



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314748-22

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| <b>Development</b>                  | Retention of childcare facility and ancillary works                |
| <b>Location</b>                     | Auntie Anne's Country Creche,<br>Gilltown, Kilcullen, Co. Kildare. |
| <b>Planning Authority</b>           | Kildare County Council   |
| <b>Planning Authority Reg. Ref.</b> | 22732  |
| <b>Applicant(s)</b>                 | Annie Birchall   |
| <b>Type of Application</b>          | Permission   |
| <b>Planning Authority Decision</b>  | Grant  |
| <b>Type of Appeal</b>               | First Party (against S. 48 Condition)                              |
| <b>Appellant(s)</b>                 | Annie Birchall   |
| <b>Observer(s)</b>                  | None   |
| <b>Inspector</b>                    | Ian Boyle  |

## 1.0 Site Location and Description

- 1.1. The appeal site is in a rural area to the southeast of Kilcullen, in County Kildare. It is accessed via a local road, the L2033, which runs along the eastern boundary of the property.
- 1.2. The site accommodates an existing childcare facility comprising three buildings (referred to as Buildings A, B and C in the application), which are used for childcare and play purposes. The fourth building is a security hut (Building D). There is an outdoor area to the rear (west) and side (north) of the property. There is a car park and a sliding access gate at the front of the site. An existing wastewater treatment system serves the facility.
- 1.3. The surrounding area is rural in nature. The predominant land use is mainly agriculture. There are a small number of detached dwellings in the vicinity, the nearest of which is roughly 100m south. There are two further dwellings to the north of the site, near where the L2033 meets Oak Avenue.
- 1.4. There is a building and agricultural fencing business on a property a short distance to the south. This comprises several outbuildings, sheds, related materials and equipment, and other associated infrastructure.
- 1.5. Gilltown studfarm and horse stables and its associated lands are to the east on the far side of the L2033.
- 1.6. The site has a stated area of approximately 0.2ha.

## 2.0 Proposed Development

- 2.1. The proposed development is for retention of the existing childcare facility and associated works.
- 2.2. The Planning Authority requested further information on 2<sup>nd</sup> August 2022 in relation to car and bicycle parking provision.
- 2.3. The Applicant responded on 18<sup>th</sup> August 2022. A Mobility Management Plan accompanied the submission.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority issued a Notification of Decision (NoD) to grant retention permission on 7<sup>th</sup> September 2022, subject to 17 no. standard conditions.
- 3.1.2. Condition No. 17 is in relation to the payment of a financial contribution (€26,177.42) and is applied under Section 48 of the Planning and Development Act 2000, as amended. The reason stated is that 'it is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority'.
- 3.1.3. The Applicant is appealing the condition.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The nature and design of the proposed development would not seriously injure the amenities of the area, or of property in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.
- The Council's Development Contribution Scheme (2015-2022) requires that a contribution should be charged on the total floor area of the existing crèche and associated buildings proposed to be retained (482sqm).

#### 3.2.2. Other Technical Reports

Environment: No objection subject to conditions.

Environmental Health Officer: No objection subject to conditions.

Area Engineer: No objection subject to conditions.

Roads Department: No objection subject to conditions.

Chief Fire Officer: No objection subject to conditions.

## 4.0 Planning History

### Subject Site

Reg. Ref. 99/1282: The Planning Authority granted permission for a crèche and wastewater treatment system on 22<sup>nd</sup> November 1999. The Applicant was Anne Birchall.

Condition 6 required payment of a financial contribution of £1,250.

Condition 12 applied a temporary duration of permission for the proposed development for a period of three years.

## 5.0 Policy Context

### 5.1. Kildare County Council Development Contribution Scheme 2023-2029

The Kildare County Council Development Contribution Scheme 2023-2029 ('the Scheme') was adopted on 19<sup>th</sup> December 2022 and came into effect on 1<sup>st</sup> January 2023. It replaces the previous Contributions Scheme, which was for the period 2015 to 2022.

The following sections of the Scheme (2023-2029) are considered relevant:

Section 8.2 Non-residential Development (e.g., commercial / retail development / warehousing)

The development contribution rate shall be €62 per sqm.

Section 9 Retention Permission

No exemptions or waivers shall apply to any developments subject to retention permission.

Section 10.1 Temporary Permission

Where a temporary permission is granted the following reduced rates shall apply:

- 33% of normal rate for permissions of up to 3 years.
- 50% of normal rate for permissions of up to 5 years.
- 66% of normal rate for permissions of up to 10 years.

Where permission is subsequently granted or a combination of temporary permissions exceeds 10 years, previous contributions paid may be taken into account.

## 5.2. **Kildare County Development Plan 2017-2023**

The relevant Development Plan is the Kildare County Development Plan 2017-2023 ('County Development Plan').

### Chapter 11 - Social, Community & Cultural Development

- **Section 11.13** sets out the Council's policy in relation to **Childcare Facilities**.

### Chapter 17 - Development Management Standards

- **Section 17.5** sets out the development management standards for **Childcare Facilities** and states that 'all childcare facilities shall be provided in accordance with the Childcare Facilities: Guidelines for Planning Authorities (DEHLG)'.

Variation No. 1 of the Kildare County Council Development Plan 2017-2023 took effect from 9<sup>th</sup> June 2020.

### Status of the County Development Plan

*Note: At the time of writing, the Kildare County Development Plan 2023-2029 was due to come into effect on 28<sup>th</sup> January 2023.*

## 5.3. **National Policy**

- *Childcare Facilities: Guidelines for Planning Authorities, 2001*
- *Development Management Guidelines for Planning Authorities, 2007*
- *Guidelines for Planning Authorities on Development Contributions, 2013*

## 5.4. **Natural Heritage Designations**

No natural designations apply to the subject site.

