



An
Bord
Pleanála

Inspector's Report ABP-314339-22

Development

Retention of 5 no. single storey prefabricated classrooms, hard landscaped courtyard area, and bicycle shelter, along with all associated site works and services.

Location

DRA Preschool and Afterschool (formerly Merlin Woods temporary Primary School), Doughiska, Galway.

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

22/138

Applicant(s)

Doughiska, Roscam and Ardaun (DRA) Community Development Company Ltd

Type of Application

Retention permission

Planning Authority Decision

Refusal

Type of Appeal

First Party -v- Decision

Appellant(s)

Doughiska, Roscam and Ardaun (DRA) Community Development Company Ltd

Observer(s)

None

Date of Site Inspection

8th December 2022

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in the eastern outskirts of Galway City, in the neighbourhood of Doughiska, and in a position to the east of the junction between the N6 and N67. This site lies at the north-eastern end of Merlin Woods Doughiska Park and to the south of a parade of shops and eateries off Doughiska Road. The housing estates of Fearann Ri and Tur Uisce lie to the north and south of the site, respectively, and Merlin Woods Primary School and Merlin College lie to the south-west.
- 1.2. The site is roughly square in shape, and it extends over an area of 1.44 hectares. Five single storey prefabricated classrooms with a floorspace of 576.50 sqm are clustered around a playground in its north-eastern quadrant. The surrounding grounds are fenced in. They include a bicycle shelter and a polytunnel. A car park lies to the front, and it is accessed off the distributor road known as Fearann Ri. This road bounds the site to the north and Doughiska Road bounds it to the east. The remainder of the site is down to grass, apart from a small plantation of trees in the north-western quadrant.

2.0 Proposed Development

- 2.1. The proposal is for the retention of 5 no. single storey prefabricated classrooms, along with a hard landscaped courtyard area and a bicycle shelter, and all associated site works and services.

3.0 Planning Authority Decision

3.1. Decision

Retention permission was refused on the following grounds:

1. *The proposed retention of five single storey pre-fabricated preschool and afterschool classrooms on a site zoned RA in the Galway City Development Plan 2017 – 2023, where it is the policy of the Planning Authority “to provide for and protect recreational uses, open space, amenity uses and natural heritage” and would be a use which is not compatible with the zoning objective for the area which is zoned primarily for outdoor recreation and would if permitted contravene materially the land use development zoning objective as set out in the Galway City Development Plan, set a negative precedent for similar non-*

conforming uses on RA zoned lands and would therefore be contrary to the City Development Plan and the proper planning and sustainable development of the area.

2. The proposed retention of five single storey prefabricated preschool and afterschool classrooms would be contrary to the proper planning and sustainable development of the area, as it would contravene materially Condition No. 2 of planning permission pl. ref. no. 10/105 and Condition No. 2 of planning permission pl. ref. no. 11/171, which restricted the development to be used only for a temporary period and at which time all structures on site shall be removed. The proposed development therefore would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning history of the site is reviewed. It is clear from this history that the temporary permissions granted for the prefabricated classrooms on the site were intrinsically linked to Merlin Park Woods Primary School and the provision of a permanent building for this School. As such a building has provided, the original justification for the classrooms, as an exception to the RA zoning of the site, no longer exists. Under Section 11.2.2 of the Galway City Development Plan 2017 – 2023, a specific development objective for the site refers to the provision of “a swimming pool/leisure centre with concessionary public use and a childcare facility, where a community facility is proposed as part of the development.” The proposal is for a stand-alone childcare facility and so it would not accord with this objective.

3.2.2. Other Technical Reports

- Galway City Council Biodiversity Officer: Further information requested, i.e., a landscaping plan.

4.0 Planning History

The site

- 03/508: Permission for 3 no. natural grass pitches, entrance access, parking area and ancillary site works and for outline permission for dressing rooms, equipment stores and associated services: Refused at appeal (PL61.205109)

on the grounds that the development would fail to be a sufficiently public facility.

