



An
Bord
Pleanála

Inspector's Report

ABP-314319-22

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| Development | Conversion of part of house to preschool facilities and associated site works |
| Location | Ballinaheese , Beech Road , Arklow, Co. Wicklow |
| Planning Authority | Wicklow County Council |
| Planning Authority Reg. Ref. | 21/1196 |
| Applicant(s) | Francis Burke. |
| Type of Application | Permission. |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party |
| Appellant(s) | Vaughan & Esther Curtis. |
| Observer(s) | None. |
| Date of Site Inspection | 01 st June 2023. |
| Inspector | Auriol Considine |

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1.0 Site Location and Description

- 1.1. The subject site is located at Ballinaheese, Beech Road, approximately 1.2km to the north west of the zoned land area associated with the town of Arklow, Co. Wicklow. The site lies approximately 1km to the north west of the M11 motorway and comprises a detached house in a row of houses to the north east of Beech Road. The front boundary comprises a low wall with hedging and trees planted on the garden side.
- 1.2. Other than the row of houses to the north and south of the subject site, there is also a church, St. Brigid's Church, and a small shop in the vicinity. A footpath extends from Arklow all the way to the site and immediately adjacent to the front of the site. The road is straight and is marked in the centre of the carriageway by a broken white line. The area, while located outside the zoned land area of Arklow and to the west of the motorway, might reasonably be described as suburban in nature.
- 1.3. There are a number of structures located within the rear garden area of the site, which extends to a stated 0.2ha.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices, to convert part of the home to preschool facilities and all associated site works. The specific works include the sectioning off a part of the existing house with a new partition to be constructed in the hallway and which would prevent access to the pre-school space directly from the house. In addition, a door in the place of a window on the north western elevation has been included and comprises the only entrance to the pre-school. An existing partition between two existing rooms within the house will be removed to provide a large room with a floor area of 36.9m². A third (possible bedroom) will become the office for the preschool with a WC. The total floor area of proposed use as a pre-school is indicated to be 63m².
- 2.2. Following a request for further information, the applicant advised that the preschool will be seasonal, 5 mornings a week for 38 weeks of the year and will cater for 10 children. Hours of operation were amended during covid with drop off now between 8.45-9.30am and collection between 12.30-1.00pm.

2.3. In addition to the above, and responses to other queries raised, the Board should note that the applicant sought that the current application (PA ref: 21/1196) be extended in order to lodge an application for retention permission for the unauthorised buildings on the site which do not have the benefit of planning permission. In this regard, it is noted that revised site notices do not mention the elements for retention although it does advise that significant further information/revised plans have been furnished. The newspaper notice was published on the 15th of June 2022, and I note that the objectors were advised by letter from Wicklow County Council on the 12th of May 2022 that further information had been submitted. A further submission was received from the appellant on the 1st of July 2022.

3.0 Planning Authority Decision

3.1. Decision

The PA decided to grant permission for the proposed development, including the retention of the existing sheds / garage, subject to 6 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submissions, planning history and the County Development Plan policies and objectives. The report also includes an EIA Screening and AA Screening assessments.

The planning report notes a number of areas that will require further information to be submitted notably with regard to details around the nature of the facility including numbers of children to be catered for, hours of operation and staff details, car parking, signage, details of existing sheds and garage on the site which may require permission and details of entrance to the site.

Following receipt of the response to the FI request, the final Planning Officers report notes the submission from the applicant, which requested that an extension be

facilitated in order to include elements for retention. The FI constituted significant further information and public notices were submitted. The report also notes the third-party submission in response to the further information submitted. The report recommends the inclusion of conditions in terms of signage and the use of the existing sheds and garage located within the rear garden area of the site.

The report concludes that the proposed development is acceptable, and the Planning Officer recommends that permission be granted for the proposed development. This recommendation formed the basis of the Planning Authority's decision to grant planning permission. The Board will note that the Case Planners report was endorsed by the SEP and Director of Services.

3.2.2. Other Technical Reports

Chief Fire Officer: Recommends that a condition be included in any grant of permission advising that the development requires the submission of a Fire Safety Certificate application and a Disability Access Certificate application.

EHO: No objection.

Roads Section: No objection.

Arklow Municipal District Office: Report refers to new access and sight line requirements, gradient of driveway and surface water management. It is required that the existing access be closed off before the new access is brought into use. (The Board will note that the new entrance has been permitted under a separate decision – ABP ref: ABP-312145-21 refers).

3.3. Prescribed Bodies

Irish Water: No objection.

3.4. Third Party Observations

There are 2 third party objections to the proposed development as follows:

- Ms. Ellen Burke: submits that she is the registered owner of the land.

