



An
Bord
Pleanála

Inspector's Report

ABP-309455-21

Development	Change of use of domestic garage to preschool and permission to extend the garage to accommodate a toilet area and associated site works.
Location	No 6 Pallas Derg, Newtown, Nenagh, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	201148
Applicant(s)	Kathleen Winhausen
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First
Appellant(s)	Kathleen Winhausen
Observer(s)	None
Date of Site Inspection	1 July 2021
Inspector	Una Crosse

1.0 Site Location and Description

- 1.1. The site has a stated area of 0.072 hectares and comprises a residential dwelling site located within a residential development known as Pallas Derg which is accessed from a local road within Newtown which is a small village located between Nenagh and Portroe. The site currently accommodates a two-storey house (No. 6) with a front garden and driveway. There is an existing single storey domestic garage located adjoining the eastern site boundary within the rear garden but with its northern boundary wall addressing the front driveway. The site is adjoined by semi-detached dwellings to the east and a detached dwelling to the west.

2.0 Proposed Development

- 2.1. It is proposed to change the use of the existing domestic garage on the property which has a stated area of 22.23 sq.m from use as a domestic garage to use as a pre-school facility. It is also proposed to extend the existing garage to the south comprising an area of 5.89 sq.m to provide a toilet facility.
- 2.2. It is proposed that the preschool would accommodate 11 children and one staff member (the applicant) and would operate on a 5-day week basis from 9.15 to 12.15.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development on 25th January 2021 for two reasons as follows:

1. The application site is zoned for existing residential land use, the zoning objectives of which is to preserve and enhance existing residential development and residential amenity and provide for additional facilities where gaps are identified. The proposal includes for the extension of a domestic garage for use as a childcare facility on a restricted development site within an existing residential estate. It is considered that the proposed development, by virtue of design, operating hours, traffic generation and noise nuisance would detract from the existing residential

amenity and would be at variance with the land use zoning objective for the site. The proposed development would, therefore, materially contravene the objectives of the North Tipperary County Development Plan 2010, as varied, would set an undesirable precedent for similar developments in the vicinity, and would be contrary to the proper planning and sustainable development of the area.

2. Policy DM 1 (Development Standards) of the North Tipperary County Development Plan 2010, as varied, states that it is a policy of the Council to require development to comply with the relevant standards identified in Chapter 10. Table 10.2 sets out the car parking standards for new development. The applicant has failed to comply with these requirements and the proposed development is therefore considered contrary to Policy DM1 (Development Standards) of the North Tipperary County Development Plan 2010, as varied, and contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planners Report #1

Having set out the proposal, submissions and development plan context the planning appraisal undertaken is summarised as follows:

- Acknowledge land use zoning matrix allows for childcare facilities on this zoning with policy SC7 supporting childcare facilities in appropriate locations.
- Application site not considered an appropriate location as would detract from residential amenity of No.6 and the wider residential estate.
- Proposal is not in accordance with the land use zoning objective for the site and would set an undesirable precedent for other similar development.
- No issues regarding the design of proposed extension.
- Considered 5 car parking spaces required based on 2 staff and 11 children with proposal resulting in increased traffic movements and associated noise within this residential estate from 9am.

- Proposal will generate a significant increase in vehicular traffic accessing the estate and does not include permanent traffic management proposals however District Engineer is satisfied same will not impact on the existing traffic regime within the estate.
- Proposal is not a type of development to which EIA Directive applies.
- Proposal screened for AA and determined AA not required. Screening Report attached notes the following:
 - All sites within 15km of the site outlined.
 - No site within zone of influence.
 - No possible impacts identified.
 - Concluded that no potential for significant effects with AA not required.
- Refusal reasons recommended as outlined above.

Correspondence from Applicant

A request for a time extension on the decision on the application was submitted by the applicant's agent on 27 November 2020 up to and including 26 January 2021.

An email dated 27 November 2020 from the applicant's agent refutes the reasons for refusal in the proposed decision from the Planning Authority for grounds including:

- Shocked given favourable advice given at pre-planning;
- Design issues discussed during pre-planning with no concerns, compliant with TUSLA requirements with no change to height or design of garage.
- Operating hours are minimal at 3 hours with permission granted for creche, preschool and afterschool facilities for large number of children over longer hours in built up residential areas.
- Advised to speak to Roads Engineer who said he had no issues with traffic with traffic generated likely to be minimal.
- Business aimed at children living in the area who would walk to the facility.
- Ample parking on site and within wider area with requirement of 3 spaces required for the facility with ability to accommodate 4 spaces on site.

- Huge waiting list for childcare facilities in the area.
- Noise levels limited to limited hours of operation with adjoining owner who made submission having moved out of the house.