- 08/183: Permission for the construction of a development comprising three buildings. Building one comprises a two-storey leisure centre, with basement containing a swimming pool, building two comprises of a single storey community centre and changing rooms and building three comprises a single storey creche. Permission is also sought for all associated carparking, landscaping and all ancillary site services and works: Withdrawn.
- 10/105: Permission for the construction of a temporary Primary School. Works to include the installation of 3 no. single storey prefabricated classrooms, hard landscaped courtyard, bin store, cycle rack, parking area with turning head. Accessed from a new junction with the existing Fearann Ri access road, along with all associated site works and services: Temporary 3-year permission granted.
- 11/171: Permission for the construction of additional classrooms and planning retention of existing ESB substation to previously approved Merlin Woods Primary School (Planning Ref. 10/105). Works to include the installation of 2 no. single storey prefabricated classrooms, additional hard landscaped courtyard and bicycle shelter, along with all associated site works and services: Temporary permission granted until 8th July 2013, i.e., the 3-year time horizon of 10/105.
- 13/133: Permission for the installation of 3 no. additional temporary prefabricated classrooms with all associated site works and services: Temporary permission granted until 8th July 2014, i.e., an extra year was granted for these 3 no. classrooms and the previously permitted 5 no. classrooms. Their use was restricted to Merlin Woods Primary School, "In view of the land use zoning of the site and future use of the site."

Lands to the south-west of the site

- 07/549: Outline permission for the construction of a new Primary School and new Post Primary School with all associated site works: Granted.

- 09/299: Permission outline for development which will consist of the provision of a new 450 pupil two-storey primary school building (Gross Floor Area [GFA] circa 2,300 sq.m.) and a new 650 pupil two/three storey post-primary school building (GFA circa 5,050 sq.m.) to include a PE Hall, play courts, car parking, bus set down areas, ancillary engineering services, provision of shared vehicular access from the east and all associated site development works: Granted.

5.0 Policy and Context

5.1. National Planning Guidelines

Childcare Facilities

5.2. Development Plan

Under Section 11.2.2 of the Galway City Development Plan 2023 – 2029, the site continues to be zoned recreational amenity (RA), wherein the objective is “To provide for and protect recreational uses, open space, amenity uses, natural heritage and biodiversity.” Outdoor recreation is cited as being an example of a use which is compatible with and contributes to this objective. Examples of uses which may contribute, depending on the RA location and scale of development are as follows:

- *Development of buildings of a recreational, cultural or educational nature or car parking areas related to and secondary to the primary use of land/water body for outdoor recreation,*
- *Public utilities, and*
- *Burial grounds and associated services.*

The site also continues to be the subject of the following specific development objective:

RA lands at Doughiska North of Túr Uisce. The Council will consider the development of part of these lands for a swimming pool/leisure centre with concessionary public use and a childcare facility, where a community facility is proposed as part of the development. This development shall not compromise the provision of a pedestrian and cycleway in this area.

Policy 7.7.1 reiterates and extends, i.e., the final phrase is added, of Policy 7.4.3 of the previous Development Plan, as follows:

Facilitate the development of childcare facilities, including afterschool services, at a number of suitable locations, such as, within residential areas, places of employment, city centre, neighbourhood and district centres, schools, in the vicinity of educational and community establishments and adjacent to public transport nodes in consultation with the Galway Childcare Committee.

5.3. Natural Heritage Designations

- Galway Bay Complex SAC (000268)
- Inner Galway Bay SPA (004031)

5.4. EIA Screening

The proposal is for the continuation of use of prefabricated classrooms on the site and so it is “not a project” for the purpose of EIA.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant introduces its appeal by stating that instead of a permanent retention permission it now seeks a temporary retention permission for a five-year period, within which it would seek alternative premises.

The applicant outlines its use of the site, which commenced in March 2014. The preschool is attended by c. 100 children over 5 sessions daily for 43 weeks of the year. The afterschool is attended by c. 50 children throughout the school year. Fourteen staff are employed along with three community employment scheme participants.

The applicant provides some background information to its formation in 2010. The locality of the site experienced rapid growth in the noughties, which led to a demand for community services. Research carried out in 2009 established that the local population is youthful, e.g., over a quarter of it is under 15 years of age, a third is composed of immigrants, more than 1 in 8 households are headed by lone parents,

and the number of degree holders is four times the national average. Given the youthful make-up of the population especially, the demand for the applicant's preschool and afterschool facilities is consistently high.

The applicant purchased the site in March 2022, and it is now seeking to regularise its planning status. It reviews the planning history of the site and observes that the Planning Authority has heretofore accepted its use for community purposes. Their previous use as a primary school ceased when a permanent building was built for the same and the applicant took over their use with the consent of the Department of Education and Skills.

The applicant summarises relevant provisions of the Childcare Facilities Guidelines and the CDPs for 2017 – 2023 and 2023 – 2029.

The applicant's grounds of appeal are summarised below in relation to the first reason for refusal.

