



An  
Bord  
Pleanála

## Inspector's Report ABP 314005-22.

### Development

Retention of the following works. (A) The use of the ground floor of the existing dwelling as a childcare/Montessori Centre, (B) The erection of a steel structure for use as a shade/covered play area, and (C) The erection of a steel shed for use as a store, all with associated site works.

### Location

New Line, Quin, Co. Clare.

### Planning Authority

Clare County Council

### Planning Authority Reg. Ref.

22328

### Applicants

John and Patricia Hennessy

### Type of Application

Permission

### Planning Authority Decision

Spilt decision

### Type of Appeal

First Party

### Appellants

John and Patricia Hennessy

### Observers

(1) Daniel & Marissa McCarty  
(2) Denise O'Callaghan

- (3) Edel Kearse
- (4) Tara Cleary
- (5) Noreen and Ronan Gallagher
- (6) Michael and Mary Griffin
- (7) Gunjan Chokshi
- (8) Laura Ambrose
- (9) Dawn Shanahan
- (10) Colette and Eoin Martin
- (11) Rachel O'Callaghan
- (12) Aidan Gorman and Sharon  
Curley
- (13) John Paul O'Brien and Neasa  
Curtin
- (14) Siobhan Hammond
- (15) Alison McGrath and Pdraig  
McGrath
- (16) Rhona Sidley and Paul Tighe
- (17) Tanya Glendon Carrick
- (18) Minnie Keane
- (19) Rosaleen O'Sullivan Hynes

**Date of Site Inspection**

22/11/2022

**Inspector**

Siobhan Carroll

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## 1.0 Site Location and Description

- 1.1. The site is located within the village of Quin, Co. Clare. Quin is a large village which is situated in east Co. Clare. It lies circa 10km to the east of Ennis. Shannon is situated circa 16km to the south. The M18 Motorway is located to the west of the village. Junction no. 11 is situated circa 5km from Quin.
- 1.2. The subject site has a stated area of 0.118 hectares it is located on Newline Road. Quin National School is located immediately to the east of the site. To the west of the site there are houses along Newline Road. The rear southern boundary of the site abuts the end of a cul de sac Arbutus Grove.
- 1.3. The site contains an existing childcare centre this is located to the north-eastern corner of the site. This building of a detached and dormer design and has a floor area of 145.15sq m. The existing dwelling on site is semi-detached and it features a two-storey extension to the side and a ground floor extension to the rear comprising a conservatory. The ground floor of the dwelling on site is currently being used as a childcare/Montessori. The adjoining dwelling features a two-storey extension to the side.
- 1.4. To the south of the dwelling there is a structure which is described in the application as a shade/covered play area. This covered play area has a floor area of 31.66sq m. The structure has a side and rear wall which is constructed with steel and grey cladding the northern side of the structure directly adjoins the rear of the existing conservatory with the conservatory door opening into the shade/covered play area. The structure has a low pitched roof.
- 1.5. The existing shed on site has a floor area of 18.99sq m, it is of steel construction and features a low pitched roof. On inspection of the site, I noted that the shed contained a number of children's bicycles and scooters, buggies and prams. There is an external play area to the rear of the site which is contains a rubber tile surface.

## 2.0 Proposed Development

- 2.1. Permission is sought for the Retention of the following works;
  - (A) The use of the ground floor of the existing dwelling as a childcare/Montessori Centre,

- (B) The erection of a steel structure for use as a shade/covered play area, and
- (C) The erection of a steel shed for use as a store, all with associated site works.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. The Planning Authority issued a split decision.

3.1.2. Under the first schedule permission was refused for (A) The use of the ground floor of the existing dwelling as a childcare/Montessori Centre and (B) The erection of a steel structure for use as a shade/covered play area, all with associated site works. Permission was refused for the following reasons;

1. The proposed site is zoned “Existing Residential” in the Clare County Development Plan 2017-2023 (as varied). The objective for lands of this zoning is *to conserve and enhance the quality and character of the area, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and patter of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained.*

Having regard to the permitted uses on the site, and the uses for which retention is hereby sought, the Planning Authority considers that ‘residential use’ is no longer the primary land use on the site and the childcare/Montessori centre activities cannot reasonably be considered ‘home-based employment’.

It is therefore considered that the proposal to retain the use of the ground floor of the existing dwelling a childcare/Montessori centre would contravene materially a development objective indicated in the Clare County Development Plan 2017-2023, as varied, and would be contrary to the proper planning and sustainable development of the area.

2. Planning permission for the standalone childcare/Montessori centre facility on the site was permitted under P04/626. In order to control and regulate the level of the development on the site, Condition 3 of the said permission states:

*The existing dwelling house shall cease to be used as a childcare centre upon completion of the new facility. Written confirmation of this shall be submitted upon commencement of use of the proposed development.*

It is considered that there have been no material changes in the setting of the childcare facility or the surrounding environment that would render this condition no longer necessary.

The retention of the use of the ground floor of the existing dwelling as a childcare/Montessori centre would contravene materially Condition No. 3 attached to existing Planning Permission Ref: P04/626 and would be contrary to the proper planning and sustainable development of the area.

3. Having regard to the number of staff employed and the number of children facilitated on the site, the parking requirements and the number of vehicle movements associated with same, the failure to provide previously approved parking arrangements, the restricted area of the proposal site and the limited public parking in the vicinity of the development, it is considered the use of the ground floor of the existing dwelling as a childcare/Montessori Centre, in conjunction with the permitted activities on the site, would generate a significant level of traffic movements and general activity in a residential area as well as on-street parking and turning movements. The proposed development would, therefore, by reason of these traffic movements and activity, seriously injure the amenities and depreciate the value of property in the vicinity and endanger public safety by reason of traffic hazard.
4. Having regard to (a) the number of children cared for on the site and the noise associated with their use of the limited outdoor space; (b) the height and finishes of the steel shelter building proposed for retention and the location of same relative to the site boundary; and (c) considering the development hereby proposed for retention in the context of all existing structures on the site, be they permitted, exempted or otherwise, it is considered the proposal to retain the use of the ground floor of the building as a childcare/Montessori

centre and to retain the steel shelter structure would constitute over-development of the site, would have a detrimental impact on the residential amenities of the area and depreciate the value of property in the vicinity.