Planners Report #2

A Planners Report dated 19 January 2021 refers to the original Planners Report and a recommendation for refusal signed on 26 November 2020 noting that there is correspondence on the file including a letter from the applicant to Deputy Alan Kelly on behalf of the applicant. It states that the applicant has not submitted any additional information which would alter the recommendation for refusal with the reasons for refusal (above) outlined.

3.2.2. **Other Technical Reports**

Email from Barry Murphy, District Engineer dated 24 November 2020 relates to traffic and parking and states that the proposal will not impact on the existing traffic regime within the estate. It states that the County Development requirement for parking spaces is 1 per staff member and 1 for every 5 children with 3 spaces at the property with the criteria appearing to be satisfied.

Response from Childcare Committee dated 29 October 2020 with no objection.

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

Observation received from owner of adjoining property No.5 with concerns expressed regarding noise disturbance from outdoor play time and road safety concerns.

Would not object to facility with maximum of 5 pupils and highly effective sound barriers.

4.0 Planning History

None of note since permission granted for the residential development. Reference made in Planners Report and appeal to Pre-planning meeting held on 20th March 2020.

5.0 Policy Context

5.1. Development Plan

The site is zoned '*Existing Residential*' the objective of which is to: '*preserve and enhance existing residential development and residential amenity and provide for additional facilities where gaps are identified*'.

The following policies are of relevance to the proposal and/or are mentioned within the decision/grounds of appeal.

Policy SC7 relates to Childcare Facilities and states that "*it is the policy of the Council to facilitate childcare facilities at easily accessible central locations in association with housing and other development in compliance with the County Childcare Strategy requirements and the Childcare Facilities Guidelines for Planning Authorities (DEHLG 2001) or any amendments thereof. New residential development will be required to consider demand for childcare likely to be generated by the development and the existing childcare facilities in the area, and submit proposals to accommodate any identified increase in demand which may arise as part of their DIS. The Council will also consider the provision of childcare facilities in appropriate locations, including town centres, neighbourhood centres and in residential areas, also in close proximity to or within places of employment, educational institutions and places convenient to public transport nodes as part of sustainable communities*".

Policy DM 1 addresses Development Standards and states that "*it is the policy of the Council to require proposed development to comply with the relevant standards identified in Chapter 10 Development Management Standards*".

Table 10.2 outlines the car parking requirements with the requirements for creches as follows:

1 space per staff member plus 1 space per 5 children.

5.2. Natural Heritage Designations

Site not within or proximate to any sites.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development which comprises a change of use and small extension, there is no real likelihood of significant effects on the environment. 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

A first party appeal was received which is summarised as follows:

- Reasons for refusal contradict pre-planning consultation undertaken which gave a favourable outlook.
- Planner acknowledges that land use zoning matrix allows for childcare facilities with Tipperary Childcare Committee considering proposal compliant.
- Design proposals discussed at pre-planning with no concerns raised with design in compliance with TUSLA guidelines, no design change to height or mass of garage with design reason for refusal questionable and subjective with Planner stating in their report that there is no issue regarding the design with inclusion of design in refusal reason contradictory, lacking logic and consistency.
- Operating hours were discussed with no concerns raised. Three-hour operating time is minimum that a preschool operates with permissions granted for other childcare facilitates for longer periods in residential areas with neighbours.
- Advised to speak to District Roads Engineer regarding traffic generation whom was contacted and whom stated that no issue regarding traffic with report received by Planning Authority stating no impact on existing traffic regime with Planner overriding roads engineers report, the competent person, even though

the planner is not deemed a competent person with regards to roads as she is not a roads engineer undermining the Roads Engineer in her assessment.

- Aiming business at children resident in the area who would be able to walk with hours of operation not impacting traffic flow to schools or work.
- Ample onsite carparking unlike other established preschools with extra spaces within wider area.
- Traffic generated would be quick drop off and collect system for a few children.
- Site can comply with Policy DM1 table 10.2 regarding car parking with requirement for 3 car parking spaces and only staff member is the applicant with Planner contradicting the roads engineer and incorrectly assuming that there would be 2 staff even though application form states 1 staff member, the applicant whose own car will be already parked at the house.
- Huge waiting list in wider area of Newtown of nearly 20 children with no spaces available with pre-school in a residential area meaning proposal will serve the area and not require people to drive to Nenagh or other areas for childcare facilities and if Council serious about reduction of carbon proposal should be encouraged.
- Alternative childcare options important to cater for different needs with no small group preschool options in local area.
- Noise levels limited to hours of operation which are weekdays from 9.15 to 12.15 during school term. Appellant's husband working at home and not disturbed by noise from children playing in green areas in estate.
- Concerns of adjoining owner who made submission to PA regarding noise used in reason for refusal rather than compliance with County Development Plan. Residential rear garden is not a place of business and observer (to PA) submission should not prevent proposal proceeding because it may impact her garden as a place of business for a limited time.
- Reasons for refusal unacceptable in light of planner's contradictory assessment report and pre-planning consultation.

