day and/or sessional care and services for pre-school age, and/or for school-going children out of school hours. It includes services involving care, education, and socialisation opportunities for children. As such, services such as pre-schools, naíonraí (i.e. Irish language play groups), day care services, crèches, and after school groups are included, but child minding, schools (including primary and secondary schools) and residential centres are excluded’.*

‘Sessional Childcare’ is defined as *‘the provision of a service which offers a planned programme to pre-school children of up to 3.5 hours per day by trained personnel. Sessional services include playgroups and Montessori groups’.*

‘Where the facility is provided in a house within a residential area, the following conditions will generally apply:

- *It should be operated by the resident living in the house,*
- *The use should be subordinate to the use of the dwelling as a main residence.*

In all cases, the use shall not be injurious to the residential amenities of the area (e.g. it will not result in unacceptable levels of noise or on street car parking etc.).

Chapter 12 Table 12.8 Car Parking Standards

5.2. Relevant Government Guidelines

Childcare Facilities – Guidelines for Planning Authorities Department of the Environment, Heritage and Local Government (2001)

Child Care Act 1991 (Early Years Services) Regulations 2016

Circular Letter PL3/2016 - Childcare facilities operating under the Early

Childhood Care and Education (ECCE) Scheme This Circular issued by the Department of Environment, Community and Local Government in respect of the Childcare Facilities Guidelines for Planning Authorities 2001 within which Planning Authorities were advised that matters relating to childcare facility standards outlined in Appendix 1 of the Childcare Facilities Planning Guidelines 2001, including the minimum floor area requirements per child, should be excluded in the consideration of planning applications relating to childcare facilities and the planning authorities should solely focus on planning related considerations that fall within the remit of the Planning and Development Act 2000, as amended.

5.3. **Natural Heritage Designations**

The Malahide Estuary SAC (Site Code 000205) and SPA (Site Code 004025) is located 2.5km to the north-west of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. A first-party appeal was received from Peter Gillett, Town Planning & Development Consultant, representing the applicant Michelle Keegan, against the decision made by the Planning Authority to refuse permission for the development seeking retention. The following is a summary of the grounds of appeal.

- The cul-de-sacs on either side of the subject site provides a safer environment in terms of traffic than that of a through road.
- The cul-de-sac road ends require traffic to slow right down to an idle speed.
- The small number of trips generated by the proposal would be no greater than that of a moderate sized family going about their daily activities.
- Almost all the children attending the facility walk to it from nearby homes.
- The recent closure of a pre-school in nearby Kinsealy Neighbourhood Centre has put a huge pressure on other facilities in the wider catchment area, all of which are at full capacity.

- The provision of small childcare facilities within residential communities is a sustainable planning approach to childcare need.
- There are other options in relation to the set down / pick-up area for the Montessori school which have not been considered.
- 3 no. options are proposed for the consideration of the Board, stating the following;

Option 1:

- Use the 6 no. near side parking spaces over which the applicant has control, during school opening hours, as a side on / drop-off collection point.
- This will obviate the need for reversing movements, allowing cars to turn and head forward in direction.
- The applicants 2 no. parking spaces are always kept clear as she parks with other staff members in nearby spaces outside the turning area.
- The applicant's neighbours in house nos. 41 & 43 have consented to use their two spaces, as set out in the letters of support submitted.
- Parents making limited trips will be requested to adhere to this and will be monitored accordingly.

Option 2:

- Use the two inside parking spaces belonging to the applicant which adjoin the verge / area of open space.
- Children can exit directly from cars onto the green area without having to cross the turning area. This would avoid exposure to turning movements.
- The applicant would request strict adherence to this arrangement and monitor compliance.

Option 3:

- Use the readily available car parking spaces outside the turning cul-de-sac. These are within 40-60 metres of the Montessori school and most are normally vacant during school hours.