- 3.1.3. Under the second schedule permission was granted for (C) The erection of a steel shed for use as a store.

## 3.2. **Planning Authority Reports**

### 3.2.1. Planning Reports

Report dated 1/6/2022 – Split decision recommended. Permission to be refused for (A) The use of the ground floor of the existing dwelling as a childcare/Montessori Centre (B) The erection of a steel structure for use as a shed/covered play area or the basis of zoning, contravenes condition of previous permission, traffic hazard and impact on residential amenity.

### 3.2.2. Other Technical Reports

Chief Fire Officer – No objections to the proposal provided that it complies with the Building Regulations.

## 3.3. **Prescribed Bodies**

- 3.3.1. Irish Aviation Authority – No observations

## 3.4. **Third Party Observations**

- 3.4.1. The Planning Authority received 47 no. submissions/observations in relation to the application. The issues raised are similar to those set out in the observations to the appeal.

## 4.0 **Planning History**

Reg. Ref. 04/626 – Permission was granted to construct a Childcare/Montessori Centre. Permission was granted subject to 17 no. conditions. Condition no. 3 specified that “The existing dwelling house shall cease to be used as a childcare



centre upon completion of the new facility. Written confirmation of this shall be submitted upon commencement of use of the proposed development.”

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative plan for the area is the Clare County Development Plan 2017-2023 (as varied).
- 5.1.2. Table 2.1 of the Plan sets out the Settlement Hierarchy for County Clare. Quin is identified as a Large Village in the Ennis Municipal District. The village settlement boundary is identified in the Quin Settlement Plan.
- 5.1.3. As indicated on the Quin Settlement Plan in Volume 3a Ennis Municipal District, the site at New Line, Quin, Co. Clare is zoned “Existing Residential”.
- 5.1.4. Chapter 5 refers to Community Development and Social Infrastructure
- 5.1.5. Section 5.4.3.1 refers to Pre-School/Childcare Facilities
- 5.1.6. CDP5.16 – Development Plan Objective: Childcare Facilities

It is an objective of the Development Plan:

A. To encourage the provision of affordable and accessible childcare and preschool facilities throughout County Clare;

B. To facilitate the development of additional childcare services for vulnerable or disadvantaged groups in the community.

C. To have regard to ‘Childcare Facilities – Guidelines for Planning Authorities (2001)’, or any updated version, in the assessment of applications for childcare facilities.

- 5.1.7. A1.3.3 refers to Childcare Facilities in Residential Areas

### 5.2. Childcare Facilities, Guidelines for Planning Authorities, 2001

- 5.2.1. The Guidelines provide a framework to guide both local authorities in preparing development plans and assessing applications for planning permission, and developers and childcare providers in formulating development proposals. They

state that Planning Authorities should encourage the development of a broad range of childcare facilities, i.e. part-time, full day-care, after-school care, etc., including those based in residential areas, in employment areas and in areas close to where users of such facilities live. The Guidelines provide detailed guidance with regard to appropriate locations for the siting of childcare facilities such as in the vicinity of schools in addition to detailing the development control considerations of proposals for same.

- 5.2.2. It is advised in relation to sessional/after-school care, the provision of such facilities may be considered in any residential area as ancillary to the main residential use subject to the criteria outlined in the relevant indents under Development Control above (at 3.2)

### **5.3. EIA Screening**

- 5.3.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

### **5.4. Natural Heritage Designations**

- 5.4.1. There are no designated areas within the vicinity of the site.
- 5.4.2. Poulmagordon Cave (Quin) SAC (Site Code 000064) is located 413m from the site.
- 5.4.3. Lower River Shannon SAC (Site Code 002165) is located 3.8km from the site.
- 5.4.4. River Shannon and River Fergus Estuaries SPA (Site Code 004077) lies 4.8km from the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal was submitted by Andrew Hersey, Planning Consultant on behalf of the applicants John and Patricia Hennessy. The issues raised are as follows;

- The applicants have appealed the decision of the Planning Authority in order to seek to keep the childcare facility open which is a vital service to the local community.
- The main element of the retention relates to the use of the ground floor of the existing dwelling as a childcare/Montessori. The applicants have operated the childcare/Montessori use within the ground floor of the existing dwelling since 2009.
- If the childcare/Montessori had to close, then the parents in the locality who rely on this service would have to find alternative childcare elsewhere. It is highlighted in the appeal that the nearest alternative facilities are located in Sixmilebridge or Ennis and that these facilities are at full capacity.
- In relation to the principle of the development it is set out in the appeal that there is a need for a childcare facility in the village. Based on the 2016 Census data the population of Quin Electoral Division is 1,476 and 8% of the population were between 0-4 years old and 12% were between 5-9 years old. It is noted that forecasts in the Clare County Development Plan 2017-2023 set out that the population of Quin village will grow by 18% by 2023.
- The appeal refers to Section 6.4 (in part) of the National Planning Framework 2040 (NPF). The following section is referred to; *“The number of people aged 15 or under will continue to increase until the early 2020’s and decline only slowly thereafter. This means that the continued provision and enhancement of facilities and amenities for children and young people, such as childcare, schools, playgrounds, parks and sportsgrounds, remains necessary and will need to be maintained at similar levels for the foreseeable future thereafter. It also means that, if a significant proportion of future population growth occurs within or close to the current built-up footprint of settlements as targeted, it will*

*be possible to maximise the use of existing facilities near where children and young people live.”*