6.2. Planning Authority Response

No response received.

6.3. Observations

None

7.0 Assessment

7.1. Introduction

Having inspected the site and considered the contents of the first-party appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of Development
- Impact on Residential Amenity of Area
- Car Parking
- Appropriate Assessment.

7.2. Principle of Proposal

7.2.1. Pre-Planning Discussions

The applicant outlines her disappointment at the refusal of permission in light of what were considered to be positive and constructive pre-planning discussions. Such discussions are undertaken under Section 247 of the Planning and Development Act 2000, as amended. I would note for the Boards information that Section 247(3) specifically states that “*the carrying out of consultations shall not prejudice the performance by a planning authority of any other of its functions under this Act, or any regulations made under this Act and cannot be relied upon in the formal planning process or in legal proceedings*”.

I would also note that Section 10.5 of the North Tipperary County Development Plan 2010, as varied references pre-planning consultation and again notes that “*such*

discussions will not prejudice any subsequent decision made by the Council'. I would also note that a note attached to the pre-planning report also reiterates the content of Section 247(3) whereby the consultation does not prejudice the performance of the Planning authority. Therefore, while the appellant may have considered that the advice received was more positive than is apparent in the decision received, pre-planning consultation cannot be relied upon during the formal planning process.

7.2.2. **Land Use Zoning & Policy**

The Planning Authority consider, as per Reason for Refusal 1 that the proposal is at variance with the land use zoning objective detracting from the existing residential amenity of the area and would materially contravene the objectives of the County Plan. While I address the matter of material contravention separately in the next section, I consider it appropriate to determine, in principle if the proposal is at variance with the zoning objective. As outlined above, the site is zoned '*Existing Residential*' the objective of which is to: '*preserve and enhance existing residential development and residential amenity and provide for additional facilities where gaps are identified*'. I would note that, as acknowledged by the Planning Officer, the land use zoning matrix allows for childcare facilities on this land use. I would also note that the zoning specifically references the provision of additional facilities where gaps are identified. The appellant has outlined the need within this area for pre-school places with the existing provision insufficient to cater for the requirements with parents having to travel to Nenagh and other areas to avail of pre-school places.

I would also note that the specific development plan policy relating to Childcare Facilities, **Policy SC7**, states that "*The Council will also consider the provision of childcare facilities in appropriate locations, including town centres, neighbourhood centres and in residential areas*". Therefore, the policy relating to childcare outlines the myriad of locations considered appropriate for such uses including residential areas such as the location of the subject proposal. I consider that the proposal is acceptable in principle.

7.2.3. **Material Contravention**

While I address the considerations in relation to design and residential amenity which are included in the first refusal reason in the following sections, I would refer the board

to the fact that the Planning Authority have determined under Reason No. 1 that the proposal would materially contravene the Development Plan in respect of the objectives of the Development Plan. Section 37(2)(a)&(b) of the Planning and Development Act 2000, as amended states that:

(a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

While the appellant refers in her appeal to other instances of childcare facilities operating within residential areas, no examples are provided and I note that the appellant does not address the material contravention in the grounds of appeal. In this regard I would propose to address same. I consider that subsections (i) to (iii) would not apply. I will refer the Board specifically to subsection (iv) which refers to the pattern of development and permissions granted since the making of the Development Plan. Newtown has seen the development of a number of relatively small residential developments including the one within which the subject site is located, Pallas Derg and another Youghlarra Way. Pallas Derg includes c. 40 units

with Youghlarra Way c.23 units. Neither of these developments would have required the provision of a creche facility to comply with the Childcare guidelines but combined provide for over 60 units. Therefore the pattern of development and the permissions granted for small housing schemes has provided housing units but the attendant facilities to cater for these homes has not been provided sufficiently such that the population is well served for childcare purposes. In this regard, the zoning objective facilitates the provision of facilities where gaps are identified and the appellant has in my opinion identified such a gap which has arisen due to the pattern of development and permissions granted in the area. I therefore consider that it can be reasonably argued that the proposal would meet with the provisions of subsection (iv) and I consider that the Board can grant permission for the development as proposal on this basis.

