



An
Bord
Pleanála

Inspector's Report

ABP-312406-22

Development	Replace temporary school building with new temporary Pre-School structure for a period of 5 years.
Location	Bracken Hill School, Beann Eadair GAA, Balkill Road, Howth, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0706
Applicant(s)	Bracken Hill School Charitable Trust
Type of Application	Permission (Temporary)
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Bracken Hill School Charitable Trust
Observer(s)	None
Date of Site Inspection	8 April 2022
Inspector	Una Crosse

1.0 Site Location and Description

- 1.1. The subject development is located within the grounds of Beann Eadair GAA grounds (Pairc O'Ruaric) which is located on the Balkill Road in Howth. The site is leased by the applicant, a registered charity, from the GAA club and currently accommodates a single storey structure with an area of 171.5 sq.m located adjoining the Clubhouse. The wider site, in addition to the clubhouse accommodates pitches and parking. Access is via a laneway which joins the Balkill Road which leads into Howth village to the north. The documentation outlines that the school has been operating from the site for in excess of 20 years.
- 1.2. The wider area is characterised by mature residential development with a number of dwellings located adjoining the laneway.

2.0 Proposed Development

- 2.1. The development comprises the replacement of the existing temporary 3 classroom pre-school single storey structure with an area of 171.5 sq.m with a new 3 classroom 179 sq.m temporary pre-school single storey structure with ramps for a period of 5 years.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused by the Planning Authority for 2 reasons (although would appear the intention was that it would be one) as follows:

1. The development seeking permission by virtue of a reliance on development being undertaken on lands outside the control of the applicant together with the absence of appropriate traffic calming measures resulting in the failure to provide required sightlines serving the subject development would endanger public safety by reason of traffic hazard and as such would be contrary to Objective DMS94 of the Fingal Development Plan 2017-2023 which seeks to ensure that such facilities provide for safe access and consideration of local traffic conditions.

2. To permit the development would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The final planning report following the receipt of the further information is summarised as follows:

- Site zoned 'HA' with childcare facilities restricted to being ancillary to use of a dwelling.
- However extensive history on the site and could be considered under objective Z05 which seeks to generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria.
- Noted that permission granted under Ref. F06A/1217 was due to expire on 31/08/2008 with permission sought and granted for a permanent structure under Ref. F14A/0093 which was not implemented with the existing structure on site considered unauthorised.
- Considered applicant should be seeking permission for retention of use and continuation
- Planning history ongoing since 2000 and PA not in favour of continuing granting permissions for temporary structures with regard to traffic issues and calming measures that are required for the use, the sensitive location and need to provide a permanent place for users of the service.
- Childcare guidelines outline that temporary permissions should only be sought once in relation to an individual premises.
- Considered applicant should be requested to provide a detailed timeline of when permanent permission will be sought and in the event permission granted, 2 year duration likely.
- Planning statement refers to opening hours of 8.50 to 1 pm however previous conditions limited opening hours to 9am -12pm Monday to Friday. Opening hours

in PL06F.244749 – 0800-1330 but permission not implemented. Clarification required.

- Development can be accommodated in the site without undue visual intrusion however temporary nature of structures is reflected in their appearance.
- No undue impact on residential amenities.

Further information Required in relation to:

- Comprehensive timeline to set out when permission for permanent structure will be sought.
- Sightlines
- Traffic calming
- Planning Status of structure to be clarified in respect of status as per 2006 permission.
- Clarification regarding previously permitted and proposed hours of operation.
- AA Screening report.

Report in Response to Further Information summarised as follows:

- Note applicant defines temporary structure as referring to the construction methodology however it will present as a permanent structure.
- Finishes considered conventional for such structures.
- PA would welcome a long-term plan for the site having regard to overall time period of temporary permissions sought with ample time afforded to applicants to achieve this.
- Applicant references works commencing on adjoining properties which provide for improved sightlines and traffic calming. Required traffic calming measures are not in place and cannot be relied upon to facilitate this proposal as outside of their control and have failed to demonstrate provision of the required measures.
- Stated by applicant that F06A/1217 has expired but PA content that description replacing the existing structure for a further period can be considered.