- Therefore, it is put forward that there will be a greater requirement for childcare provision, and it is recommended in the NPF that the use of existing facilities are maximised.
- It is submitted that the applicants have maximised the use of a vacant building directly adjacent to the permitted childcare facility granted permission in 2004.
- There is no other facility in the village and it is stated that there is a clear requirement for increased childcare provision. It is submitted that the decision of the Planning Authority is flawed and that greater emphasis should have been given to the need for such a facility in a village centre location.
- The first reason for refusal refers to the zoning of the site. It would appear that the issue at hand is the fact that the existing residential use is not being maintained on the site and that therefore the proposal contravenes the zoning objective for the site.
- It is highlighted in the appeal that the applicants made a submission to the Draft Clare County Development Plan 2023 – 2028 seeking to get lands rezoned for Community use.
- If the site was rezoned to Community use then the adopted Development Plan would come into effect in early 2023.
- It is the opinion of the applicant’s Planning Consultant that it is unlikely that the Development Plan will be adopted before the Board make a decision. It is noted that the Manager’s report on the recommendations regarding submissions will be available before the end of summer.
- Notwithstanding the “Existing Residential” zoning on the site, it is highlighted that a community use has been established on this site for a considerable period since at least 2004. From 1997 the childcare facility was located in the detached building on site has been used for over 13 years as a childcare facility. It is therefore put forward that the community use on site is long since established.

- The applicant's Planning Consultant is of the opinion that the site which is directly adjacent to a National School will be zoned community use in the forthcoming Development Plan.
- Therefore, it is put forward that the principle of the development should be accepted by the Planning Authority.
- It is submitted that cognisance must be had to the fact that there is an established childcare facility on the site, that it is adjacent to a National School and that it is located in a compact settlement where most of the customers can walk or cycle their children to the facility. It is submitted that it is a logical location for an expansion of an existing childcare facility and it is broadly compliant with national policy which seeks "to maximise the use of existing facilities near where children and young people live.
- In relation to the matter of contravention of condition no. 3 of Reg. Ref. P04-626, the applicants are seeking retention for the use of the ground floor of the existing residential building for childcare purposes.
- It is submitted that it is not considered appropriate to refuse on the basis that the proposal contravenes an existing permission of planning. If this were the case, then permission could never be granted for the proposed development as it would always contravene this condition.
- The third reason for refusal refers to traffic safety and car parking. There appears to be a number of issues which the Planning Authority considers will result in the endangerment of public safety by reason of traffic hazard.
- It is highlighted that this reason for refusal was not supported by an internal road design report and therefore it was the Planning Officer who decided upon this.
- The main issue appears to relate to the shortfall of parking spaces required having regard to the standards as set out in the Development Plan. It is stated that the applicants will be able to provide 8 no. spaces within the front garden of the site as shown in the Site Layout Plan. This will be provided should the Board decided to grant planning permission.

- Car parking standards are set out in Section A1.9.3 of the Clare County Development Plan 2017-2023. Childcare provision requires 1 space per employee and 0.25 spaces per child.
- It is also required that “where the construction of a new school or childcare facility or an extension to an existing school/childcare facility is proposed, the Planning Authority will require the provision of a lay-by or drop off site, parking in relation to buses and for parents dropping off and picking up school children provision shall be made within the site for staff parking.
- It is stated in the report of the Planning Officer that 20 spaces are required to serve the proposed development for retention and the standalone creche granted under Reg. Ref. P04-626.
- The applicants confirm that no more than 10 staff are on site at any time during the day and that not all staff would be there at the same time because some work on a part-time basis. 4 no. staff live in the village and therefore walk to work. Therefore, the required number of staff parking spaces are just 6 whereas 8 are proposed. It is noted that this is short of the 20 spaces which is required under the Development Plan. It is highlighted that there is a pull-in bay located directly adjacent to the site in front of the primary school.
- Having regard to the location of the proposed site adjacent to the national school it is stated that the level of traffic is significantly reduced during the school holidays. The applicants state that the number of children attending the facility reduces by between 25%-30% during the school holiday period.
- It is also highlighted that 63 children who attend the childcare facility are from Quin village and the surrounding area and there is a total of 85 children attending the childcare facility.
- Regarding car parking standards it is noted that the standards required in other development plans including the Limerick Development Plan 2022 - 2028 and Dun Laoghaire Rathdown Development Plan 2022 - 2028 are not as stringent.
- In relation to the matter of residential amenity it is stated that the only objection to the application was from the occupants of the adjacent property.

The report of the Planning Officer suggests that there are three sources which result in the loss of residential amenity for the adjacent property. References is made to noise from use of the creche specifically noise from childcare using the garden, the disturbance as a consequence of extra traffic that would be generated by the proposed development and the visual impact of the proposed steel shed and the steel canopy structure for which retention was sought.

- It is not accepted that the noise of children playing would result in any residential amenity considerations. There is a permitted childcare facility on the site which is located next door to a school with outdoor play space.
- It is stated that the objectors did not submit any proof in the form of sound surveys that noise from children playing was at a level which is considered unbearable. Secondly, it is not considered that noise and disturbance from traffic on a public road can be deemed a source of noise and loss of residential amenity. There has been an existing childcare facility on the site and this is a primary school on the adjacent site which has been extended over a number of years. It is stated that there will always be traffic at this location and that there is noise and disturbance associated with this. It is not considered that the additional traffic which would result as a consequence of the retention of this development would increase the noise and disturbance to any significant degree.
- Regarding the third element which relates to the visual impact of in particular the steel canopy structure. It is noted that the side elevation of the structure will be visible from the objectors garden and rear windows of their property. However, it is not accepted that this is a visual intrusion because it is no higher than a single storey extension constructed to the rear of the property. The applicants state that they intend to plant ivy or a suitable climbing plant at the base of the structure to cover it in a few years.
- In relation to the hours of operation the Board should note that the majority of care carried out on the ground floor of the dwelling on site for which retention is sought is Sessional Care. The Sessional Care is based on care up to 3½ hours, Part-time care from 3½ to 5 hours and Full time based on care over 5

hours. In relation to the operation of the subject facility it is stated that children start to go home from 4pm onwards and the numbers decrease until the day finishes at 5.30pm. The facility is not opened at the weekends or public holidays. The day starts when the staff arrive at 8.00am the children do not arrive until 9.00am.