- Section 11.2 of the CDP states that "Uses, which are temporary in nature, may be considered by the Council as uses that are compatible and contribute to the zoning objective." Previous CDPs expressed this position, too. Accordingly, earlier permissions for the site were granted in the light of it, and so Merlin Woods Primary School used the site until its permanent building was constructed. Since then, the applicant has used the site, and, as its location is optimum, it seeks to continue to do so while it looks for alternative premises.
- The applicant's use is similar to that of Merlin Woods Primary School, as it provides a service for local families. The prefabricated classrooms facilitate its use, and the location is ideal, being close to Merlin Woods Primary School and local housing estates.
- The Planning Authority raised no issues with respect to amenity, traffic hazard, or visual obtrusion. The use is compatible, too, with surrounding land uses.
- If the Board considers that under Section 11.2 the proposal is compatible with the zoning objective for the site, then no material contravention of the CDP would arise. Alternatively, if it considers that such a contravention would arise,

then the following provisions of Section 37(2)(b) of the Planning and Development Act 2000, as amended, are of relevance:

(i) The proposed development is of strategic or national importance

Throughout the country there is a shortage of childcare spaces at affordable prices. These factors impinge upon on whether parents are able to be fully involved in the workforce. They are, consequently, considered to be of strategic and national importance. The applicant's facility contributes to childcare capacity and its closure would have a significant negative impact on the surrounding locality.

(ii) There are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned.

Policy 7.7.1 of the CDP is supportive of childcare provision at appropriate locations. As outlined above, the site is in an optimum location for such provision, and so the retention of this use on a temporary basis would not conflict with the site's RA zoning objective.

(iii) Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under Section 28, policy directives under Section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government.

The Section 28 Childcare Facilities Guidelines sets out location criteria, which the site fulfils.

(iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development.

The pattern of development in the area in recent years has included several community uses, e.g., Merlin Woods Primary School, Merlin College (secondary school), and the Cumasu multi-unit community centre on Doughiska Road. The retention of the proposed childcare facility would continue this pattern.

The applicant's grounds of appeal are summarised below in relation to the second reason for refusal.

- While Condition No. 2 attached to the temporary permission granted to 11/171 is noted, it does not preclude the granting of permission by the Board to the applicant, which is now being sought.

6.2. **Planning Authority Response**

None

6.3. **Observations**

None

6.4. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the Childcare Facilities Guidelines, the Galway City Development Plan 2023 – 2029, relevant planning history of the site and the surrounding area, the submissions of the parties, and my own site visit.

Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Zoning, planning history, and the proposed use, and
- (iii) Appropriate Assessment.

(i) Zoning, planning history, and the proposed use

7.2. Under the current CDP and its predecessor, the site is zoned for recreational amenity, and so the objective for it is "To provide for and protect recreational uses, open space, amenity uses, natural heritage and biodiversity." Guidance on land uses within this zone indicates that outdoor recreation is the land use envisaged. Buildings of a recreational, cultural or educational nature maybe considered where, critically, they are related to and secondary to outdoor recreation.

- 7.3. The proposal is to retain the prefabricated classrooms on the site, along with ancillary items, such as a courtyard and a bicycle shelter, and thereby to continue the use of the site as a preschool and afterschool facility. The Planning Authority refused this proposal on the grounds that, as a non-outdoor recreational use, it would materially contravene the above cited zoning objective for the site.
- 7.4. At the appeal stage, the applicant has revised its proposal insofar as it now seeks permission to retain its preschool and afterschool facility for 5 years, during which it would seek alternative premises for its facility. The applicant goes on to draw attention to Section 11.2 of the CDP, which includes the following statement concerning temporary uses: "Uses, which are temporary in nature, may be considered by the Council as uses that are compatible and contribute to the zoning objective." This statement appeared, either verbatim or in essence, in earlier CDPs and so it would have informed the original temporary permission (10/105) for the prefabricated classrooms on the site. It is interpreted as meaning that uses, which would otherwise be incompatible with the zoning objective for a site, can be accepted on a temporary basis.
- 7.5. I have read the case planner's report on 10/105 in which the above cited advice on temporary uses is set out and interpreted in the manner indicated by the applicant. At that time, the original prefabricated classrooms were used for a temporary period by Merlin Park Woods Primary School, while a permanent building for this School was constructed nearby. Temporary permission was granted against the backdrop of an extant permission (07/549 and 09/299) for the permanent building. Ultimately, it was accompanied by further temporary permissions for additional classrooms and an overall time period for the school use of 4 years. The school relocated to its permanent home and 3 no. of the prefabricated classrooms were removed from the site, leaving the 5 no. which are the subject of the current proposal *in-situ*. In 2014, the applicant began using the remaining classrooms as a preschool and afterschool facility and it is this use that it seeks to continue on the site for a further 5 years. Clearly, the nature of the facility and the proximity of Merlin Park Woods Primary School, create synergies that ensure the location of the site is optimal.
- 7.6. Under the CDP, the site is also the subject of a specific development objective, which seeks the provision of a swimming pool/leisure centre with an accompanying childcare facility. This objective appears to mirror an earlier application, 08/183,