- Current operational hours arisen due to Covid restrictions enabling safer drop/collection and considered operational hours can be conditioned.
- AA Screening report submitted which states site is not within the SAC and AA not required, PA concur with findings of the AASR.
- PA supportive of provision of childcare services recognising importance of same but equally consider importance of safe access with each application assessed on its own merits relative to the site and surroundings.
- Site has been subject to numerous applications over 21 year period with sufficient time for applicants to address the long term plan for the facility and access arrangements.
- Issue of safety is relevant whether a permission is temporary or permanent and in this instance the development is not considered acceptable.

3.2.2. **Other Technical Reports**

Transportation Section

First Report

- Parking acceptable as uses mutually exclusive.
- Traffic safety for all road users particularly children being walked to the facility from local area an ongoing concern for the Transportation section.
- While ongoing temporary permissions have facilitated the provision of a desirable service, issues have safety put on long finger time and again.
- Key part of risk assessment is to avoid unnecessary risk which if unavoidable should be mitigated.
- Access to and from the proposal is substandard and temporary/permanent nature should not be relevant.
- Sightlines are non-existent at the entrance to the south and not much better to the north with the requirement for 50km/hr 45m in each direction from 2.4m setback (2m relaxation only suitable for residential dwelling). The traffic would be required to reduce to 5km/hr to facilitate the sightlines achievable. Traffic calming

on Balkill Road would reduce to 30km/hr with sightline of 23m required for this speed.

- Sightline cannot be achieved without works to third party lands and issue has been wrongly shelved while the development temporary in nature.
- Entrance point not wide enough for two cars to pass and below standard in terms of pedestrian access.
- Resolution of the access in terms of safety is a prerequisite for any continued used either on a temporary or permanent basis.
- No sightline drawing or traffic calming measures indicated in the documentation.
- Traffic calming will help to reduce speeds but the entrance with or without same in its current form is a traffic hazard.

Further Information required as follows:

- Sightline drawing to comply with DMURS indicating works needed to facilitate same and in the absence of any traffic calming the starting point of 32m in each direction required.
- Traffic calming proposal designed by an Engineer with relevant experience required and with suitable traffic calming design speed for sightlines can be reduced to 30km/hr (23m in each direction). Consent for any works to third party lands required.

Second Report

Refusal recommended

- Applicants reference to temporary structure referring primarily to the construction methodology noted, PA would welcome a long-term plan for the site with ample time afforded to applicants to achieve this.
- Reference made to works associated with two adjoining permitted developments (F20A/0293 & F19A/0464) which will facilitate sightlines and traffic calming.
- Sightline map is on OSI map and not topographical map as required and not acceptable.

- Sightlines of 23m only acceptable where traffic calming measures are already in place on the Balkill Road.

Water Services

No objection subject to conditions.

Parks Department

Condition proposed relating to the protection of trees.

Irish Water

Condition proposed

3.3. Prescribed Bodies

None

3.4. Third Party Observations

None

4.0 Planning History

4.1. On Site

4.1.1. Ref. F14A/0093

Permission granted on appeal (PL06F.244749) for the replacement of the existing 3-classroom single story structure used as a pre-school facility with new permanent single storey 3 storey structure and permanent continuance of its use as a pre-school facility.

Condition 2 - The proposed traffic calming measures, incorporating road narrowing, additional yield and stop signs and traffic islands, as indicated on drawing number 1307-01 Revision F and submitted with the application on the 4th day of March, 2014 shall not be carried out. The following road traffic calming measures shall be implemented: (a) A raised table speed control area, incorporating the junction with Dungriffin Road and junction with the school access with Balkill Road shall be provided. This shall incorporate a paved or similar area and shall be differentiated

from the surrounding road area by different colour and material. This raised area shall be provided with school warning lights which shall operate while the school is open and advance warning signs indicating the presence of a school shall be provided. The costs of this proposal shall be borne by the developer. Details of the above raised area shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety and convenience.

