



An
Bord
Pleanála

Inspector's Report ABP310410-21

Development	Retention of 11m x 13m outdoor Playground with enclosure, synthetic surface and playground equipment.
Location	Station Road, Falcarragh, Letterkenny, County Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	2150015.
Applicant	Paul McFadden.
Type of Application	Retention of Planning Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party.
Appellants	Helen McHugh and Others.
Observers	None.
Date of Site Inspection	6 th October, 2021.
Inspector	Paul Caprani.

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1.0 Introduction

ABP310410-21 relates to a third-party appeal against the decision of Donegal County Council to issue notification to grant retention of planning permission for a small outdoor playground within an enclosure at a site at Station Road, Falcarragh, Letterkenny, Donegal. The grounds of appeal argue that a playground at this location is inappropriate as it significantly and adversely affects the residential amenity of adjoining residences.

2.0 Site Location and Description

- 2.1. The playground for which retention of planning permission is sought is located to the rear of a car parking area associated with Ionad Naomh Fionnán, a community centre located on Station Road (R256) in the settlement of Falcarragh. The subject site is located on the eastern side of Station Road c.250 metres to the south of the junction with Main Street, Falcarragh (N56).
- 2.2. The site itself comprises of a small enclosed area surrounded by 1.2 metre high plastic coated metal fencing. At the time of site inspection temporary steel fencing was attached to the permanent fencing surrounding the playground. The playground is relatively modest in size (11 metres by 13 metres) and accommodates a variety of play equipment including slides, swings, seesaws and climbing frames etc. Lands to the rear (east of the site) are undeveloped. A small five-a-side artificial football pitch is located to the south of the site to the rear of the community centre. Lands to the north of the site accommodate a private garden associated with a small single storey dwelling which is set back behind an existing dwelling on Station Road. Mature and semi-mature landscape runs along the boundary between the rear garden and the playground.

3.0 Proposed Development

- 3.1. Retention of planning permission is sought for the outdoor playground.

4.0 Planning Authority's Decision

4.1. Decision

4.1.1. Donegal County Council issued notification to grant retention of planning permission subject to four conditions. Condition No. 3 incorporated the following opening times.

- Winter 9 a.m. to 4 p.m.
- Spring 9 a.m. to 7 p.m.
- Summer 9 a.m. to 9 p.m.
- Autumn 9 a.m. to 7 p.m.

4.2. Planning Authority's Assessment

4.2.1. The application was lodged with Donegal County Council on 11th January, 2021.

4.2.2. The first planner's report sets out details of the site location and description. It notes that no internal reports or reports from prescribed bodies were received regarding the proposed development. Two jno. third party submissions were noted expressing concerns in relation to the impact of the proposal on privacy and residential amenity. The report also sets out details of the planning policy provisions as it relates to the proposal and notes that the site is located in an area designated as high scenic amenity.

4.2.3. The assessment considers the principle of the development to be acceptable and notes that the scale of the proposal is limited and is located within the curtilage of the established community facility. While it is noted that there are residential developments adjacent, it is considered that recreational developments of this nature are appropriate and are within walking distance of established residential developments. It is noted that a few issues require clarity and on this basis Donegal County Council requested the following further information.

4.2.4. The applicant is requested to submit revised plans providing further details in relation to:

- Boundary treatment.
- Stormwater collection and discharge points.

- Delineation of car parking layout for the proposed playground.
- Details of the finished ground levels relative to the adjacent car park and community buildings and the adjacent dwellings to the north of the site.
- The applicant is also requested to submit details on the opening hours of the playground.

4.2.5. Further information was submitted on 29th April, 2021. It includes revised site layout drawings and details of the proposed boundary treatment. In terms of boundary treatment, it is proposed to provide gabion walls and fill the rear of these walls up to the level of the playground in order to plant broadleaf trees. It is noted that there are a number of mature trees and established growth in this area which would be retained where possible.

4.2.6. The stormwater will be collected in drainage channels along the edges of the playground area and will discharge into the existing surface water drainage associated with the adjacent all-weather pitch.

4.2.7. A total of 63 car parking spaces is provided for the entire site.

4.2.8. Details of all finished floor levels are set out in drawings submitted.

4.2.9. Details of the opening hours are also indicated.

4.2.10. A further planner's report dated 13th May 2021 considered the additional information submitted to be acceptable and recommended that planning permission be granted subject to four conditions.