- Vaughan & Esther Curtis: the objection is summarised as follows:
 - The existing facility (5-6 children) generates considerable noise already. Increased numbers would increase the noise and disruption at drop off and pick up times.
 - The playschool entrance is totally biased to the objectors' side and the proposed entrance layout will not stop the concentration of noise at their boundary, unfairly.
 - The Beech Road is very busy with a speed limit of 80kph. The development will bring a considerable amount of extra traffic.
 - Over the summer months / mid-term breaks, the applicant holds supper camps which don't fall under the same planning restrictions for the numbers that can attend. Numbers can often be in excess of 10 – 15.
 - The applicant has never planted any boundary hedging to try and afford privacy or act as sound barrier. If existing hedging was to fail, the objectors would be overlooked.
 - The noise from the facility interferes with the ability to work from home, while the objectors husband works night shift, and the facility disrupts sleeping during the business hours of the pre-school.
 - The impact in terms of noise was really felt over lockdown when the objector was able to enjoy the quiet.
 - The area is residential and the submission objects to any commercial premises and the consequential implications of its operation next door to their family home.
 - The need for the facility is questioned.

4.0 Planning History

PA Reg. ref. 05/2888: Permission was granted to erect a dormer bungalow, install a waste water treatment plant and soil polishing filter.

PA Reg. ref. 08/1511: Permission was sought to convert part of ground floor plan to pre-school facility. The planning officers report recommended that the

development be refused on the grounds of traffic hazard, consolidation of unauthorised development and inadequate effluent treatment system.

The case was withdrawn prior to a decision issuing.

PA Reg. ref. 09/698: Permission was sought to convert part of ground floor plan to pre-school facility. The planning officers report recommended that the development be refused on the grounds of consolidation of unauthorised development and inadequate effluent treatment system.

The case was withdrawn prior to a decision issuing.

PA Reg. ref. 20/762: Permission was sought for conversion of part of the dwelling house to preschool facilities and all associated works. Following a request for further information, it was recommended that permission be refused for the following reason:

It was considered that the proposed development would endanger public safety by reason of serious traffic hazard because 80m sight line in a north-westerly direction cannot be achieved as they are impaired by neighbouring stone pillars.

The case was withdrawn prior to a decision issuing.

ABP-312145-21 (PA Reg. ref. 21/1169): Permission sought to relocate vehicular entrance to dwellinghouse. The Board granted permission subject to 2 conditions following a third-party appeal.

5.0 Policy Context

5.1. Regional Spatial and Economic Strategy - Eastern & Midlands

It is a stated objective of the Regional Spatial and Economic Strategy (RSES), RPO 9.14 refers, that 'Local authorities shall seek to support the planned provision of easily accessible social, community, cultural and recreational facilities and ensure that all communities have access to a range of facilities that meet the needs of the communities they serve'.

5.2. National Guidelines

The following guidelines are considered relevant to the current appeal:

- Childcare Facilities – Guidelines for Planning Authorities Department of the Environment, Heritage and Local Government (2001)
- Child Care Act 1991 (Early Years Services) Regulations 2016
- Circular Letter PL3/2016 - Childcare facilities operating under the Early Childhood Care and Education (ECCE) Scheme.

This Circular issued by the Department of Environment, Community and Local Government in respect of the Childcare Facilities Guidelines for Planning Authorities 2001 within which Planning Authorities were advised that matters relating to childcare facility standards outlined in Appendix 1 of the Childcare Facilities Planning Guidelines 2001, including the minimum floor area requirements per child, should be excluded in the consideration of planning applications relating to childcare facilities and the planning authorities should solely focus on planning related considerations that fall within the remit of the Planning and Development Act 2000, as amended.

5.3. Development Plan

- 5.3.1. The Board will note that the subject appeal was considered under the previous Wicklow County Development Plan 2016-2022. In the interim, the 2022 CDP was adopted by the members of Wicklow County Council and came into effect on the 23rd of October 2022.
- 5.3.2. The subject site lies in an area which is not subject to a zoning objective.
- 5.3.3. Chapter 7 of the CDP deals with Community Development with Section 7.3 dealing with Social Infrastructure, including childcare facilities – S7.3.2 – Health, Care & Development. The provision of childcare and preschool facilities is recognised by Wicklow County Council as a key piece of social infrastructure enabling people to play a more active role in society, particularly in accessing employment and education. Childcare services range from childminding a small number of children in a private home to pre-schools and crèches. A large number of childcare facilities now provide a full range of services from caring for newborns to pre-school and

Montessori type education. The growth in population and housing in Wicklow over the last number of years has not been matched with the necessary growth in childcare services, notwithstanding the implementation of the DoECLG Childcare Facilities Guidelines, which require the provision of 20 childcare places for every new 75 housing units granted permission.