- Should the Board decide to grant permission for the subject proposal, the applicants are amenable to the attachment of a condition stipulating the hours of operation. It is detailed on table 1 of the appeal document that between the hours of 9am-12 noon there would be a maximum of 33 children. Between 12pm to 1.40pm there are no children present. From 1.40pm to 2.40pm there are 12 no. children at the facility and from 2.40pm to 4pm there is a maximum of 24 no. children present.
- It is submitted, having regard to these details that the facility is only used at intermittent times during the day and that in this respect disturbance to the adjacent residential amenity is minimal.
- In conclusion it is recommended that the Board grant permission for the proposed development. If the proposal is granted it will provide for the continued use of much need community services in the form of childcare for the residents of Quin and the surrounding rural hinterland.
- The subject childcare facilities are within walking distance of 16 minutes from any house within the village. The facility is located where infrastructural pedestrian works carried out under the Active Travel Investment Programme which were funded by the National Transport Agency to encourage active travel. If granted permission the proposal will reduce unsustainable private car based commuting patterns that would arise if the existing customers of the facility have to find alternative childcare provision elsewhere outside the village.
- It is submitted that the proposal will not impact upon the residential amenity of the adjacent residential property any more than it is at present.



## 6.2. Planning Authority Response

- Clare Co. Council notes the appellants grounds of appeal. The Planning Authority refers to the considerations set out in the Planner's Report and respectively requests that the Board uphold the decision of Council in this instance.

## 6.3. Observations

- 6.3.1. Observations to the first party appeal have been submitted from the following (1) Daniel & Marissa McCarty (2) Denise O'Callaghan (3) Edel Kearse (4) Tara Cleary (5) Noreen and Ronan Gallagher (6) Michael and Mary Griffin (7) Gunjan Chokshi (8) Laura Ambrose (9) Dawn Shanahan (10) Colette and Eoin Martin (11) Rachel O'Callaghan (12) Aidan Gorman and Sharon Curley (13) John Paul O'Brien and Neasa Curtin (14) Siobhan Hammond (15) Alison McGrath and Pdraig McGrath (16) Rhona Sidley and Paul Tighe (17) Tanya Glendon Carrick (18) Minnie Keane and (19) Rosaleen O'Sullivan Hynes.
- 6.3.2. The observations to the appeal are predominately in favour of the proposal and submissions raised the following issues;
- The existing childcare/Montessori Páistí Beaga has provided an excellent valued service to the community. It is highlighted that the facility provides an inclusive service including for children with specific special needs.
  - Páistí Beaga is a full service creche which is fully regulated. It provides a range of childcare and early education services, childcare for infants and toddlers, the ECCE programme and after school care.
  - It is the service in Quin and the surrounding area which offers full day care year round.
  - It is highlighted that recently there has been a slew of closures of childcare facilities in the country and therefore there is a severe shortage of childcare. It is therefore submitted that it is crucial that Páistí Beaga and other similar childcare facilities be maintained and supported.
  - Car parking for patrons/customers of the childcare/Montessori is not an issue due to the staggered drop-off and collection times.

- The traffic congestion at the premises has not been experienced by patrons/customers. It is considered that traffic in the area is primarily generated by the National School on the neighbouring site.
- It is noted that the neighbouring National School does not provide any parking for parents and that there is a playschool also operating on the site of the National School. There is a pull in bay to the front of the National School.
- Reference is made to the Quin Active travel Program and the recent improvements which have been carried out which have provided a safe environment to travel by bicycle and walk within the village.
- It is noted that the proximity of the National School to Páistí Beaga that it reduces the journeys generated for some primary pupils from the National School attending afterschool care.
- The closure of the childcare/Montessori would be hugely disruptive to the children and their families and would result in job losses.
- There is an absence of any alternative childcare/Montessori facilities in the area should the facility have to close.
- The parabola/shade/covered play area was erected during the Covid 19 Pandemic to provide children access to the outdoors in all weathers. The shade/covered play area was hugely beneficial during the extreme heat which occurred this past Summer.
- Excessive noise coming from the facility has not been noted by observers to the appeal who have children who attend the childcare/Montessori. Outdoor play is critical to children's development and the year round outdoor facilities at Páistí Beaga are invaluable.
- It is noted that the Montessori element of the facility only operates from September to June and therefore the seasonality of the service reduces noise concerns.
- Páistí Beaga has a large number of outdoor toys including bicycles, cars and scooters which are required to be stored appropriately out of direct weather conditions. The steel shed which is part of this application provides such storage.

- The outdoor play facilities at the Páistí Beaga premises are considered excellent, and they facilitate independent play and the development of gross motor skills and provide a safe play environment.
- Páistí Beaga is located beside the National School which has a large outdoor play area and sports pitches. It is stated that these play areas and pitches are used on a near daily basis throughout the year and this generates noise therefore any issues relating to noise are not solely attributable to children attending Páistí Beaga.

6.3.3. The observation to the appeal submitted by P. Coleman & Associates Consulting Engineers & Planners on behalf of Noreen and Ronan Gallagher raises objections to the proposed development. The following matters are discussed;

- The observers property is a semi-detached house which is attached to the dwelling house on site which is part of the subject application.
- The observers raised their concerns with Clare County Council in relation to unauthorised development and uses which were occurring on the site.
- The site contains a semi-detached dwelling house, a separate stand-alone creche facility and six shed/store/glasshouses.
- It is stated that the application was lodged in the names of John and Patricia Hennessy. The property is registered to a limited Company Cúinche Paisti Beaga Limited. It is stated that no letter of consent was submitted with the application to permit the applicants to apply for planning permission. It is considered that the application should have been deemed invalid and that the Board should deem the appeal invalid.
- It is the opinion of the observers Consultants that the conservatory which was constructed as an extension to the rear of the original dwelling is not in compliance with exempted development Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- It is noted that the retention of this extension has not been included in this application.
- It is stated that no first floor plans of the existing dwelling were provided with the application showing the residential accommodation to be provided.