5.0 Planning History

5.1. Details of various planning applications associated with the adjoining community building and astro soccer pitch are set out in the planner's report.

6.0 Grounds of Appeal

6.1. The decision of Donegal County Council to issue notification to grant planning permission was appealed by the occupiers of the adjacent dwellinghouse to the north of the subject site. The grounds of appeal are outlined below.

- 6.2. It is considered that the fundamental issue concerning the playground is its location in too close a proximity to the appellant's garden. This has resulted in a significant increase in noise from young kids using the playground. This has seriously and profoundly impacted on the appellant's amenity. It has resulted in the interference of the appellant's right to privacy and quite enjoyment of their garden. It is stated that the appellants can no longer sit in their backgarden when the playground is operating. One of the appellants is an elderly gentleman and can no longer sit out in his private garden due to the noise. It is stated that the noise pollution penetrates the appellant's house even when windows are closed. Another one of the appellants works from home and he finds the level of noise pollution very challenging when working in a home environment. The fact that the development is located on higher ground exacerbates the levels of noise pollution.
- 6.3. The proximity of the playground also gives rise to significant overlooking which impacts on the appellant's privacy.
- 6.4. The proposal also results in overshadowing of the appellant's rear garden.
- 6.5. It is stated that there have been instances of missile throwing, verbal abuse and gestures from children using the playground. The playground has been the subject of some anti-social activity.
- 6.6. The appellants are at a loss to understand how an unauthorised structure has received State funding. The appellants are also at a loss to understand how the applicant in this instance could construct a facility of this nature without realising that such works would require planning permission.
- 6.7. Concerns are expressed in the grounds of appeal that objectors' concerns were taken in consideration by the Planning Authority in its assessment of the proposed development. No conditions attached to the grant of planning permission relate to the principal concerns in respect of noise pollution, invasion of privacy through overlooking etc.
- 6.8. The appellants were not afforded an opportunity to comment on the additional information submitted.
- 6.9. The later closing time of 9 p.m. has attracted some older unaccompanied and unsupervised children to the playground. This could give rise to health and safety issues.

- 6.10. People bringing food and drink into the playground could also attract vermin.
- 6.11. The impact of the proposed development has had a direct detrimental effect on the appellant's mental health.
- 6.12. While it is appreciated that the playground is a wonderful asset to the community it has been built on the wrong location.
- 6.13. It is therefore recommended that the playground be relocated perhaps to the area between the community station and the fire station.
- 6.14. It is also suggested that the opening hours could be restricted between 10 a.m. and 6 p.m. While these opening hours are indicated at the entrance of the playground it is argued that they have not been adhered to.
- 6.15. Gate fencing of a sufficient height is required to prevent access to the playground outside stipulated opening hours. The construction of a suitable acoustic wall/noise barrier between the playground and the garden properties should be investigated. A written agreed timeframe for the schedule of works should also be put in place.

7.0 Appeal Responses

7.1. Applicant's Response to Grounds of Appeal

- 7.1.1. A response was received by the Chairperson of the Community Centre at Falcarragh. It is stated that much consideration was put into the location of the children's playground, the type of equipment and the height of the equipment etc. in the context of adjoining amenity. It is noted that Falcarragh is an important centre for tourist amenity located along the Wild Atlantic Way and the playground forms part of the community amenities available to the community. It offers a safe area for parents to park in a fully lined and surface car park which off the road. The new Community Centre caters for a wide range of needs.
- 7.1.2. The subject site was carefully considered in order to provide a practical user friendly facility which would cause as little interruption to the local area as possible.
- 7.1.3. It was initially believed that the children's playground was exempted from planning permission. However, retention of permission was sought when the applicant became aware that permission was required.

- 7.1.4. The following design principles were incorporated into the application.
- 7.1.5. A 4.56 metre separation distance has been left between the playground perimeter and the boundary wall with third parties. Separation distance was maximised. The playground is in excess of 15 metres from the closest part of the adjacent dwelling. The playground equipment does not create adverse noise, is not too high and would have little impact on third party property owners. The playground is well served by car parking and the area is covered by existing CCTV cameras which allows the area to be monitored.
- 7.1.6. The need to provide enhanced amenities for children is recognised in the National Planning Framework and in various policy statements contained in the development plan.
- 7.1.7. All the conditions attached to the Planning Authority's decision will be adhered to including additional planting which will attenuate noise levels generated by the playground. Opening hours will also be adhered to. It is also suggested in the winter time the playground will not be used at all while in the spring time it will only be used in the evening time weather permitting. The facility will be used more in the summer months during periods of good weather. The planting of trees together with the incorporation of gabion walls will ensure that noise is properly attenuated.
- 7.1.8. In conclusion therefore, it is considered that the proposal would provide a very beneficial facility for the local community and every effort will be made to ensure that the development will have as little impact as possible on the residents of Station Road. The applicant will continue to work with all parties to ensure that any unacceptable behaviour will be eliminated.