5.3.4. The following CDP objectives are considered relevant:

- **CPO 7.27** To facilitate the provision of childcare in a manner, which is compatible with land-use and transportation policies and adheres to the principles of sustainable development.
- **CPO 7.28** To facilitate the provision of a network of childcare facilities that reflects the distribution of the residential population in the County, in order to minimise travel distance and maximise opportunities for disadvantaged communities.
- **CPO 7.30** While the Planning Authority does not encourage the provision of childcare facilities in rural areas consideration may be given subject to the following strict criteria:
 - Existing infrastructural services (water supply, wastewater disposal, entrance and car parking arrangements) are adequate or can be upgraded to a standard suitable to meet the needs of the facility; and
 - The scale of the facility (i.e. the number of children attending) shall be modest and appropriate to the rural location and will be required to be justified on the basis of the catchment of the facility, the proximity to other childcare facilities and the proximity to an existing towns or village, where land is zoned or available for childcare development.

5.4. **Natural Heritage Designations**

5.4.1. The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Buckroneys-Brittas Dunes and Fen SAC (Site Code: 000729) which is located approximately 4.3km to the north east. The Kilpatrick Sandhills SAC (Site Code: 001742) lies approximately 9.6km to the south and the Slaney River Valley SAC (Site Code: 000781) is located approximately 14.1km to the south east of the site.

5.5. EIA Screening

5.5.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. The proposed development comprises the change of use of part of a detached house in a rural area for use as a pre-school and is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

5.5.1. Having regard to:

- (a) the nature and scale of the development, and
- (b) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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 at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal against the decision of the PA to grant planning permission for the proposed development. The issues raised reflect those raised with the PA during its assessment of the application and the grounds of appeal are summarised as follows:

- Impacts of the development in terms of noise and privacy.
- Operating hours – should be tied to the school term as referring to 38 weeks / 184 days is too vague to police.
- There is no evidence to justify the increase in numbers to 10.

6.2. Applicant Response

The Board will note that the applicant submitted a response to the third-party appeal, but outside the appropriate period. The response was therefore returned.

6.3. Planning Authority Response

None.

6.4. Observations

None.

7.0 Assessment

7.1. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development the subject of this application and the nature of existing and permitted development in the immediate vicinity of the site including the planning history of the subject site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

- Principle of the development
- Impact on residential amenity
- Other Issues
- Appropriate Assessment

7.2. Principle of the Development:

7.2.1. The subject site lies within a rural area approximately 1.2km to the north west of the town of Arklow and the proposed development comprises the change of use of 63m² of a large, detached house, with a floor area of +300m² for use as a pre-school. The Board will note that the home owner currently operates a pre-school facility from the house which facilitates 5/6 children in the mornings, Monday to Friday. It is submitted that, if permitted, the pre-school will facilitate a maximum of 10 children. The applicant is the only employee and as such, is bound by the relevant Child Care

Regulations in terms of provision of adequate space per child and the Adult : Child ratio.

- 7.2.2. Chapter 7 of the 2022 Wicklow CDP deals with Community Development with Section 7.3 dealing with Social Infrastructure, including childcare facilities – S7.3.2 – Health, Care & Development. The provision of childcare and preschool facilities is recognised by Wicklow County Council as a key piece of social infrastructure enabling people to play a more active role in society, particularly in accessing employment and education. Childcare services are noted to range from childminding a small number of children in a private home to pre-schools and crèches.
- 7.2.3. The CDP objectives as they relate to the provision of childcare facilities seek to ensure that they are compatible with land-use and transportation policies, CPO 7.27 refers, and to facilitate a network of such facilities that reflects the distribution of residential population in the county, CPO 7.28, refers. In addition, objective CPO 7.30 advises that while the PA does not encourage the provision of childcare facilities in rural areas, consideration may be given subject to the adequate infrastructural services, including water supply, wastewater disposal, entrance and car parking arrangements and having regard to the scale of the facility.
- 7.2.4. In terms of the above and having regard to the existing established use on the site, I am generally satisfied that the principle of the proposed development is acceptable. While I note that the third-party appellant has raised concerns regarding the need for the pre-school at this location, I am satisfied that the scale proposed is such, that it can be considered both acceptable and appropriate to this semi-rural area. While the immediately adjacent residents may not have the need for such a facility, the Board will note that the site, although somewhat rural in feel, is approximately 1.2km from the town of Arklow and has a footpath the full way from the town which passes the front boundary of the site. As such, I am satisfied that the site is accessible from an area where the population exists to support such a facility and where existing infrastructure can promote sustainable modes of travel.
- 7.2.5. I therefore, have no objection to the principle of the proposed development at this location.