7.3. Impact on Residential Amenity

The first refusal reason specifically states that the proposal would be at variance with the land use objective for the site, materially contravening same, as outlined above by virtue of design, operating hours, traffic generation and noise nuisance, detracting from the existing residential amenity of properties within the area. I will address each of the matters included in turn.

7.3.1. Design

The inclusion of design within the first reason for refusal appears to directly contradict the Planners statement within the report that there are no issues regarding the design of proposed extension. Given the minimal change to the existing structure I consider that the design proposed is acceptable.

7.3.2. Operating Hours

It is proposed to operate the facility for three hours from 9.15 AM to 12.15 PM. This is a limited window within the normal working day after peak hour traffic and I do not consider that it is unreasonable to provide such a service in this location for this limited time period.

7.3.3. Traffic Generation

I address the matter of car parking separately at Section 7.4 below as it was referenced in a separate reason for refusal. I would refer the Board to an email from Barry Murphy, District Engineer dated 24 November 2020 to the District Planner which relates to traffic and parking and which states that the proposal will not impact on the existing traffic regime within the estate. In their report, the Planner considers that proposal would result in increased traffic movements and associated noise within this residential estate from 9am. They also contend that the proposal will generate a significant increase in vehicular traffic accessing the estate and does not include permanent traffic management proposals however District Engineer is satisfied same will not impact on the existing traffic regime within the estate. It is not clear how the Planner considers the proposal will generate significant traffic given the minor scale of the proposal and operation. While sustainable of the appellant to consider that most children will be walked to the facility this could not be conditioned nor could the appellant reasonably implement such a policy. Notwithstanding, given the limited nature of the proposal I do not consider that the proposal could impact on the residential amenity of the estate from the perspective of traffic generation.

7.3.4. Noise Nuisance

The issue of noise would appear to be the central factor in relation to the decision of the Planning Authority to refuse permission. It is stated in the Planners report that the application site is not considered an appropriate location as would detract from residential amenity of No.6 and the wider residential estate. The appellant outlines the concerns expressed by the adjoining property owner in her submission to the planning authority where she was expressing her need to have a quiet garden to undertake work calls and her concern that the use of the garden by the children attending would interrupt her work environment. The proposal is for an indoor pre-school facility with the use of the appellants garden minimal and weather dependent during the school term. I do not consider that it is feasible or reasonable, within a multiple unit residential development, for any property owner to expect such quiet conditions. I do not consider that the traffic associated with the development or the operation of the facility indoors will create any negative impacts from a noise perspective. The use of the garden would create some noise but I do not consider

that it would be unreasonable within such a built up area and for such a short duration of time.

7.4. Car Parking

- 7.4.1. The second refusal reason refers to the requirement for the development to comply with the relevant standards included in Chapter 10 of the current plan and specifically in this instance to the car parking requirements set out at Table 10.2. It is stated that the applicant has failed to comply with these requirements and the proposed development is therefore considered contrary to Policy DM1 (Development Standards) of the North Tipperary County Development Plan 2010, as varied, and contrary to the proper planning and sustainable development of the area. I note the Planners report states that they consider that 5 car parking spaces are required based on 2 staff and 11 children with proposal resulting increased traffic movements and associated noise within this residential estate from 9am.

The subject property has a substantial area for parking within the front of the property. Space is available for 3 cars to park including the car of the appellant who is the only proposed staff member. Furthermore, the nature of the proposed pre-school use provides that the parking required is minimal as parents would drop and collect pre-school children prior to and following the session. There is lots of available space within the estate itself to park for the short duration required. I would also note as outlined above in relation to traffic generation, there is no objection from the Roads Engineer to the proposal in relation to parking with the emailed response from Mr. Murphy stating that the County Development requirement for parking spaces is 1 per staff member and 1 for every 5 children with 3 spaces at the property with the criteria appearing to be satisfied. I do not consider that this reason for refusal is reasonable and would suggest that it conflicts with the advice from the Roads Department and therefore it should not be included in any decision to refuse permission should the Board propose to refuse.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development, which is a small-scale residential development, outside of any Natura 2000 sites, I do not

consider that any Appropriate Assessment issues arise and I do not consider 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. I recommend that permission is granted for the proposed development.

9.0 Reasons and Considerations

9.1. Having regard to the existing use of the site for residential purposes and the proposal to provide a pre-school facility for a limited time period from Monday to Friday during school term, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of residential amenity, traffic safety and would not detract from the character of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The pre-school facility shall operate from 0915 to 1215 Monday to Friday during school term only.</p> <p>Reason: In the interest of orderly development.</p>

3.	<p>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.</p> <p>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.</p>
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Una Crosse

Una Crosse
Senior Planning Inspector

5 July 2021