7.2. Donegal County Council's Response to the Grounds of Appeal

The development proposal is located in an established and permitted community facility and is also within the settlement framework for Falcarragh Village. While there are residential developments located adjacent, it is considered the recreation developments of this nature should be within appropriate walking distance of existing residential developments adjacent to established facilities.

The Planning Authority requested further information to address privacy issues and this includes appropriate boundary treatment. It is considered that the provision of a

gabion wall and further planting will significantly aid in the protection of adjacent residential amenities.

In light of the above it is respectfully requested that the decision of Donegal County Council be upheld in this instance.

7.3. **Natural Heritage Designations**

- 7.3.1. The site is not located within or adjacent to a designated Natura 2000 site. The nearest Natura 2000 site (the Falcarragh to Meenlaragh SPA (Site Code: 004149)) is located over 750 metres from the subject site. The Ballyness Bay SAC (Site Code: 001090) is located c.1.5 kilometres to the north-west of the subject site.

7.4. **EIAR Screening Assessment**

- 7.4.1. A playground is not a class of development for which EIAR is required.

8.0 **Planning Policy**

- 8.1. The site is governed by the policy and provisions contained in the Donegal County Development Plan 2018-2024. The subject site is located within the Settlement Framework Boundary for the Town of Falcarragh.

- 8.2. Policy CCG-P-1 states that it is the policy of the Council to consider development proposals for new social and community/service related developments (e.g healthcare facilities, sheltered housing facilities, nursing homes, residential care homes, sports/recreational facilities, **playgrounds**, (my emphasis), community resource centres, new education facilities etc) in accordance with the following locational criteria:

(a) At locations within the defined boundaries of settlement framework / urban areas which are within safe walking distance (i.e. via an existing or proposed footpath) of local services and residential areas and which would otherwise promote social inclusion.

Policy CCG-P-4: It is the policy of the council that any development proposal for social, community or cultural use (inc. playgrounds) shall be required to meet the following criteria;

(a) It is compatible with surrounding land uses existing or approved.

- (b) It will not have a significant impact on residential amenities.
- (d) It does not cause a traffic hazard and the existing road network can safely handle any extra vehicular traffic generated by the proposed development.
- (e) Adequate parking provision, access arrangements, maneuvering and servicing areas are provided in line with technical standards and policies of this plan.
- (g) It does not create a noise nuisance and will not cause and will not cause any significant environmental emissions.
- (h) The location, siting, and design of the development including associated infrastructure and landscaping arrangements is of a high quality and does not have an adverse impact on the host landscape, rural character, or visual amenities of the area (for developments in rural areas), does not have an adverse impact on/successfully integrates with the streetscape, vernacular character or built environment of the area (for developments in urban areas).
- (i) Appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view;
- (j) It does not have an adverse impact on the built, scenic, or natural heritage of the area including structures on the RPS/NIAH and Natura 2000 sites;
- (k) It is not located in an area at flood risk and/or will not cause or exacerbate flooding;
- (l) It does not compromise the water quality of water bodies with River Basin Districts designed under the Water Framework Directive or hinder the programme of measures contained within any associated River Basin Management Plan.

CCG-O-5: To preserve, improve and extend amenities and recreational amenities of the county including:

- Maintaining and enhancing our existing playgrounds, parks, and recreational spaces
- and providing new recreational amenities at sustainable locations.
- Improving the urban environment of our Towns and Villages including through the Council's town and village renewal programme.

9.0 Assessment

9.1. I have read the entire contents of the file visited the subject site and its surroundings and I've had particular regard to the issues raised in the grounds of appeal. I consider the critical issues in determining the current application and appeal are as follows:

- the location of the proposed development
- the impact on residential amenity as a result of noise pollution
- privacy and overlooking issues
- potential for antisocial activity
- other issues.