7.3. Impact on residential amenity

- 7.3.1. The Board will note that the third-party has raised a number of concerns in terms of impacts on residential amenity. In particular, the issue of noise associated with the drop-offs and pick-ups as well as children playing, and the potential for overlooking into their property from the rear garden area. In this regard, I would acknowledge that during Covid times, when the pre-school was not likely operating, the noise was potentially less. However, the proposal is for a pre-school facility for up to 10 children, which is not a significant number.
- 7.3.2. In addition, I note that the operation runs, as per the response to the further information received from the applicant, between the hours of 8.45am and 1.00pm, Monday to Friday on a seasonal basis. In terms of the noise concerns raised, I would not consider it necessary to require a noise assessment and would consider that the noise from 10 children, while perhaps unwanted if working from home, would not be of such a scale or duration as to warrant a refusal of permission. I would also consider that the sounds of children playing outdoors is not an inappropriate noise in the context of the location of the site, and that the children will be indoors for the majority of time while they are attending at the pre-school.
- 7.3.3. With regard to the running of summer camps as submitted by the appellant, I note that the applicant is silent on the matter, other than to advise that the pre-school operates for 38 weeks of the year. This would appear to correlate with the operation and opening hours of primary schools. Should the Board consider it necessary, a condition could be attached to any grant of planning permission requiring that the facility would not operate outside of the dates of the local primary schools and that details of the period of summer closure would be agreed in writing with the Planning Authority.
- 7.3.4. With regard to the concerns raised regarding overlooking and the lack of planting on the boundaries of the applicant site, I would note that the existing boundary walls are not high boundary walls. I would consider it reasonable that the applicant be requested to submit a landscaping proposal for the north western boundary, to address the matter of potential overlooking, in both directions, if the children play in the back garden area. The appropriate planting of this boundary will also assist in buffering noise associated with the facility.

7.4. Other Issues

7.4.1. Roads & Traffic Safety:

The Board will note that the recent permission relating to the amendments to the entrance to the site has addressed any roads and traffic safety concerns which may have arisen in previous applications. I am satisfied, given the nominal scale of the proposed pre-school, that the development is acceptable in terms of roads and traffic safety.

Water Services:

- 7.4.2. The existing house is connected to services in terms of water and waste water. I note that the PA raised no concerns in terms of water services in terms of the proposed development. I have no objection to the proposed development in this regard.

Development Contribution:

- 7.4.3. The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development, which relates to a change of use of an area of an existing house, and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that the decision of the planning authority be upheld for the reasons and considerations and subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the existing use on the site, the planning history of the site and the modest nature of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or residential amenities of property in the vicinity 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.

10.0 Conditions

1. 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 10th day of May 2022 and by the further plans and particulars on the 20th day of June 2022, 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.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The proposed new internal partition which would cut off direct access from the main body of the house from the pre-school shall be replaced with a door.
 - (b) The landscaping of the development shall incorporate a continuous hedge of indigenous species (e.g. holly, hawthorn or beech) or of evergreen species, but not leylandii, which shall be planted for the full length of the north western boundary. Planting shall be implemented in the first growing season following this grant of permission.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of clarity and residential amenity.

3. The proposed childcare facility shall not operate outside the period of 0845 hours to 1300 hours Monday to Friday inclusive, and shall not operate on Saturdays, Sundays or public holidays, without the benefit of planning permission.

Reason: In the interest of residential amenity.

4.
 - (a) The number of children to be accommodated within the existing and proposed facility shall not exceed 10 number at any one time.
 - (b) Any proposals for intensification of attendance numbers at the site, including any proposals for camps, shall form the subject of a separate planning application.
 - (c) The use of the converted area to pre-school shall not commence prior to the full implementation of the permission granted under ABP ref: ABP-312145-21, and full compliance with conditions thereby attached.
 - (d) Only the area indicated as the pre-school within drawing number 310C13 submitted to the planning authority on the 4th day of October 2021 shall be used as a pre-school and shall not be used for any other commercial use/purpose.
 - (e) The use as a pre-school shall be operated by a resident of the main dwelling.
 - (f) The part of the dwelling used as a preschool facility shall not be separated from the principle residential use of the site. In particular, it shall not be sold or let independently of the main house and, when no longer required for the preschool facility, use of that part shall revert to use as part of the main house.

Reason: In the interests of clarity, the residential amenity of the area and traffic safety.

5. A register of attendance of the pre-school shall be maintained by the provider, which shall be made available for inspection, at the request of the planning authority.

Reason: In the interests of orderly development and the protection of residential amenity.

6. No advertising signs or structures shall be erected, except those which are compliant with the exempted development provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, without the prior approval of the planning authority.

Reason: In the interests of orderly development and of visual amenity.

7. The existing garage and sheds on the site shall not be used for human habitation or for any commercial purposes and shall be for private domestic use only.

Reason: In the interest of clarity, of orderly development and the protection of residential amenity.

8. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the existing house on the site without a prior grant of planning permission.

Reason: In the interest of residential amenity.

9. 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.

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.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

A. Considine
Planning Inspector

4th June 2023