Site Layout Plans for the proposed option Nos. 1 and 2 have been submitted.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response is as follows;

- The decision to refuse permission was based on the Transportation Planning Section's concern that the outstanding issue of a traffic hazard by reason of inadequate set-down facilities remains.
- The proposed options would only persist at the good will of the third parties and as suits them.
- Any change of circumstances or the sale of nearby properties may lead to this arrangement becoming defunct and unenforceable.
- In the event that this appeal is successful, a financial contribution should be applied in accordance with the Council's Section 48 Development Contribution Scheme.

6.3. Observations

None

7.0 Assessment

7.1. I have reviewed the development seeking retention and the correspondence on the file. The main issue raised in the Grounds of Appeal relates to the Planning Authority's 2 no. reasons for refusal. This can be addressed under the following heading;

- Traffic generation and parking.

However, having reviewed the documentation submitted and having regard to relevant policy in the Fingal County Development Plan and relevant Government Guidelines, and further to site inspection, I consider that other issues for consideration include the following;

- Intensity of use of the childcare facility,

- Impact on residential amenity,
- Compliance with policy re. residential properties with a childcare facility.

These are addressed below.

7.2. Traffic Generation and Parking

- 7.2.1. The Planning Authority refused permission for the retention of the Montessori school / childcare facility on the grounds that it is located at the end of a cul-de-sac with limited designated car parking, that the parking spaces at the end of the cul-de-sac would result in reversing manoeuvres and that the childcare facility has the potential to generate a significant increase in traffic. The Planning Authority considers that such development would endanger public safety by reason of a traffic hazard. The applicant contests this as set out in Section 6.1 above.
- 7.2.2. The appeal site is located at the eastern end of the Holywell estate, at the end of 2 no. cul-de-sac roads, Holywell Green to its north and Holywell Meadow to its south. The road leading to the site through the Holywell estate is circuitous and has a distance of c. 0.7 km from the estate entrance to the north-west. The estate is accessed from a roundabout off the R125 road and the M1 motorway is located adjacent to the east of the site. The closest Dublin Bus stop is located c. 0.3km to the north-west of the site along the R125 road.
- 7.2.3. Car parking in the Holywell estate is shared on-street parking. Defined car parking spaces are provided at the turning ends of the 2 no. cul-de-sac's adjacent the appeal site, some of which are designated disabled car parking spaces. There are no parking restrictions along the adjacent estate roads.
- 7.2.4. Table 12.8 of the Development Plan requires 0.5 no. spaces per classroom for pre-school/ creche facilities and 2 no. spaces per 3+ bedroom house – an overall requirement of 2.5 no. car parking spaces in this instance. In the Grounds of Appeal, the applicant has provided 3 no. options of car parking, as detailed in Section 6.1 above. All of the options would involve the use of a car parking space outside the control of the applicant. While the applicant has submitted letters from residents of neighbouring properties (Nos. 41 and 43 Holywell Green) giving consent for the use of their parking spaces between the hours of 8am and 6pm Monday to Friday, I concur

with the Planning Authority that the use of these spaces would only continue at the goodwill of and as suits these third parties. Any change of circumstance or sale of these properties may lead to a termination of this arrangement.

