



An  
Bord  
Pleanála

## Inspector's Report ABP-311919-21

<b>Development</b>	Revision of permission to create convenience store and associated site development works.
<b>Location</b>	Callenders Mill, Celbridge, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	21828
<b>Applicant(s)</b>	Aidan Henry
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Aidan Henry
<b>Observer(s)</b>	(1) Daniel & Joanne Kane (2) Conrad Wilson (3) Marguerite & Mark Lynch (4) Brian O'Neill & Aisling Finnegan (5) Joanne McGarry & Turlough O'Riordan

- (6) Derek & Veronica O'Kelly,
- (7) Residents of Callenders Mill.
- (8) Fintan & Roisin Laverty
- (9) Clare O'Hanlon
- (10) Donnacha O Corcorain
- (11) Declan & Lorraine Farrell
- (12) Cllr Clara Gavin
- (13) Ciaran Moroney & Kate Murray
- (14) Richard Brophy
- (15) Cllr Vanessa Liston

**Date of Site Inspection**

12<sup>th</sup> March 2022

**Inspector**

Colin McBride

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.0352 hectares, is located within the residential area of Callender Mills approximately 1km to the south of Celbridge town centre. The appeal site is currently indistinguishable from an open space area serving the housing development and is located at the junction of distributor road serving dwellings with the main access road through the wider housing development at this location.

## 2.0 Proposed Development

- 2.1. Permission is sought for a revision to existing planning permission ref no. 17711, to create a new neighbourhood convenience unit, to include a revised entrance position, internal modifications, new signage, bin storage, delivery area to rear, parking area to the front and associated site works. The proposed development has a floor area of 172sqm and a ridge height of 5.5m and external fenced off service area. The proposal was originally for a single-storey structure however the design of the proposal was revised in response to further information with the approved design being two-storeys with flat roof profile.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission refused based on one reason...

1. Having regard to the planning history of the overall development lands and in particular Condition no. 4 of Planning register Reference 03/334, it is considered that to permit a convenience retail unit on the site identified for the provision of a crèche would preclude the development of a childcare facility and as such would set an undesirable precedent for similar developments in a residential area, would be contrary to the provision of Sections 11.13 and 17.5 of the Kildare County Development Plan 2017-2023, which encourage and require the provision of childcare facilities in residential areas, and would contravene the provision of the Childcare Facilities Guidelines 2011 issued as Ministerial Guidelines under Section

28 of the Planning and Development Act 2000 (as amended). The proposed development would therefore contravene Condition no. 4 of Planning register Reference 03/334 and materially contravene Objective CPFO1, requiring compliance with the ministerial guidance, and Objective CPFO2 encouraging the provision of childcare facilities at appropriate locations, and as such would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Planning report (14/10/21): Further formation including a childcare audit of the area, revised design required, details of parking proposed, details loading facilities, bin storage and a construction management plan.

Planning report (14/10/21): Non-compliance with condition no. 4 or ref no. 03/334, contrary Development Plan policy and national guidance regarding childcare provision. Refusal recommended based on the reason outlined above.

#### 3.2.2. Other Technical Reports

EHO (14/07/21) No objection subject to conditions.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

Several submissions were received. The issues raised can be summarised as follows...

- Loss of open space, disruption, impact on privacy, traffic safety, inadequate parking, lack of justification or need for the retail unit.

## 4.0 Planning History

17/711: Permission granted for a single-storey crèche building and associated site works.

15/424: Permission refused for a pair of semi-detached dwellings.

14/1119: Permission refused for a pair of semi-detached dwellings.

10/54: Permission granted for a single-storey crèche building and associated site works.

04/1371: Permission granted for a single-storey retail building consisting of 2 no. units and a single-storey crèche building and associated site works. This includes the appeal site (crèche) and another location (retail unit) within the overall development subject to parent permission.

03/0334: Permission granted for construction of 115 dwellings and associated site works.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant Development Plan is the Kildare County Development Plan 2017-2023 and the Celbridge Local Area Plan 2017-2023. The appeal site is zoned 'B', Existing residential/infill. Shop convenience is identified as a use 'open for consideration within the zoning objective.

