



An
Bord
Pleanála

Inspector's Report

ABP-306610-20

Development

Extension of playschool opening hours from 9:30am - 12:30pm and 2pm - 6pm to opening hours of 8am - 6pm inclusive, incorporating existing study room into playschool for additional space and all associated site works.

Location

52, Ballyroan Crescent, Rathfarnham, Dublin 16

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

SD19A/0254

Applicant

Mark Stapleton

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party v Grant of Permission

Appellant

Martin Leahy

Date of Site Inspection

28.04.2020

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located on a residential road approx. 1.3km south west of Rathfarnham village.
- 1.2. The site is occupied by a two-storey semi-detached house which has a single-storey area to the side used as 'Kids Play' playschool and Montessori. There is a vehicular access to the front of the house with a separate pedestrian entrance at the corner of the site frontage which leads to the playschool area. The house and the playschool are internally linked. There is another Montessori school on the opposite side of the road to the south east at No.87; 'Usher Montessori'
- 1.3. The site has a stated area of 0.0545 hectares.

2.0 Proposed Development

- 2.1. Permission is sought to:
 - Extend the playschool opening hours from 9.30am-12.30pm and 2pm-6pm to 8am-6pm inclusive, and;
 - Incorporate an existing study room into the playschool.
- 2.2. The floor area of the existing building is stated as 193sqm. The house has an indicated height of 9.15 metres.
- 2.3. The application was re-advertised as significant further information on foot of the further information response which related to the provision of sessional pre-school, playschool and after-school services.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 5 no. conditions including Irish Water connection, construction practices and financial contributions.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports of 30.09.2019 and 13.01.2020 are the basis of the planning authority decision. The Planning Report concluded that, having regard to the provisions of the South Dublin County Council Development Plan 2016-2022 and the overall design and scale of the development proposed, subject to conditions, the proposed development would not seriously injure the amenities of the area, would be in accordance with the proper planning and sustainable development of the area and would be in compliance with Council policy.

3.2.2. **Other Technical Reports**

Roads Department – No objection subject to a condition.

Water Services – No objection subject to conditions.

Environmental Health Officer – The Planning Report states the report indicated the application was acceptable subject to conditions and recommended the applicant consult with Tusla.

3.3. **Prescribed Bodies**

Irish Water – The Planning Report states the report indicated no objection subject to conditions.

3.4. **Third Party Observations**

3.4.1. Submissions were made by Martin Leahy, 87 Ballyroan Crescent and Noel McSharry, 184 Ballyroan Road. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- Permitting commencement of business at 8am would seriously intrude on the peaceful enjoyment of No. 184 Ballyroan Road bringing noise, traffic and activity to the location.
- An early morning child minding facility at Ballyroan Community Centre has ample parking and capacity with no intrusion on neighbours.

- This is the second business expansion application in the last 18 months at this location in a residential neighbourhood. Local schools and other child-minding facilities commence at 9/9.30am and the same should apply here.
- The site notice cannot be seen by the public as it is in a hedge.

3.4.2. A second submission was made by Martin Leahy, 87 Ballyroan Crescent on foot of the re-advertised public notices. The issues raised are largely covered by the grounds of appeal and the original submissions with the exception of the following:

- The new site notice again cannot be seen by the public as it is in a hedge.
- A number of assertions made in the applicant's further information response were disputed with references made to, inter alia, the type of facilities being provided, Tusla, the number of children and staff, car parking arrangements etc.

4.0 Planning History

P.A. Reg. Ref. SD18B/0038 – Permission granted in 2018 for an attic conversion and raising of gable end with dormer windows etc. This has been constructed.

P.A. Reg. Ref. SD14A/0141 – Permission granted in 2015 for the provision of childcare services from 2pm-6pm at the existing creche. Condition 2 stated the facility shall cater for a maximum 20 no. children between 9.30am-12.30pm and between 2pm-6pm Monday to Friday.

P.A. Reg. Ref. S02A/0078 – Permission for a single-storey Montessori playschool at the side of the house and change of use existing playschool to a study and permission for retention of a bedroom over same granted in 2002. Condition 2 stated the pre-school Montessori facility shall cater for a maximum 20 no. children between 9.30am-12.30pm Monday to Friday.

P.A. Reg. Ref. S99A/0527 – Permission granted in 1999 to retain a Montessori play school.

According to the Planning Report, Enforcement reference S8067 relates to a live case which remains open.

5.0 Policy Context

5.1. South Dublin County Council Development Plan 2016-2022

- 5.1.1. The site is in an area zoned 'Objective RES; To protect and/or improve residential amenity'. Under Table 11.2 of the Plan, childcare facilities are open for consideration in this zoned area.
- 5.1.2. Section 3.10.0 (Early Childhood Care and Education) of the Plan relates to the application. Policy C8 Objective 3 supports the provision of small-scale childcare facilities in residential areas subject to appropriate safeguards to protect the amenities of the area, having regard to noise pollution and traffic management.
- 5.1.3. Section 11.3.11 (Early Childhood Care and Education) sets out issues the planning authority will have regard to in the assessment of proposals for childcare and educational facilities e.g. suitability of the site, play space availability, local traffic conditions, hours of operation, impact on residential amenity etc.