- 7.2.5. The Transportation Planning Section report of the Planning Authority raises concerns that the applicant has not proposed a dedicated set-down area for the childcare facility. Furthermore, Transportation Planning Section report raises concern that the car parking spaces at the turning ends of the cul-de-sac (contrary to the parent planning permission for the overall estate) requires reverse manoeuvres for cars to turn around and exit the estate. The report states that the car parking space between vehicles is less than the required 6m for perpendicular parking spaces, which further complicates turning manoeuvres. On this basis, the Transportation Planning Section report recommend that the development seeking retention be refused permission on the grounds of it creating a traffic hazard.
- 7.2.6. Having regard to the above, I concur with the Planning Authority that the applicant has not proposed a dedicated set-down area for the childcare facility, and that the proposed car parking does not provide safe access for children using the childcare facility. Such development would be contrary to the requirements of Objective DMS94 of the Development Plan. Furthermore, it is my view that possible volume of traffic associated with drop-off and collection times for up to 48 children each day at the proposed childcare facility from 7.30am to 6pm would be significant. This figure of 48 no. children is based on the 3.5 hours sessional nature of the childcare facility, which could enable 3 no. sessions per day, and the 16 no. children that could be cared for within each session – refer to Section 7.3 below also.
- 7.2.7. Drop-off and pick-up parking would invariably take place on the cul-de-sac's Holywell Green and Holywell Meadow. While much of the associated parking would be for short stays and would be concentrated during drop-off and collection periods, the childcare facility would place significant additional demand on the shared on-street parking, particularly during those periods. While Holywell estate provides ample free shared / on-street parking, I consider that the intensity of use of the childcare facility would create unacceptable levels of traffic through a residential area, would result in significant on-street parking impacting on existing residential dwellings and would lead to increased levels of noise. Such development would seriously injure the residential amenity of nearby residents and would, therefore, not be in accordance with the proper

planning and sustainable development of the area. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

7.3. Intensity of Use of the Childcare Facility

- 7.3.1. The appeal site is zoned 'RS' with the objective to 'provide for residential development and protect and improve residential amenity'. Childcare facilities are 'permitted in principle' in this zone. It is an objective of the Development Plan to encourage the provision of childcare facilities in appropriate locations, including residential areas (Objective PM74). The Development Plan recognises that applications for childcare facilities in existing residential areas will be treated on their own merits, having regard to the likely effect on the amenities of adjoining properties, and compliance with criteria as set out in Objectives DMS94 and DMS95 of the Development Plan, as outlined in Section 5.0 above.
- 7.3.2. The applicant is seeking permission for the retention of the change of use of the ground floor of the dwelling to a Montessori school. As stated in the Grounds of Appeal and original planning reports submitted, the school provides full day care, sessional childcare and an after-school facility. The school is certified by Tulsa to accommodate a maximum of 16 no. children for up to 3.5 hours a day, 5 days a week over a 38-week duration to coincide with the primary school year. The applicant states that the maximum number of afternoon pupils rarely exceeds 10-11 no. children and that the maximum number of children on the premises at any one time i.e. morning or afternoon, will not exceed 16. Internally, the facility has a stated floor area 43.6 sq.m. This includes a kitchen, toilet and open plan child-care / activity area.
- 7.3.3. The hours of operation of the childcare facility are not explicitly stated. However, the applicant states that parents can pick up children at the after-school facility from mid afternoon up to 6pm. I note on the facilities website (www.minitrinity.ie) that the stated hours of operation are from 7.30am to 6pm.
- 7.3.4. Having regard to the 3.5 hour sessional nature of the childcare facility and its hours of operation (a total of 10.5 hours per day), the proposal has the capacity to provide 3 no. childcare sessions within any working day. Given that the proposal can accommodate 16 no. children within any one session, this would potentially enable a maximum of 48 no. children be accommodated in the childcare facility in any one day.

7.3.5. While the childcare facility is integrated within the main dwelling, I consider that the scale of operation and intensity of use of the childcare facility is not subordinate to the main dwelling. Such development would be contrary to the requirements of Appendix 4 of the Development Plan which requires that where a childcare facility is provided in a house within a residential area, that the use be subordinate to the use of the dwelling as a main residence. Given the residential context of the area, I consider the scale of operation of the childcare facility seeking retention inappropriate.

7.4. Impact on Residential Amenity

7.4.1. The childcare facility comprises the ground floor of the existing end-of-terrace dwelling. The stated floor area of the dwelling is 90 sq.m. and the floor area of the childcare facility seeking retention is 43.6 sq.m. Discounting the 2 no. sheds in the rear garden (28 sq.m. combined), the play area / private amenity space to the rear of the dwelling is 43.5 sq.m.