Chapter 11 Social, Community & Cultural Development

## Section 11.4 Strategy

Require the provision of services and facilities in tandem with housing developments (e.g. shops, businesses, schools, childcare, recreational/sports areas and community centres);

## Section 17.5 Childcare Facilities

All childcare facilities shall be provided in accordance with the Childcare Facilities: Guidelines for Planning Authorities (DEHLG). In particular the following should be noted:

– One childcare facility is generally required to cater for 20 places in developments of 75 houses, including local authority and social housing schemes, in accordance with DEHLG Guidelines. This standard may be varied depending on local circumstances. The Council will consult with the Kildare County Childcare Committee in this regard.

### Objectives: Childcare and Pre-School Facilities

It is an objective of the Council to:

CPFO 1 Ensure the provision of childcare facilities in accordance with the Childcare Facilities: Guidelines for Planning Authorities (DEHLG) and the Child Care (Pre-School Services) Regulations 1996 and 1997, 'Ready, Steady, Play! A National Play Policy' (2004) and any other relevant statutory guidelines which may issue during the period of this Plan.

CPFO 2 Facilitate and encourage the provision of childcare facilities, including community crèche facilities, of an appropriate type and scale, at appropriate locations throughout the county.

Table 17.9 car parking standards (1 per 20sqm gross floor area).

## 5.2 National Policy

Childcare Facilities: Guidelines for Planning Authorities (2001)

### Section 3.3.1 New and Existing Residential Areas

1. Detached houses/sites or substantial semi-detached properties with space for off-street parking and/or suitable drop-off and collection points for customers and also space for an outdoor play area. In relation to new housing areas, a standard of one childcare facility providing for a minimum 20 childcare places per approximately 75 dwellings may be appropriate. This is a guideline standard and will depend on the particular circumstances of each individual site. Consideration of childcare facilities provision should be raised as early as possible in pre-planning discussions for larger housing developments

## 5.3 Natural Heritage Designations

None in the vicinity.

## 5.4 EIA Screening

The proposed development is not of a class (Schedule 5, Part 2(10) of the Planning and Development Regulations, 2001 (as amended)). No EIAR is required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by PDC Architectural on behalf of the applicant, Aidan Henry. The grounds of appeal are as follows...

- The reference to a condition that is 18 years old is noted with it stated that a number of crèche businesses have been set up in the area during this time and satisfy the demand.
- The permission for a 128sqm crèche is not viable due to the limited size of and is economically unsustainable.

- A childcare audit was not possible due to GDPR regulations.
- There is no demand for the crèche at this location.
- The appellant question the level of detail requested by way of further information given the proposal was refused.
- The land is zoned B and the use is open for consideration with the appellant questioning why the land is zoned if such a use is not permitted.

## 6.2. Planning Authority Response

### 6.2.1 Response by Kildare County Council.

- The PA has no further observations to make.

## 6.3. Observations

### 6.3.1 Observation have been received from...

Daniel & Joanne Kane, 1 Callenders Mill, Celbridge, Kildare.

Conrad Wilson, no. 3 Callenders Mill, Celbridge, Kildare.

Marguerite & Mark Lynch, 21 Callenders Mill, Celbridge, Kildare.

Brian O'Neill & Aisling Finnegan, 32 Callenders Mill, Celbridge, Kildare.

Joanne McGarry & Turlough O'Riordan, 6 Callenders Mill, Celbridge, Kildare.

Derek & Veronica O'Kelly, 8 Callenders Mill, Celbridge.

Residents of Callenders Mill.

Fintan & Roisin Laverty, 33 Callenders Mill, Celbridge, Kildare.

Clare O'Hanlon, 22 Callenders Mill, Celbridge, Kildare.

Donnacha O Corcorain, 58 Callenders Mill, Celbridge, Kildare.

Declan & Lorraine Farrell, 28 Callenders Mill, Celbridge, Kildare.

Cllr Clara Gavin, 70 The Grove, Celbridge, Kildare.

Ciaran Moroney & Kate Murray, 11 Callenders Mill, Celbridge, Kildare.



Richard Brophy, 4 Callenders Mill, Celbridge, Kildare.