Each of these issues will be dealt with under separate headings below:

9.2. Location of the Proposed Development

- 9.2.1. The grounds of appeal argue that the development for which retention of planning permission is sought is in that inappropriate location on the basis that it is located adjacent to the rear garden of a private dwelling. Policy CCG-P-4 specifically requires that that development proposals for social and community uses should assess any proposals in the context of its impact on residential amenity. Therefore, the playground's location in the context of the adjoining rear garden in an important and material consideration in the context of the current application and appeal. However, the Board should also note that the playground is located within the curtilage of an existing community center and adjacent to a 5-a-side football pitch. The playground is also served by ample communal public parking. These are also important locational considerations in the context of development plan policy. It could be equally argued that the agglomeration of such community facilities in an accessible area of town makes the subject site an ideal location for a playground.
- 9.2.2. Furthermore, I do not consider that the location of a playground adjacent to a residential area constitutes a juxtaposition of incompatible uses. Elevated noises levels are a natural by-product of any communal area where young people play. It is in my view appropriate that playgrounds, or other uses such as creches, after-

schools, and childcare facilities would be located in proximity to other communal services and recreational sports facilities which serve as an important community service as well as being located in proximity to existing residential areas which they serve. The playground, due to its central location within the village is situated in close proximity to numerous residential developments.

9.2.3. The playground at this location also complies with many of the policies of the current county development plan which seeks to provide community facilities, including playgrounds at locations within defined boundaries of defined settlements. In this regard I refer to policy CCG-P-1. It also complies with Policy CG-0-5 which seeks to preserve and improve and extend amenities and the recreational amenities of the county.

9.2.4. For the above reason I do not consider that the subject site is inappropriate to accommodate a playground.

9.3. Impact on Amenity Through Noise Pollution

9.3.1. As acknowledged above, playgrounds can give rise to excessive noise levels. This is also a key planning consideration as per the criteria set out under Policy CCG-P-4. Elevated noise levels are an inevitable consequence of young children at play. However, I note the playground in question is relatively modest in size at 140 sq.m. It also accommodates limited amounts of playground equipment (a slide, a climbing frame, 3 swings and a see-saw). The size and scale of the facility does not allow for large numbers of children to congregate, and this in itself will limit the potential for noise generation.

9.3.2. Furthermore, the playground is located in a built-up area, adjacent to a Regional Road (R256) and public car park all of which will contribute to elevated baseline noise levels. It cannot be reasonably argued therefore that the appellants dwelling is located in a very low ambient baseline noise environment such as a quiet rural area.

9.3.3. As part of the development, and as indicated in the drawings submitted with the development application and response to the grounds of appeal, it is proposed to construct c1m in depth and 1.2m high gabion cages with a stacked railway sleepers along the common boundary. Furthermore, between both boundaries it is proposed to augment the dense planting already in place. This will provide a significant and

dense barrier which will be effective in attenuating noise. This in my view will be effective in reducing noise levels.

9.3.4. Thus, elevated noise levels associated with a small playground such as the application before the Board would be generally acceptable in my view, particularly if restrictive opening hours are put in place. I would consider it reasonable to impose the following restriction on opening hours in order to protect the residential amenities of the occupants of the adjoining houses. To this end the Board should consider restricting the opening hours of the playground from between 9am to 4pm in the wintertime (Oct 1st to March 31st) and 9 pm to 6 or 7 pm during the summertime (Apr 1st to Sept 30th). This in my view would represent an appropriate compromise between providing an appropriate community service within the confines of the settlement and ensuring that any noise generated by the playground will be restricted on the whole to business hours.

9.3.5. It is acknowledged that noise generated in the playground will readily be heard in the rear garden of the appellants residence. However, the above opening hours would in my view constitute an appropriate compromise between providing an appropriate recreational and community service at an existing community center and ensuring that the amenity of the appellants is in some way protected. The Board will note from the photographs attached that that at the time of site inspection (October 2021), the playground was open between 9 am and 6 pm.