made by McInerney Homes Ltd, which was deemed to be withdrawn following the lapse of six months without a response to a request for further information. The case planner discusses it and observes that what is envisaged is not a standalone childcare facility, such as that currently proposed for retention, but one that would be incorporated in a wider recreational development. While I recognise the validity of this observation, I note that the specific development objective does contemplate the presence of a childcare facility on the site and so, to that extent, such a facility is not viewed as being entirely incompatible with the zoning objective.

7.7. During my site visit, I observed the afterschool facility in operation. Notwithstanding the fact that the classrooms are of prefabricated construction and they have been in-situ for upwards of 12 years, these classrooms are in good condition. The functionality of the facility for this childcare use was self-evident and it presented as being one that was clearly meeting a local need. I recognise that it is an unauthorised use at present. I recognise, too, that were the use to cease on the site, the applicant may have difficulty, in the short-term, finding alternative premises to continue to provide the well-used preschool and afterschool facility.

7.8. The current proposal is analogous to the earlier school proposal. However, one significant difference is that the earlier proposal was, as outlined above, acceded to against the backdrop of an extant permission for a permanent home for the school. No parallel exists for the preschool and afterschool facility. Furthermore, it is an on-going use, rather than a proposed use that has yet to commence. As noted above, if it were to cease with immediate effect, then social harm would be likely to occur. In these circumstances, I consider that it would be reasonable to allow the facility's retention for a temporary period to allow for alternative premises to be found and, thereby, to ensure the continuity of childcare provision. While the applicant has requested 5 years, I consider that to be an unduly long period for the purposes of sourcing alternative premises and relocating to the same. Three years would, in my view, be an ample period, and it would leave time, under the current CDP, for the zoning objective to be realised with the clearance of the site and its use for recreation as part of the wider Merlin Woods Doughiska Park.

7.9. I accept that the advice on temporary uses set out in Section 11.2 of the CDP means that the proposal would not materially contravene the zoning objective for the site. Accordingly, the provisions of Section 37(2)(b) of the Planning and Development Act

2000, as amended, do not arise. If the Board takes a different view, then the applicant has set out why it considers that under Items (i), (ii), (iii), and (iv) of this Section the proposal would warrant such material contravention. I have reviewed the applicant's case in this respect, and I do not find it persuasive.

7.10. I note the Planning Authority's second reason for refusal, which relates to earlier time limited conditions attached to the permissions granted to 10/105 and 11/171. I note, too, that the periods cited have expired many years ago now and so in that sense they cannot now be contravened. I therefore agree with the applicant that this reason for refusal does not preclude the current proposal from being granted retention permission.

7.11. I conclude that the retention of the prefabricated classrooms for continued use as a preschool and afterschool facility would, under the CDP, be appropriate for a temporary period only.

(iii) Appropriate Assessment

7.12. The proposal is for the retention of prefabricated classrooms for continued use as a preschool and afterschool facility on a fully serviced suburban site, which is neither in nor beside a European site. Accordingly, no Appropriate Assessment issues would arise.

7.13. Having regard to the nature, scale, and location of the proposal, the nature of the receiving environment, and proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans of projects on a European site.

8.0 Recommendation

That temporary permission be granted.

9.0 Reasons and Considerations

Having regard to the Galway City Development Plan 2023 – 2029 and the planning history of the site, it is considered that, subject to the temporary retention of the prefabricated classrooms for use as a preschool and afterschool childcare facility

only, the proposal would be compatible with the zoning objective for the site and no material contravention of this objective would occur. No Appropriate Assessment issues would arise. The proposal would, therefore, accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 10th day of August 2022, except as may otherwise be required in order to comply with the following conditions.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The prefabricated classrooms shall only be used as a preschool and afterschool childcare facility.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The use of the prefabricated classrooms as a preschool and afterschool childcare facility shall cease and the prefabricated classrooms shall be removed and the site cleared on or before the expiration of a period of 3 years from the date of this order.</p> <p>Reason: The existing use is not acceptable in principle as a standalone use in this area and its retention for an indefinite period would be contrary to the proper planning and sustainable development of the area.</p>

Hugh D. Morrison
Planning Inspector

24th January 2023