- The observation notes the planning context in terms of the relevant provisions of the Clare County Development Plan 2017-2023 (as varied).
- The provisions of the Child Care Facilities Guidelines for Planning Authorities, June 2001 is cited.
- The observers have serious concerns regarding the large scale commercial business which has been operating on the site directly adjacent to their home.
- They welcome the decision of Clare County Council to refuse planning permission for the use of the ground floor of the existing dwelling as a childcare/Montessori and the erection of a steel covered play area. They also seek that permission be refused for the steel shed.
- It is submitted that the unauthorised development to be retained is not acceptable in principle as it is contrary to the zoning objective for the site. It is stated that from the Indicative Land Use Zoning Matrix in the Development Plan that a Creche/Childcare facility is acceptable in principle on lands zoned as 'Existing Residential' this is only where the primary residential use is maintained and where existing residential amenities are protected.
- The change of use of the full ground floor of the existing dwelling including the conservatory extension to a creche/childcare facility and the vacancy of the first floor of the dwelling house has resulted in the majority of the residential component on the site being eliminated.
- The applicants state the centre was opened in 2005 and the existing dwelling became vacant until 2009 when it became used again as a childcare facility.
- No first floor plans of the existing dwelling were provided showing residential accommodation to be provided. It is unclear how the building would operate with residential accommodation at first floor and a childcare/Montessori at ground floor level.
- It is stated in the appeal that appellants claim that there has been an established community use on the site and that since 1997 the childcare facility was located in the detached building on the site. Reference is made to the use of the ground floor of the detached residential building to accommodate demand for childcare spaces from 2009.

- The observers wish to clarify that the residential building on the site is a semi-detached building and not a detached building as stated in the appeal on a number of occasions.
- The appeal refers to a submission in respect of the Draft Clare County Development Plan 2023-2029 in relation to the rezoning of the site. It is highlighted that the observers also made a submission in respect of the Draft Clare County Development Plan 2023-2029 seeking no change to the proposed zoning of “Existing Residential”. It is understood that the Chief Executive’s report on the submissions to the Draft Plan has been prepared and is with the local representatives for consideration. It is stated that it is likely that the new plan will not be adopted until the beginning of 2023. Therefore, it is only the current zoning on the subject site as per the Clare County Development Plan 2017-2023 which applies.
- The observers acknowledge the need for the provision of a creche and childcare facilities and they were satisfied with the level and scale of the development as granted under Reg. Ref. 04/626. It is stated that the current operations on the site are in breach of the following conditions of Reg. Ref. 04/626 no. 2, no. 3, no. 8 and no. 10. Condition no. 2 states that no change of use on the entire site area shall take place without a prior grant of planning permission and that no change in the opening hours or the number and age profile of the children from the details submitted shall take place without a prior grant of permission. Condition no. 3 states that the existing dwelling house shall cease to be used as a childcare centre upon completion of the new facility. Condition no. 8 states five public and three staff hard-surfaced car parking spaces shall be provided within the curtilage of the site. Condition no. 10 states that surface water from the site shall be prevented from running onto surface of public road and provision of a concrete channel or a concrete grid with sump drained to local drain or soakaway.
- It is submitted that the observers residential amenities have been unduly impacted in a negative manner through the intensification of use on the site and the erection of unauthorised structures in the rear garden.

- It is stated in the appeal that the facility currently cater for 85 children. Under Reg. Ref. P04/626 permission was granted for a stand along creche building to accommodate 20 children. If the proposed development were permitted it would significantly increase the intensification of use of the site.
- The use of the full ground floor of the dwelling house as a creche/childcare facility results in the existing dwelling house no longer being a suitable domestic residential unit. It will result in the generation of increased noise, pedestrian and vehicular traffic.
- The intensification of use on the site to fully commercial is contrary to the zoning objective and contrary to the proper planning and sustainable development of the area.
- In relation to the matter of noise it is stated that the facility generates a significant level of noise both indoor and outdoor. It is stated that the noise generated by up to 85 children at play time is not comparable with that normally generated by domestic use by children playing in a family residence.
- In relation to noise from traffic associated with the facility there is a substantial increase in traffic volumes from the development which was originally granted.
- The observers have serious concerns regarding the provision of the most recent shed directly abutting their property. It is stated that the steel shed is substantial in size and height and is visually obtrusive.
- The observers have serious concerns regarding the impact on traffic from the significant intensification of use taking place on the site. It is stated that this facility with its present numbers generates significant traffic during peak drop off and pick up times.
- In relation to car parking there is a significant deficiency in the number of car parking spaces currently provided and proposed as part of this application. It is noted that no lay-by or drop-off site parking is proposed.
- As part of the previous permission P04/626 a total of eight car parking spaces were provided, only two accessible marked out spaces were provided.
- Having regard to the close proximity of the facility to the school and the constrained nature of parking arrangements the deficient car parking

proposed it is the observers opinion that the retention of the unauthorised development would further endanger public safety by reason of traffic hazard to vulnerable road users such as cyclists and pedestrians.

- The observers state that while they note the need for childcare spaces both locally and nationally this should not be factored in the consideration of the application. It should be solely considered on the proper planning and sustainable development of the area.
- The observers refer to a number of decisions of the Board where permission was refused for childcare/creche facilities within existing residential properties. Under ABP 304626-19 permission was refused for change of use from a family childcare facility at 26 Offington Park, Sutton, Dublin 13.
- Under PL08.249011 permission was refused for the retention of (a) an increase in the number of students attending the Montessori from 15 places as previously granted under Reg. Ref.93/202467 (b) revision in the hours of operation of the Montessori School to operate between 8.30am to 5.15pm and permission for (i) the change of use of original 'Bradgate' building to residential use (ii) the extension over two floors and change of use of "Sallywood" from residential to childcare/Montessori school to accommodate the number of childcare places.
- Under ABP 303578-19 permission was refused for the erection of portacabin for sessional use for childcare facilities including before school care from 7.30am to 9.10am, pre-school care from 9.20am to 12.20pm and after school care from 2.00pm to 6.00pm Monday to Friday in the curtilage of Number 13, Lios Dubhaile, Dulla Village, Co. Tipperary. Under ABP 303524-18 permission and retention was refused for change of use from exclusively 'Residential' use to 'Residential' and 'Sessional Services-Childcare Facility' use at 43 Chelmartin Avenue, Marion, Dublin 3.
- Under PL29S.244173 permission was refused for the retention of permvision of a single storey classroom studio positioned to the side of the existing creche at Glenone Montessori & Nursery number 48 Terenure Road East, Dublin.