4.1.2. **F06A/1217**

Permission granted for the continuance and permanent retention of a single storey three classroom school and ancillary facilities (previously approved under P.A. Reg. Ref. No. F00A/0622 and F03A/0521 Condition 2 required the removal of the structure on or before the 31st day of August, 2008, unless permission had been granted by the Planning Authority or the Board for its retention. The stated reason for this condition was to enable the impact of the proposed structure to be reassessed. In addition, Condition No. 5 restricted the use of this facility as per Condition No. 5 of P.A. Reg. Ref. No. F03A/0521.

4.1.3. **Ref. No. F03A/0521**

Permission granted for the continuance and permanent retention of a single storey three classroom school and ancillary facilities (previously approved under P.A. Reg. Ref. No. F00A/0622). Condition 2 required the removal of the structure on or before the 31st day of August, 2006, unless permission had been granted by the Planning Authority or the Board for its retention. Condition 5 restricted the use of the facility to term times and during the hours of 9am to 12 noon Monday to Friday. The stated reason for this condition was to enable the impact of the proposed structure to be reassessed

4.1.4. **Ref. No. F00A/0622**

Permission was granted for temporary 3 classroom school and ancillary facilities. Condition 2 required the removal of the structure on or before the 31st day of August, 2003, unless permission had been granted by the Planning Authority or the Board for its retention. The stated reason for the condition was to enable the impact

of the proposed structure to be reassessed having regard to the high amenity zoning of the area.

4.2. Adjoining Sites referenced in Documentation

4.2.1. Ref. F19A/0464

(i) A 2-bedroom dormer bungalow with solar panels, SuDs drainage; landscaping; boundary treatments and all associated works to facilitate the development; (ii) A new shared vehicular entrance to serve the new and existing house, which includes closing up the existing entrance, and (iii) creation of two speed bumps on Balkill Road at either side of the proposed entrance.

4.2.2. Ref. F20A/0293

- 4.2.3. (a) Demolition of existing conservatory and shed at the rear, demolition of existing gable wall, bay window and gate to the north, demolition of existing front garden wall on Balkill Road. (b) Erection of a new set-back vehicle entrance and gate to Balkill Road with provision of 2 carpark spaces in the front garden. (c) Erection of a new part 1 storey, part 2 storey extension to the rear and the side, partially below ground with a dormer window and a rooflight;

5.0 Policy Context

5.1. Childcare Guidelines 2001

These guidelines, which are now over 20 years old, include reference to temporary permission at Section 3.4.2 as follows:

The use of temporary permissions should be avoided if at all possible. The circumstances in which a temporary permission is granted should be exceptional and will normally be such that, in the absence of the “probation” period afforded by a temporary permission, the planning authority would have issued a refusal. If a temporary permission is granted, the permission should be for a period of not less than 5 years. The granting of a temporary permission should occur only once in relation to any individual premises and on the expiry of the temporary permission, a permission or refusal should issue.

5.2. **Development Plan**

Site located within 'HA' high amenity zoning the objective of which is to 'protect and enhance high amenity areas'. Site is within buffer zone of the Howth Special Amenity Area Order which adjoins the site to the south.

Development Management Standard (DMS) 94

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

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

5.3. **Natural Heritage Designations**

Site is located within the Howth Head SAC (site code (000202)). Screening report attached to the file.