5.2. Childcare Facilities Guidelines for Planning Authorities (2001)

- 5.2.1. The guidelines relate solely to the land use planning aspects of childcare provision. The guidelines encourage the provision of childcare facilities in, inter alia, residential areas with suitable sites including substantial semi-detached properties with space for off-street parking and space for an outdoor play area. Sessional or after-school care may be considered in any residential area as ancillary to the main residential use subject to certain development control criteria.

5.3. Circular Letter PL 3/2016

- 5.3.1. This Circular Letter states that, having regard to the extension of the Early Childhood Care and Education (ECCE) Scheme, planning authorities are requested, inter alia, to exclude matters relating to childcare facility standards outlined in Appendix 1 of the 2001 Guidelines e.g. minimum floor area requirements per child, and to solely focus on planning related considerations that fall within the remit of the Planning & Development Act, 2000 (as amended). The Child and Family Agency, Tusla, is responsible for inspecting pre-school services under, and enforcing compliance with,

the Child Care (Pre-School Services) Regulations 2006 which set out a range of childcare related standards for childcare facilities.

5.4. Natural Heritage Designations

- 5.4.1. The closest Natura 2000 site is Wicklow Mountains SAC approx. 5.3km to the south. The closest heritage area is Dodder Valley pNHA approx. 2.2km to the west.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by Martin Leahy, 87 Ballyroan Crescent; a property on the opposite side of the road to the south east of the site. The main issues raised can be summarised as follows:

Breach of Planning Regulations/Legislation

- The childcare facility has been operating the proposed 8am-6pm Monday to Friday times for the last two years without planning permission and the study room has been incorporated into the play school for many years.
- The facility is currently in breach of planning regulations as staff are not parking inside the drive of 52 Ballyroan Crescent as directed in their previous planning submission.
- The pedestrian gate does not have planning permission.
- The large advertising sign outside the property does not have planning permission.

Operation of the Childcare Facility

- The number of children attending and the type of facility for the opening hours (sessional, part-time, full-day, afterschool) is not mentioned. There is reference to a breakfast club, sessional and after-school. There is also reference to pre-school children's parents requiring an extra two hours. An extra two hours on top of a sessional service is classed as a part-time service and this is what

Tusla required the applicant to apply for. However, if the application is for an inclusive 8am-6pm facility it should be classed as a full-day service and needs to be affirmed by Tusla before planning is granted. A Tusla Inspection Report (attached to the grounds of appeal) states the service caters for a maximum of 34 no. children per session and the operating hours are out of their planning. The facility only has planning for 20 children. Insurance needs to be clarified and the fire prevention policy needs to be checked if they are operating with more than 22 children per day.

- Before planning is granted Tusla should confirm the exact nature of business (8am-6pm is classed as a full-time service), proper insurance and fire safety rather than the applicant's word.
- Far more children are being accepted for a breakfast club than an extra five or six and the considerable extra numbers add to the traffic problems.

Traffic

- Constant reversing into driveways and parking by the continuous white line is unsafe.
- The increase in hours and use of the study room should be rejected as it is a huge disruption to neighbours who have been restricted in their ability to access their properties.
- Staff continue to park over the appellant's driveway. Carers calling to elderly neighbours cannot obtain access due to staff parking and drop-off and collection by parents. It causes traffic chaos in an area that already has a considerable amount of traffic problems.

Miscellaneous

- The planning authority's Policy C8 Objective 3 refers to a small-scale childcare facility in residential areas. This is not a small-scale facility.

6.2. Applicant's Response

The main points made can be summarised as follows:

- The child-minding facility has been in operation for 21 years. Planning application P.A. Reg. Ref. SD19A/0254, to address the increasing demand for a breakfast club and 5 hours pre-school, was granted and the process was commenced in full consultation with Tusla.
- The applicant believes the appeal is mischievous and vexatious as the appellant's wife runs a childcare business at No. 87 Ballyroan Crescent. Concern is expressed about the accuracy of the content of the submissions to the planning authority and the Board.
- The appellant is the sole objector on Ballyroan Crescent to the development.
- The applicant has worked closely with Tusla to secure part-time registration, not full-time as the appellant mistakenly states. The application is a result of a nationwide re-registration process involving all childcare facilities in the country to have planning and fire regulations updated and correct before June 2020.
- It is not correct that 34 no. children are attending each morning. 34 no. pre-school children are registered with Tusla however 12 no. attend part-time so 28 no. attend each morning in line with the approved planning permission. Insurance and fire prevention policies are in full compliance with Tusla and the relevant legislation. These are not planning issues and are not relevant to be included in an appeal.
- There is no traffic chaos on Ballyroan Crescent. There can be a large volume of traffic on rainy days at the pinch points of 9am and 1.30pm because of the local national school and the childcare facility deliberately operates outside of these times.
- 2 no. of the 3 no. driveway car parking spaces are used daily and one staff member walks. Staff and parents never block driveways.
- The planning authority Roads Department report indicated no objection. There are never more than 3 no. staff members at any given time, one of which is the owner/resident.
- The planning authority considered that every further information response was satisfactory.