- The matter of enforcement is raised and while it is acknowledged that it is not within the remit of the Board the observers wish the Board to note they are not satisfied with how the Planning Authority have addressed the matter.
- The observers request that the Board refuse permission for the reasons outlined in their submission.

## 7.0 Assessment

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Policy context and planning history
- Access and traffic
- Residential Amenity
- Appropriate Assessment

### 7.1. Policy context and planning history

- 7.1.1. Clare County Council are currently reviewing the existing Clare County Development Plan 2017-2023 (as varied) and is preparing a new Clare County Development Plan 2023-2029. As detailed on the website of Clare County Council the current stage is Stage 3 ‘Public Display of the Amendments to Draft Plan’. The Proposed Amendments to the Draft Clare County Development Plan 2023-2029 and the associated addendum were on public display from Monday 28<sup>th</sup> November 2022 to Tuesday 3<sup>rd</sup> January 2023. Accordingly, the provisions of the Clare County Development Plan 2017-2023 (as varied) apply in terms of the assessment of the current appeal.
- 7.1.2. Chapter 19 of the Clare County Development Plan 2017-2023 refers to Land Use and Zonings. The subject site in Quin is zoned “Existing Residential”. As set out



under this section of the plan the objective for land zoned 'existing residential' is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained. CDP 19.3 – Development Plan Objective Compliance with Zoning. It is an objective of Clare County Council: to require development proposals to comply with the zoning of the subject site in the settlement plans and local area plans. Appendix 2 of the Plan refers to the Indicative Land Use Zoning Matrix. On lands zoned 'Existing Residential' a Crèche/Childcare facility is indicated as a use which will normally be acceptable in principle.

- 7.1.3. Chapter 5 of the Development Plan refers to Community Development and Social Infrastructure. Section 5.4.3.1 refers to Pre-School/Childcare Facilities and states that it is essential that sufficient childcare spaces are available to meet the needs of the population of the County and that childcare facilities will be encouraged to located close to residential areas, in the vicinity of employment locations and in town centres or local centres. It is advised in the Plan that while it is recognised that the provision of childcare facilities in residential areas can provide a beneficial service to the surrounding communities, this must be balanced with the protection of residential amenities and the residential character of the area. Development proposals for change of use of all or part of a dwelling house in a residential area to a childcare facility will be assessed having regard to the standards set out in Appendix 1, Section A1.3.3 Development Management Guidelines.
- 7.1.4. Appendix 1 of the Development Plan refers to Development Management Guidelines and Section A1.3.3 refers to Childcare Facilities in Residential Areas. It advises that in established residential areas detached houses/sites or substantial semi-detached properties with space for off-street car parking and/or suitable drop-off and collection points for customers and also space for an outdoor play area are likely to be more acceptable for the provision of child care facilities. This is especially the case if this involves use of only part of the house and the residential use remains.
- 7.1.5. The use of terraced properties or semi-detached properties on small plots is less likely to be acceptable for full day care facilities and will be assessed on their merits

with regard to the objectives and development management guidelines outlined in this Plan. Sessional or after-school care which is ancillary to the main residential use, may be more appropriate in this regard.

- 7.1.6. The observations to the appeal apart from the observation received from the residents of the dwelling adjoining the site have expressed support for the proposed development. The observations set out the requirement for the proposed development and refer to the wider shortfall of childcare places.
- 7.1.7. In relation to the current context and planning history on the site, the details of operations of the childcare facility on the site are set out in the appeal. The applicants have operated the childcare/Montessori use within the ground floor of the existing dwelling since 2009. Under Reg. Ref. 04/626 permission was granted for the construction of a childcare/Montessori centre in a detached building to the east of the existing dwelling. The childcare/Montessori centre was opened in 2005. Regarding the existing dwelling on site, it is confirmed in the appeal that it was vacant from 2005 to 2009 when it was then used for childcare.
- 7.1.8. The permission for the childcare/Montessori centre granted under Reg. Ref. 04/626 was subject to 17 no. conditions. Condition no. 2 specified that no change of use on the entire site area shall take place without a prior grant of planning permission and no change in the operating hours or the number and age profile of the children from the details submitted shall take place with a prior grant of permission. Condition no. 3 specified that the existing dwelling house shall cease to be used as a childcare centre upon completion of the new facility.
- 7.1.9. Refusal reason no. 2 issued by the Planning Authority refers to condition no. 3 and stated that condition no. 3 was attached to the permission for the standalone childcare/Montessori centre facility on the site was permitted under P04/626 in order to control and regulate the level of the development on the site.
- 7.1.10. In response to this refusal reason, it is set out in the appeal that it is not considered appropriate to refuse on the basis that the proposal contravenes an existing permission of planning. If this were the case, then permission could never be granted for the proposed development as it would always contravene this condition.
- 7.1.11. Refusal reason no. 1 refers to the zoning of the site which is "Existing Residential". The Planning Authority consider that having regard to the permitted uses on the site,

and the uses for which retention is sought that the residential use is no longer the primary land use and that it is therefore contrary to the zoning and the relevant provisions of the development plan.

7.1.12. It is argued in the appeal that the subject retention of the use of the ground floor of the existing dwelling as a childcare/Montessori Centre should be granted because there is no other facility in the village and it is stated that there is a clear requirement for increased childcare provision. In relation to the residential zoning of the site it is stated in the appeal that the applicants have made a submission to the Council in respect of the draft Clare County Development Plan 2023-2029 to have the site rezoned to Community use. It is also set out in the appeal that notwithstanding the “Existing Residential” zoning on the site, that a community use has been established on this site for a considerable period since at least 2004. From 1997 the childcare facility was located in the detached building on site has been used for over 13 years as a childcare facility. It is therefore put forward that the community use on site is long since established. The proximity of the adjacent National School is also highlighted.