5.4. **EIA Screening**

Proposal does not comprise a project for the purposes of EIA.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal are summarised as follows:

- PA concluded that proposal could be accepted on basis of Objective Z05 given extensive history on the site and noted that site location means development can be accommodated without undue injury to visual amenity of the area.
- Permission granted by the Board in 2014 for slightly larger unit on basis of existing use on the site and that issues regarding traffic safety could be addressed by condition.
- Accepted by both PA and ABP that no amenity issues arise and proposal does not conflict with the HA zoning and note proposed façade will visually enhance the area.
- Temporary characteristic of proposal relates to construction methodology with modular construction providing structure can be moved/relocated if lease on lands not renewed.
- As applicant is a charity, modular structure only cost effective solution with modular structures having 20-25 year life span.
- Additional information requested regarding sightlines, with sightlines of 23m proposed as traffic calming measures approved under an adjoining permission but concluded that as the traffic calming works are not in place that they cannot be relied upon with refusal recommended.
- While argument of reliance relevant if permission has not been commenced, the permission has been commended under commencement notice CN0076975FL with condition 6 requiring that the traffic calming measures are agreed with the PA prior to the commencement of development.
- The measures therefore have to be implemented and the subject applicant can rely on same as they are mandatory.
- Any failure of the PA to enforce the conditions which is essential to the granting of permission cannot be held against the current applicant.
- Noted that condition regarding the traffic calming measures would not be applicable if the permission on the Heathfield development was implemented with onus on the applicant who has commenced.

- Statement by PA that the applicant cannot rely on a planning application on lands outside their control incorrect as the applicant is not relying on an application but rather on a permission that has commenced.
- In relation to the Childcare Guidelines and temporary permissions, Guidelines are not mandatory and the PA and ABP are required to have regard to them with reference to avoiding use of temporary permissions if at all possible.

6.2. Planning Authority Response

Response is summarised as follows:

- Appeal reviewed by Planning Officer and Transportation Section
- Notwithstanding traffic calming measures required by recent applicants in vicinity such measures will not address sightlines issue to the north of the entrance which remain below requirements for DMURS.
- Other traffic calming measures for the subject use i.e. signage would not be proposed as part of the residential development and all traffic calming measures should be in place prior to a grant of permission on the site.
- Remain of opinion development is not acceptable and request permission is refused.
- If permission is granted a Section 48 condition should be attached.

7.0 Assessment

7.1. Principle of Temporary Permission

In relation to the principle of permitting a temporary permission for the proposal, which I note the Planning Authority have concerns about due to the length of time which has lapsed since the first one, I consider there are a number of pertinent matters arising. Firstly, as pointed out by the appellant, the structure is located on lands leased by the appellant and not in their ownership. The temporary permission in this instance provides each party in the arrangement more options in respect of the use of the land. Secondly, the appellant is a charitable trust and in this regard the use of the temporary permission is more suitable. I also note the reference by the

appellant to the temporary nature of the structure from a construction methodology perspective. I consider that while a long term plan for the site would be welcomed, given the particular circumstances, that a temporary permission for the development would be appropriate.

7.2. Traffic Matters

The most pertinent matter in this case is the suitability of the access arrangements proposed. Firstly, I would note that this is an existing entrance which serves the GAA club. The proposed pre-school would operate outside of the hours of the GAA and therefore would not intensify the access during peak periods of use. I note concerns expressed about young children being walked to the facility but I would note that the same concerns would apply to those being walked to the GAA grounds.

Notwithstanding, the previous permission granted by the Board in 2014 which was not implemented included a condition (2) which required the following:

The following road traffic calming measures shall be implemented: (a) A raised table speed control area, incorporating the junction with Dungriffin Road and junction with the school access with Balkill Road shall be provided. This shall incorporate a paved or similar area and shall be differentiated from the surrounding road area by different colour and material. This raised area shall be provided with school warning lights which shall operate while the school is open and advance warning signs indicating the presence of a school shall be provided. The costs of this proposal shall be borne by the developer. Details of the above raised area shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

The traffic calming measures were not undertaken as the permission was not implemented. Since then, two permissions have been granted in the vicinity of the subject site which incorporate traffic calming measures/changes to boundaries.