Cllr Vanessa Liston, 48 Rockfield Court Maynooth, Kildare.

- Requirement under 03/334 to provide a crèche. Failure to comply with Development Plan policy and Childcare Guidelines, undesirable precedent.
- Failure to justify lack of provision of a crèche, no audit of childcare facilities and no demonstration that size of the crèche permitted is unviable.
- Traffic impact with inadequate parking provision, provision of deliveries and potential hazard with a residential area. Proposal will reduce the level of parking available to residents.
- Lack of public open space in the area.
- There are a number of existing shop units including vacant units in the vicinity with the viability of the proposal question.

## 7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

7.2. Principle of the proposed development/planning history:

7.2.1 The proposal is for the construction of retail unit and associated site works. The site is located within an existing housing development originally permitted under ref no. 03/334 and is a development of 115 dwellings. The appeal site was earmarked for a crèche building (retail unit earmarked for provision further south in the same development) as part of this permission with condition no. 4 of the permission stating the following...

4. Within six months of the date of final grant of permission the applicant shall submit a separate planning application for the proposed crèche and shop at the locations indicated on drawings and details submitted on 2/7/03.

Reason: To provide sufficient facilities to cater for the development and to comply with the provisions of the Childcare Guidelines, in the interests of clarity and proper planning and sustainable development of the area.

No crèche has been provided on the site with the last permission granted for a crèche under ref no. 17/711.

7.2.2 The appellant argues that there is no demand for such a facility and that the size of the crèche permitted would be commercially unviable. The permission was refused as it would contravene the provision of the Childcare Facilities Guidelines 2011 issued as Ministerial Guidelines under Section 28 of the Planning and Development Act 2000 (as amended), contravenes Condition no. 4 of Planning register Reference 03/334 and materially contravene Objective CPFO1, requiring compliance with the ministerial guidance, and Objective CPFO2 encouraging the provision of childcare facilities at appropriate locations, and as such would be contrary to the proper planning and sustainable development of the area.

7.2.3 In relation to zoning the appeal site is zoned 'B', existing residential/infill. The proposed use, shop convenience is identified as a use 'open for consideration within the zoning objective. The observations submitted state that the site is part of the overall open space and that if a crèche is not going to be constructed it should be retained as open space. The issue of zoning and open space is not a planning consideration. The appeal site is zoned existing residential/infill with a number of uses permitted and open for consideration including the proposed use. The appeal site is not zoned for open space and has had permission for and been earmarked for a structure previously.

7.2.4 The main issue is the appropriateness of the site being used for an alternative structure/use other than the crèche use it was earmarked for under the parent permission granted under ref no. 03/334 and then subsequently whether the proposed use is acceptable in terms of its physical impact. The original permission for 115 dwellings included a crèche proposal on the appeal site as well as a retail unit at a different location within the same development. This would have been a

requirement under the Childcare Facilities: Guidelines for Planning Authorities published in 2001 which identifies that “in relation to new housing areas, a standard of one childcare facility providing for a minimum 20 childcare places per approximately 75 dwellings may be appropriate”. Current development plan policy includes this requirement for new residential development and this a very common requirement for new residential development with the Childcare Guidelines still the current guidance in relation to childcare provision.

7.2.5 In relation to the parent permission I would be of the view that the manner in which the provision of childcare facility as part of the development was dealt with is somewhat weak in way it was implemented or required. The proposal did not include provision of a childcare facility as part of the development. A reservation was made on site for a childcare facility to comply with the requirement of the Childcare Guidelines and this was accepted by the Planning Authority as sufficient to comply with the guidelines. In granting permission Condition no. 4 stated that within six months of the date of final grant of permission the applicant shall submit a separate planning application for the proposed Crèche and shop at the locations indicated on drawings and details submitted on 2/7/03. An application for a crèche and retail unit (other location within overall development) was submitted under 04/1371 within one year of the grant of permission under ref no. 03/334. It would appear to me that the terms of the condition were complied with and that the manner in which the recommendation of the childcare guidelines were implemented, was quite weak in terms of ensuring the provision of a childcare facility as an integral part of the overall development. I do not consider that it could be considered that the proposal is in contravention of condition no. 4, when the terms of the condition as written appear to have been complied with.