7.1.13. Having regard to all the above details I would consider that while there is an established childcare use on the site, the subject site is zoned ‘Existing Residential’ in the Clare County Development Plan 2017-2023 (As Varied) which is the current development plan. The objective of this zoning is to provide for and improve residential amenities. While I note that the retention of the childcare/Montessori use refers to the ground floor of the existing dwelling and the applicants do not propose to use the first floor of the dwelling for this use, the first floor is currently vacant and therefore not in residential use. I would concur with the opinion of the Planning Authority that having regard to the existing permitted use on the site and proposed retention of the use of the ground floor of existing dwelling to childcare/Montessori use that the primary use on the site would not be residential it would be childcare and as such it would be contrary to the section 5.4.3.1 which refers to Pre-School/Childcare Facilities seeks to permit childcare facilities in existing residential areas provided that it is balanced with the protection of residential amenities and the retention of the character of the area. Furthermore, as set out in section A1.3.3 of the Plan that sessional or after-school care may be appropriate in the context of semi-detached properties where the proposed use is ancillary to the main residential use.

7.1.14. Accordingly, I would consider having regard to the significantly increased scale and intensification of the childcare/crèche facility over that which was permitted under planning permission register reference number P04/626, and to the limited residential use on site, that the development for which retention is sought seriously injures the amenities of residential property in the vicinity and therefore the development for which retention is sought is, therefore, contrary to the proper planning and sustainable development of the area.

## **7.2. Traffic and car parking**

7.2.1. The third refusal reason of the Planning Authority refers to the matter of traffic and car parking. The Planning Authority considered that having regard to the number of staff and number of children attending the facility and the limited on site car parking available that the subject proposal would generate a significant level of traffic movements and general activity in a residential area as well as on-street parking and turning movements. They concluded that by reason of these traffic movements and activity the proposed development seriously injure the amenities and depreciate the value of property in the vicinity and endanger public safety by reason of traffic hazard.

7.2.2. In response to this it is stated in the appeal that this refusal reason is not supported by a report of the Road Design section of the Council. In response to the matter of a shortfall of car parking it is stated in the appeal that a total of 8 no. spaces are proposed within the front garden of the site as indicated on the Site Layout Plan. They note in the appeal that the report of the Planning Officer stated that a total of 20 no. car parking spaces are required to serve the proposed development for retention and also the standalone creche.

7.2.3. It is stated in the appeal that no more than 10 staff are on site at any time during the day and that not all staff would be there at the same time because some work on a part-time basis. It is also confirmed that 4 no. staff live in the village and that they walk to work. It is submitted in the appeal that the number of car parking spaces required to serve the scheme is less than what is required under the standards in the development plan. It is put forward in the appeal that staff would require 6 no. car parking spaces and that 8 no. spaces are proposed. It is also highlighted in the

appeal that there is a pull-in bay located directly adjacent to the site in front of the primary school.

- 7.2.4. Regarding the requirements in the development plan as set out in section A1.3.3 which refers to Childcare Facilities in Residential Areas it is stated that facilities should be served by off-street car parking and suitable drop off and collection points for customers. The car parking standards are set out in section A1.9.3 of the Clare County Development Plan 2017-2023 (as varied). Creche/Playschool/Nursery require the provision 1 space per employee and 0.25 spaces per child.
- 7.2.5. The subject childcare/Montessori Centre proposed to be retained in the ground floor of the existing dwelling has 35 children and 3 no. staff members and therefore generates the requirement for 12 no. car parking spaces. On inspection of the site, I noted that there are two marked out car parking spaces to the front of the standalone childcare building on site and while the area to the front of this building and the existing dwelling is hard surfaced there is a shortfall in the number of car parking spaces which were required to be provided under the permission for the standalone creche/childcare facility. Under that permission 8 no. on-site car parking spaces were required. Accordingly, in relation to the existing provision there is a significant shortfall. It is argued in the appeal that the level of car parking is not required having regard to the fact that a number of staff live in the village and walk to and from work. Furthermore, I note that reference is made in a number of the observations to the appeal regarding the Quin Active Travel Programmer which has provided for improvements to footpaths to facilitate pedestrian movements. It is also highlighted in a number of the observations that the proximity of the national school on the adjoining site means that some children attending the national school would then attend the after school childcare and would walk between the two locations. In relation to this I would note that the evening collection would generate traffic where such children did not live within walking distance of the childcare facility.
- 7.2.6. The subject site does not have a dedicated drop-off and collection point. While I note that the neighbouring national school does have a pull in bay to the front, I consider given the restricted size of the site and limited area for vehicles to park and/or pull in for drop off and collection that the proposed development would likely give rise to traffic congestion and general disturbance along this narrow road at peak times to the detriment of local residents given the limited space available.

7.2.7. Accordingly, having regard to the site context I would consider that given the number of staff employed within the childcare/Montessori facilities on site and the number of children attending the facility and the significant deficiency in the provision of car parking, that the level of traffic generated that it would lead to unacceptable levels of traffic within this residential area and would give rise to haphazard vehicular stopping and parking practices and turning movements which would endanger public safety by reason of traffic hazard and would seriously injure the residential amenity of the occupants of nearby housing.