9.4. **Privacy and Overlooking**

9.4.1. It is argued in the grounds of appeal that the playground will give rise to unacceptable levels of overlooking which will impact on privacy. The common boundary between the site and the appellants rear garden, as the photographs attest to, accommodate a relatively mature boundary, this as it continues to mature, will create effective screening so as to ensure that levels of overlooking are reduced, particularly during the summer months when the hedges and trees are in full bloom, and the when the playground is in heavier use. Having inspected the site from the climbing frame, intermittent views of the adjoining garden are available, however it is respectfully suggested that due to their height, children have more restricted views and would be more interested in playing in the playground than peering into the appellants garden. There is also a c4.5m between both boundaries, which will

reduce the potential for direct overlooking. As part of the development, and as indicated in the drawings submitted with the application and response to the grounds of appeal, it is proposed to construct c1m in depth and 1.2m high gabion cages with a stacked railway sleepers along the common boundary. This will provide a significant barrier which at 2.4m in height will reduce overlooking. This in my view will be effective in reducing the potential for overlooking. I do not accept that the playground will give rise to an unacceptable level of overshadowing of the rear garden.

9.5. I would in my view be disproportionate to refuse planning permission on the grounds of overlooking or indeed overshadowing of the adjoining rear garden.

9.6. **Anti-Social Activity**

9.7. Concerns have been expressed in the grounds of appeal that the playground has been used as a venue of antisocial behavior. Reference is made to verbal abuse and the throwing of missiles etc. This issue is primarily a management issue and there is an onus on the parents and guardians of the children that use the playground to ensure appropriate behavior. Any incidences of antisocial behavior such as referred to in the grounds of appeal are a matter for the gardai, and the community organization that manage the community facilities. It would not in my view constitute reasonable grounds for refusal this is a management issue as opposed to a planning/land use policy issue.

9.8. **Other issues**

9.8.1. A number of other issues were raised in the grounds of appeal which will be briefly dealt with in this section of the assessment.

9.8.2. It was suggested that public funding should not be forthcoming in the absence of securing planning permission. I consider this matter to be a matter for the funding organization I'm not a matter for An Bord Pleanála in determining the application.

9.8.3. Concerns are also expressed the Donegal County Council did not afford the appellant an opportunity to comment of the additional information submitted. The appellant has the opportunity to express all concerns in the grounds of the appeal lodged with the Board, this includes the additional information submitted to the

planning authority. The Board in considering the application will take into consideration all aspects of the development for which retention of planning permission is sought on a de Novo basis having particular regard to the issues raised in the grounds of appeal.

- 9.8.4. Any health and safety concerns associated with the playground is not a matter for on Board Pleanála. All playgrounds are required to adhere to the guidelines set out in '*Ready Steady Play! – A National Play Policy*' prepared by the National Children's Office of the Department of Health (Updated 2019).
- 9.8.5. Any arguments regarding the relocation of the playground to another site within the settlement are not a matter An Bord Pleanála under the current application, the Board is required to deal with the application before it, and adjudicate on this matter only.
- 9.8.6. Grounds for appeal also suggest that noise attenuation barriers should be considered as part of any proposal to permit a playground at this location. For the reasons set out above, I considered that such noise attenuation measures would be disproportionate and unnecessary, and I do not recommend that the Board would include such measure by way of condition.

10.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, which is located c750m away, 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.

11.0 **Recommendation**

- 11.1. Arising from my assessment above, I consider that the Board should uphold the decision of the planning authority and grant planning permission for the proposed development based on the reasons and considerations set out below.

12.0 Reasons and Considerations

Having regard to the policies and provisions contained in the Donegal County Council Development Plan 2018 to 2024 and in particular policy CCG-P-1 and objective CG-0-5, both of which seek to improve and extend recreational amenities within defined boundaries of settlements, it is considered that subject to conditions set out below, the proposed development would not seriously injure the residential amenities or property in the vicinity, would not be prejudicial to public health and would be generally acceptable in terms of traffic safety and convenience. The proposed development what therefore be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 29th day of April 2021, 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 within three months of the date of this order.

Reason: In the interest of clarity.

2. All boundary treatment as indicated on the revised plans received on the 29th day of April 2021 shall be carried out and completed within three months from the date of grant of this permission. Any trees planted as part of the development which die within the next five years shall be replaced.

Reason: To cater for orderly development and to protect adjoining residential amenities.

3. The opening hours for the playground shall be as follows:

Winter (October 1st to March 31st) – 09.00 – 16.00

Summer (April 1st to September 30th) – 09.00- 19.00

Reason: To protect adjoining residential amenity.

4. Surface water drainage arrangements shall be agreed in writing with the planning authority within three months of the days of this order.

Reason: in the interest of orderly development

Paul Caprani,
Senior Planning Inspector.

November 17th, 2021.