In relation to their proximity to the subject access, Ref. F20A/0293 (extension to property and changes to access arrangements) was granted permission which provides for the alterations to the boundary wall of the property to the south of the entrance which would facilitate sightlines of 23m. This development has been commenced and is under construction.

Further south of the permitted extension and the subject access permission was granted under Ref. F19A/0464 for a new residential unit, referenced as the Heathfield development, and the provision of two speed bumps on Balkill Road at either side of the proposed entrance. This development has been commenced and as pointed out by the appellant the provision of the traffic calming measures will form part of same.

I note in their response to the appeal that the PA appear to acknowledge the impact that the traffic calming measures required by recent applicants in vicinity will have in respect of the subject proposal but then outline that such measures will not address sightlines issue to the north of the entrance which remain below requirements for DMURS. I would state in this regard, that sightlines of 23m are achievable which they have stated would suffice with the traffic calming measures. Furthermore, this is an existing access facilitating the GAA club.

They also state that other traffic calming measures for the subject use i.e., signage would not be proposed as part of the permitted residential development and that all traffic calming measures should be in place prior to a grant of permission on the site. The second report of the Transportation Section states that sightlines of 23m are only acceptable where traffic calming measures are already in place on the Balkill Road.

Therefore, there would appear to be an acceptance that the arrangements proposed are acceptable subject to the traffic calming measures being in place. I consider that it may be appropriate, should the Board be minded to grant permission, to condition that the traffic calming measures should be in place prior to the operation of the facility thereby facilitating the works to take place as part of the commenced development. I also consider that signage could be conditioned as part of the subject proposal.

Therefore, I would recommend that a condition should be attached requiring that the traffic calming measures must be in place prior to the operation of the facility and that the signage is agreed with the Planning Authority prior the commencement of operation of the facility.

7.3. Appropriate Assessment

While the Planning Authority stated in their report that the proposal is located with the Howth Head SAC, the screening report submitted by way of further information outlines that the site is not although the boundary of the site adjoins the boundary of the SAC. Notwithstanding, despite the sites close proximity to Howth Head SAC there is no hydrological pathway from the site itself to Howth Harbour, I consider that having regard to the modest nature and scale of proposed development proposed, the nature of the proposal which is a temporary modular structure replacing an existing structure, the sites location in a serviced urban area with surplus capacity to accommodate the proposed development, taken together with the information on file which I consider is adequate to issue a screening determination, it is reasonable to conclude, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the conservation objectives of the aforementioned site or indeed any other SAC or SPA within the immediate and wider area. I therefore consider that in this case a Stage 2 Appropriate Assessment, is not required.

8.0 Recommendation

8.1. I recommend that permission is granted subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the existing pattern of development in the area including the use of the site for the proposed purposes for the use proposed, to the zoning for the area, to the planning history of the site and to the speed limits prevailing in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate complementary use to the existing sports club on the site, would not seriously injure the residential amenity of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1.	<p>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 the 8th day of November 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 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>This permission shall be for 5 years from the date of first operation of the facility.</p> <p>Reason: in the interest of orderly development</p>
3.	<p>(a) The permitted use of the facility shall only commence once the traffic calming measures permitted under Ref. F19A/0464 have been completed on the Balkill Road.</p> <p>(b) Prior to the operation of the facility, the developer shall agree a plan for signage in the vicinity of the access.</p> <p>Reason: in the interest of traffic management in the vicinity of the site.</p>
4.	<p>The permitted use of the development shall be restricted to between the hours of 0800 and 1330 from Mondays to Fridays inclusive and shall not take place on Saturdays, Sundays, Bank or Public Holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority. Reason: In the interest of residential amenity and the proper planning and sustainable development of the area.</p> <p>Reason: In the interest of residential amenity and the proper planning and sustainable development of the area.</p>

5.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
6.	<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>

Una Crosse
Senior Planning Inspector

19 April 2022