### **7.3. Residential Amenity**

- 7.3.1. Concerns in relation to the detrimental impact of the proposed development have been expressed by the observers Noreen and Ronan Gallagher who reside at the adjoining semi-detached dwelling to the dwelling on site where it is proposed to retain the use of the ground floor as a childcare/Montessori Centre. The observers submit that their residential amenities have been unduly impacted in a negative manner through the intensification of use on the site and the erection of unauthorised structures in the rear garden. They refer to the noise and disturbance generated by children playing in the external area and also within the ground floor of the property and reference is also made to noise generated by the traffic which arises from the operation of the childcare/Montessori Centre.
- 7.3.2. Refusal reason no. 4 issued by the Planning Authority refers to the matter of residential amenity and states that having regard to the number of children cared for on the site and the noise associated with their use of the limited outdoor space that it would have a detrimental impact on the residential amenities of the area. In relation to the steel structure for use as a shade/covered play area which it is proposed to retain, the Planning Authority considered that having regard to the height and finishes of the steel shelter building proposed for retention and its location relative to the site boundary that it would have a detrimental impact on the residential amenities.
- 7.3.3. In response to these matters the appellants put forward that the only objection to the application was from the occupants of the adjacent property. They note that report of the Planning Officer suggests that there are three sources which result in the loss of residential amenity for the adjacent property. References is made to noise from use

of the creche specifically noise from childcare using the garden, the disturbance as a consequence of extra traffic that would be generated by the proposed development and the visual impact of the proposed steel shed and the steel canopy structure for which retention was sought. The appellants acknowledge that noise generated by children would result in residential amenity considerations, however they also note the site context that there is a permitted childcare facility on the site and that it adjoins a National School which has outdoor play space.

7.3.4. The appellants request that the Board consider the planning history and site context in relation to the matter of residential amenity.

7.3.5. It is stated that the objectors did not submit any proof in the form of sound surveys that noise from children playing was at a level which is considered unbearable. Secondly, it is not considered that noise and disturbance from traffic on a public road can be deemed a source of noise and loss of residential amenity. There has been an existing childcare facility on the site, and it is highlighted that there is a primary school on the adjacent site which has been extended over a number of years. It is stated that there will always be traffic at this location and that there is noise and disturbance associated with this. It is not considered that the additional traffic which would result as a consequence of the retention of this development would increase the noise and disturbance to any significant degree.

7.3.6. In relation to these matters while I would note that permission was granted to construct a standalone Childcare/Montessori Centre under Reg. Ref. 04/626 and that this has been built and is operating it was conditioned under that permission that the use of the existing dwelling shall cease as a childcare centre upon completion of the new facility. Accordingly, it is clear that the Planning Authority in their assessment of that application considered that a certain level of childcare use on the site was acceptable subject to the existing residential use be maintained within the existing dwelling. The report of the Planning Officer in respect of the current application noted that while the upper floor of the existing dwelling is currently vacant that a poor level of residential amenity would be provided to future occupants with the ground floor being provide for childcare/Montessori use and in the absence of a designated private amenity space to serve the residence.

- 7.3.7. Regarding the subject steel shelter which it is proposed to retain, it is used as an outdoor play area in association with the childcare facility. The structure has a height of 3.2m and it directly adjoins the boundary wall with the neighbouring property which is the home of observers to the appeal. Having regard to the height of the structure and its proximity to the party boundary I would concur with the assessment of the Planning Authority that has a negative impact on the amenities of that property in terms of visual obtrusion and also noise generated.
- 7.3.8. In relation to the steel shed which is proposed to be retained for use as a store, the structure has a floor area of 18.99sq m and a height of 2.84m. On inspection of the site, I note that it is used to store a number of children's bicycles and scooters, buggies and prams associated with the childcare facility. Having regard to the nature and scale of the subject shed, I consider that it's retention is acceptable.
- 7.3.9. In conclusion, I would concur with the assessment of the Planning Authority that the having regard to the scale of the development which has taken place on the site and including the elements which it is proposed to retain that it is not appropriate to the site context which is a site containing a semi-detached dwelling and that the proposal would unduly impact upon the residential amenities of the area.

#### 7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

### 8.0 **Recommendation**

- 8.1. I recommend that a split decision be issued.
- 8.2. I recommend that **permission be grated for (C) The erection of a steel shed for use as a store, all with associated site works.**



- 8.3. I recommend that **retention of permission be refused for (A) The use of the ground floor of the existing dwelling as a childcare/Montessori Centre, and (B)The erection of a steel structure for use as a shade/covered play area.**

## 9.0 Reasons and Considerations (1)

- 9.1.1. Having regard to the provisions of the Clare County Development Plan 2017-2023 (As varied), to the scale and nature of the development to be retained, It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the development plan, would not adversely affect the amenities of the area and would otherwise be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained 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.

**Reason:** In the interest of clarity.

2. The disposal of surface water shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

## 11.0 Reasons and Considerations (2)

1. The site of the subject development is located in an area subject to the zoning objective 'Existing Residential' in the Clare County Development Plan 2017-2023 (as varied), where the objective is to provide for and improve residential amenities. Furthermore, it is a policy of Clare County Development Plan 2017-2023 (as varied) as set out in Section 5.4.3.1 which refers to Pre-School/Childcare Facilities to permit childcare facilities in existing residential areas provided that it is balanced with the protection of residential amenities and the retention of the character of the area. It is advised under section A1.3.3 of the Plan that sessional or after-school care which is ancillary to the main residential use is more appropriate in the context of semi-detached properties. Accordingly, having regard to the significantly increased scale and intensification of the childcare/crèche facility over that which was permitted under planning permission register reference number P04/626, and to the limited residential use on site, it is considered that the development for which retention is sought seriously injures the amenities of residential property in the vicinity, particularly by reason of incompatible on-street parking and traffic generation. The development for which retention is sought is, therefore, contrary to the proper planning and sustainable development of the area.
2. Having regard to the number of staff employed and the number of children facilitated on the site, and the significant deficiency in the provision of car parking, it is considered that the traffic volumes and movements associated with the proposed use of the ground floor of the existing dwelling as a childcare/Montessori Centre in conjunction with the existing permitted childcare facility on site, together with the hours of operation of such a facility, would lead to unacceptable levels of traffic within this residential area, and would give rise to haphazard vehicular stopping and parking practices and

turning movements thereby resulting in the obstruction of other road users, would endanger public safety by reason of traffic hazard, and would seriously injure the residential amenity of the occupants of nearby housing by reason of increased levels of traffic, noise, and general disturbance. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Siobhan Carroll  
Planning Inspector

30<sup>th</sup> January 2023