7.4.2. The rear and side boundaries of the site share a common boundary with 4 no. residential dwellings. Given the overall possible capacity of 48 no. children that could be accommodated within the childcare facility and the existing hours of operation from 7.30am to 6pm, I consider that the childcare facility would generate noise and disturbance, in particular during drop-off and collections times and in the play area to the rear of the facility. Having regard to its location, in close proximity to neighbouring dwellings to either side and rear (Nos. 43 Holywell Green and 25 Holywell Meadow to either side and Nos. 17 & 18 Holywell Dene to the rear) and its context within a quiet residential area, I consider that the generation of noise and disturbance from the childcare facility would be injurious to the residential amenity of neighbouring dwellings and the surrounding residential area. Such development would be contrary to the zoning objective of the area which seeks to protect and improve residential amenity and would be contrary to Appendix 4 of the Development Plan which requires that in all cases, the use of childcare facilities will not result in unacceptable levels of noise and shall not be injurious to the residential amenities of the area.

7.5. Compliance with Policy re. Residential Properties with Childcare

- 7.5.1. Objective DMS95 of the Development Plan requires that residential properties with childcare shall retain a substantial residential component within the dwelling and shall be occupied by the operator of the childcare facility. The planning report submitted with the application states that the applicant and her family live in the premises and that accommodation provided at first and second floor level include a living room/ kitchen, 3 no. bedrooms and 2 no. bathrooms / W.C. The floor plans submitted do not detail the kitchen at first floor level.
- 7.5.2. Notwithstanding that the applicant lives in the dwelling and that adequate residential accommodation is provided at first and second floor level, it is my view that the development seeking retention would be contrary to the requirements of Appendix 4 of the Development Plan by reason of its scale of operation and intensity of use, such that it would not be subordinate to the use of the dwelling as a main residence. Furthermore, the use of the play area to the rear of the premises by the childcare facility would negate the use of this area as private amenity space for other occupants of the main dwelling during the hours of operation of the childcare facility. Such development would be contrary to Development Management Standards as set out in Chapter 12 of the Fingal County Development Plan which requires that all residential units (be they traditional type housing or apartments) be provided with private open space.

7.6. Appropriate Assessment:

- 7.6.1. Having regard to the nature and modest scale of the development seeking retention, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any European site, no Appropriate Assessment issues arise and it is not considered that the development seeking retention would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1.1. I recommend that permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The Montessori / childcare facility does not provide a dedicated set-down area and the proposed car parking at the end of Holywell Green cul-de-sac does not provide safe access for children using the childcare facility. The car parking spaces at the turning ends of the adjacent cul-de-sacs (contrary to the parent planning permission for the overall estate) are substandard in width and would require reverse manoeuvres for cars to turn around and exit the estate. Such development would create a traffic hazard and would be contrary to the requirements of Objective DMS94 of the Development Plan.
2. Having regard to the overall daily capacity and hours of operation of the sessional Montessori school / childcare facility, it is considered that the scale of operation and intensity of use of the development seeking retention would be contrary to the requirements of Appendix 4 of the Development Plan which requires that the use of a sessional childcare facility be subordinate to the use of the dwelling as a main residence. Such development would be contrary to the proper planning and sustainable development of the area.
3. Having regard to the location of the development seeking retention in a residential area, it is considered that the intensity of use and hours of operation of the childcare facility would generate noise and disturbance, in particular in the play area to the rear of the Montessori / childcare facility and during drop-off and collections times. The development seeking retention would also create unacceptable levels of traffic through a residential area, would result in significant on-street parking along adjacent residential estate roads and would lead to increased levels of noise

throughout the day. Such development would be injurious to the residential amenity of neighbouring dwellings and the surrounding residential area. The development seeking retention would, therefore, be contrary to the zoning objective of the area which seeks to protect and improve residential amenity and would be contrary to Appendix 4 of the Development Plan which requires that in all cases, the use of childcare facilities will not result in unacceptable levels of noise and not be injurious to the residential amenities of the area. As such, the development seeking retention would not be in accordance with the proper planning and sustainable development of the area.

Brendan Coyne
Planning Inspector

23rd June 2020