7.2.6 I do consider that the non provision of a crèche at this location is a failure to comply with the recommendations of the Childcare Guidelines, but the failure to do so is down to the manner in which the parent permission was dealt with and there are no conditions that require the provision of such, there were no submitted plans for such with the original permission and the condition attached only requires the applicant to submit an application for a crèche within one year of the grant of parent permission.

Notwithstanding such if the Board is of the view that the proposal is not in compliance with its original permission or the requirement for a crèche must be implemented, I would be of the view that the applicant failed to make a strong case for its non provision. Firstly the applicant failed to provide an audit of childcare facilities based on GDPR issues despite being requested to do so. I would be of the view that this could have been provided and is information that has been provided in other applications for residential development where there are questions about existing demand and provision of such facilities in an area. I would also be of the view that the applicant has not demonstrated that the size of the crèche is unviable and some sort of consultation with the Kildare County Childcare Committee would have been helpful.

### 7.3 Physical Impact/proposed use:

7.3.1 The proposed shop unit is located at the entrance a part of the existing housing development at the junction with the distributor road and the main spine road through the larger housing development. The site is adjacent an existing communal parking area with 6 no. parking spaces (appears to be part of the site). The proposal is beside an open space area serving the existing dwellings. As noted above the proposed use is compatible with the zoning objective. I would be of the view that the provision of a retail unit in a residential area is acceptable in principle and provides for local services that are accessible to residential development. Notwithstanding such and despite proximity to residential development/pedestrian access, the retail unit would have the potential to generate inward traffic from the wider area. A crèche use on site would also generate traffic, however such would be confined to concentrated periods of time, whereas a retail unit would have potential to generate traffic constantly throughout the opening hours of such. I would consider that it is important that any retail unit provides sufficient degree of separation between it and the existing residential development include adequate provision of parking and turning movement that would be generated so as not to conflict with the existing residential use and occupants. Retail units in residential areas tend to work best in neighbourhood centre setting, with adequate traffic and parking infrastructure that provide some degree of separation between the commercial use and existing

residential development. In the case of crèche uses such are confined in operating hours (no evening hours) and concentrate traffic/movement to limited periods.

- 7.3.2 I would consider that having regard to limited size of the site and its location at the entrance of a housing development with a limited degree of separation from the existing service road/separation from communal parking already in use in the residential area, the development has the potential to generate inward traffic and turning movement that would conflict with existing traffic and pedestrian movements and cause general disturbance to existing residential development/occupiers and subsequently be seriously injurious to the residential amenities of existing dwellings in the vicinity.
- 7.3.3 The existing parking appears to be part of the site and the requirement for a retail use under Table 17.9 is 1 space per 20sqm gross floor area. The proposed development (revised proposal) has a gross floor area of 192sqm with a requirement for 10 parking spaces. There are six spaces on site, however such appear to be in constant use for residential parking. I would be of the view that there is insufficient provision for the traffic likely to be generated by the proposed development and as noted above inadequate separation from existing residential development.
- 7.3.4 The design of the structure and its relationship with the surrounding area and main frontage of the site is poor in quality and architectural character. This is in part due to the limited size of the site and its poor integration with the existing residential scheme that stems back to a poor implementation and design process for providing a crèche within the original scheme. Notwithstanding such I would consider that regardless of the design the issue concerning the limited size of the site and its lack of adequate separation from the internal service road and parking associated with the existing residential development is the key issue that cannot be overcome even if the design was improved.

## 8.0 Appropriate Assessment

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 Recommendation

9.1. I recommend refusal based on the following reasons...

## 10.0 Reasons and Considerations

1. Having regard to limited size of the site and its location at the entrance of a housing development with a limited degree of separation from the existing service road and communal parking area currently in constant use for residents of the overall scheme, the proposal has potential to generate inward traffic and turning movement that would interfere with the existing residential use and conflict with existing residential traffic and pedestrian movements and cause general disturbance to existing residential properties. The proposal would be seriously injurious to the residential amenities of existing dwellings in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.



Colin McBride  
Senior Planning Inspector

21<sup>st</sup> March 2022