6.3. **Planning Authority Response**

The planning authority confirms its decision and the appeal raises no new issues.

6.4. **Observations**

None received.

7.0 **Assessment**

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Unauthorised Development/Tusla
- Intensification of Use of Existing Facility
- Traffic
- Appropriate Assessment

7.1. **Unauthorised Development/Tusla**

- 7.1.1. The grounds of appeal make reference to alleged unauthorised development on site (operating outside permitted hours, numbers of children attending, the study has already been incorporated, staff not parking on site and no permission for the pedestrian gate or advertising sign). Reference is also made to the ongoing operation of the facility and Tusla-related matters.
- 7.1.2. All matters relating to possible non-compliance with planning permissions or alleged unauthorised development are issues for the planning authority to address. The Board has no powers or role in enforcement matters. These issues are not a consideration in the assessment of this appeal.
- 7.1.3. Tusla/The Child and Family Agency is an independent legal entity, the dedicated State agency responsible for improving wellbeing and outcomes for children. Its

responsibilities include inspecting pre-schools, play groups, day nurseries, creches, day-cares and similar services. The Early Years Inspectorate is empowered by legislation to directly enforce standards and the relevant regulations in eligible services. This is reiterated in Circular Letter PL 3/2016 which states that Tusla is responsible for inspecting pre-school services and enforcing compliance with the Child Care (Pre-School Services) Regulations, 2006. The Circular Letter requests planning authorities solely focus on planning related considerations. Therefore, many of the issues raised in the grounds of appeal are matters to be addressed between the applicant and Tusla as opposed to being matters specifically relevant to the planning application e.g. non-compliance with their Tusla registration as cited in the submissions received by the local authority, dispute over terminology, insurance and fire prevention policy issues (also a building regulations issue evaluated under a separate code). I do not consider these issues to be planning-related considerations and therefore they are not a consideration in the assessment of this appeal.

- 7.1.4. Having regard to the foregoing, I do not consider issues of possible non-compliance with existing planning permissions, alleged unauthorised development or Tusla-related issues to be matters that need concern the Board in the determination of this appeal.

7.2. Intensification of Use of Existing Facility

- 7.2.1. The grounds of appeal state that increasing the hours of operation will be a huge disruption to the local neighbours.
- 7.2.2. The existing childcare facility is an established, permitted development which has the benefit of planning permissions granted in 1999, 2002 and 2015. Its permitted hours of operation are 9.30am-12.30pm and between 2pm-6pm Monday to Friday. It is proposed to extend these hours to 8am-6pm i.e. an additional three hours a day comprising a start an hour and a half earlier in the morning and an hour and a half at lunch time. The reasons given for this are to provide for a breakfast club and extended hours over lunch to provide a longer period for working parents of morning session pre-school children. Pre-ECCE siblings of children in the ECCE class will be accommodated in the proposed study room conversion.

- 7.2.3. I do not consider that the proposed development would have any undue adverse impact on the amenity of adjoining properties. An earlier opening time of 8am is not unduly early in the context of a populated, residential area of the city which would already be subject to a certain degree of traffic and general noise. The study that it is proposed to convert has a floor area of approx. 12sqm which would result in a limited increase in capacity. Notwithstanding, it is stated this room will accommodate pre-ECCE siblings of existing ECCE children which would not add to traffic movements.
- 7.2.4. I do not consider that the extended opening hours would unduly adversely affect the amenity of property in the vicinity. The additional number of children that would be accommodated in the existing study that it is proposed to convert is limited. Therefore, I consider that the intensification of use of the existing facility is acceptable.

7.3. Traffic

- 7.3.1. The grounds of appeal make a number of references to traffic.
- 7.3.2. Traffic volumes at 9am and 1.30pm on rainy days is attributed by the applicant to the local national school. It is inevitable that, for a facility such as this, there may be short periods where some congestion may occur. However, I do not consider that the proposed development would result in any perceptible increase in traffic given the limited increase in capacity. It is stated that the 12sqm study room will partially accommodate younger siblings of ECCE children which suggests that limited additional car trips would be made because of the increase in floorspace. Reference is made to afterschool children being picked up by parents on foot. I also note that the planning authority's Roads Department had no objection in principle to the development.
- 7.3.3. I do not consider that traffic is a concern for the specific development subject of the planning application.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location remote from and with no hydrological pathway to any 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.

8.0 Recommendation

- 8.1.1. I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the provisions of the South Dublin County Council Development Plan 2016-2022, the Childcare Facilities Guidelines for Planning Authorities, 2001, and Circular Letter PL 3/2016, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of traffic and would not seriously injure the amenities of the area or of property in the vicinity. 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 06.12.2019, 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. Prior to commencement of development, the applicant or developer shall enter into a water and/or waste water connection agreement(s) with Irish Water.

Reason: In the interest of public health.

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. 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.

Anthony Kelly

Planning Inspector

14.05.2020