The nearest European Site is the pNHA Curragh (Kildare) (Site Code: 000392), which is roughly 3.7km to the northwest and on the far side of the M9 Motorway.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Approximately one third of the floor area of the existing childcare facility ('Building A') has planning permission. This building has permission and should not have been included for the purposes of calculating the development contribution amount required.
- The building was for a proposed crèche and received permission in 1999 under Reg. Ref. 19/1282. The permission was restricted to a temporary three-year period under this Decision (Condition No. 12 applies).
- The rationale of the Planning Authority for applying this condition was that as the proposed development comprised a prefabricated structure it should be considered as temporary in nature. However, the intention was never for the crèche to be temporary, and the proposed building was not a prefab.
- Retention of the entire crèche facility is being sought as part of the current application to regularise the planning situation for the overall site only.
- In summary, the Board is requested to not apply the floor area of Building A and that the levy to be applied should instead be €18,030.92 (derived from 332sqm \* €54.31sqm).

### 6.2. Planning Authority Response

- The Planning Authority have reviewed the appeal and considers that the calculation of the development contribution has been correctly applied and in accordance with the Council's Development Contribution Scheme.

## 7.0 Assessment

- 7.1. The sole planning consideration relevant to this appeal case is whether the Applicant should be required to pay a development contribution in respect of the development proposed, which is for retention of an existing childcare facility and ancillary site works.

- 7.2. The proposed development is in accordance with the relevant Development Plan policy and is considered acceptable. The appeal, therefore, is confined to the matters concerning the specific condition, which the Applicant has appealed, and which, in this case, can be treated under Section 48(10)(b) of the Planning and Development Act, 2000 (as amended).
- 7.3. The role of the Board is confined to assessing whether the terms of the Council's Development Contribution Scheme have been correctly applied under the relevant legislation, which, as outlined above, is Section 48(10)(b) of the Planning and Development Act, 2000 (as amended). The Board, therefore, has no function in reviewing or determining if a Council's Development Contribution Scheme has been correctly prepared and / or adopted.
- 7.4. The appeal is the subject of Condition No. 17 of the Council's Decision, which requires the Applicant to pay a development contribution in the order of €26,177.42. The condition was applied by the Planning Authority under the provisions of Section 48 of the Planning and Development Act 2000 (as amended) and the stated reason for doing so is that 'it is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority'.
- 7.5. The Applicant argues that a part of the existing overall creche facility already has permission. This permission relates to Building A, as shown on the relevant Site Layout Plan, and which has a stated floorspace of 165sqm. [I have scaled the relevant drawings accompanying the application and confirm this information is accurate.]
- 7.6. I note that there is some confusion regarding the planning status of the development in that the Applicant decided to include Building A in the current application 'in order to regularise the planning situation on the overall site'. However, I note that they also state in the same submission, i.e., the appeal, that the building already has permission and that this was obtained under Reg. Ref. 99/1282 in November 1999. It is argued that the Planning Authority acted in error by attaching a condition which had the effect of making the permission temporary and for a period of three years only.

- 7.7. The Applicant argues that their intention for the original proposed development (i.e., Building A under Reg. Ref. 99/1282) was never for it to be temporary in nature and that a permanent facility was always envisaged. However, I note that Condition No. 12 clearly states that the use of the structure 'shall cease on the expiration of the period of 3 years beginning on the date of the grant of the permission and the structure shall be removed from the site within a period of 2 months of cessation of the use' unless a further permission is obtained.
- 7.8. Therefore, and having regard to the above, it is clear to me that temporary permission was granted for Building A under Reg. Ref. 99/1282. Furthermore, as the three years since the date of the grant of the permission has passed, I consider it appropriate that the building was included as part of the overall retention application. As stated by the Applicant themselves the intention is to regularise the planning status of the overall development and this is the appropriate manner in which to achieve this.
- 7.9. The Planning Authority has therefore correctly applied the terms of the Scheme to overall proposed development, which includes Building A, and I do not consider that this structure should be omitted from the area considered for contributions.
- 7.10. I note that the 'Kildare County Council Development Contribution Scheme 2023-2029' came into effect on 1<sup>st</sup> January 2023. This replaces the previous Contributions Scheme, which covered the period 2015 to 2022. The rate per sqm under the previous scheme was €54.31 and this rate was used to determine the total contribution amount specified by Condition No. 17.
- 7.11. However, as the Development Contribution Scheme for the period 2023-2029 has now taken effect, I consider it appropriate to apply the rate specified in this Scheme instead, and not the old Scheme (for 2015-2022). I note that the applicable rate for 'Non-residential Development' is €62 per sqm. Therefore, I recommend that the contribution amount should be revised upwards to €29,884.00 and the condition be amended accordingly. I note also that Section 9 of the Scheme, which relates to retention permission, states that no exemptions or waivers shall apply to any developments subject to retention permission.
- 7.12. Section 10.1 of the Scheme states that where permission is subsequently granted, or a combination of temporary permissions exceeds 10 years, previous contributions



paid may be taken into account. However, the Applicant has not referenced this part of the Scheme in their appeal, nor furnished any information confirming whether any contribution was made by them to the Council in respect of the previous temporary permission for the development. In this regard, I note that Condition No. 6 of Reg. Ref. 99/1282 specified a levy contribution of '£1,250'. However, there is nothing on file to suggest any payment or contribution was ever made.

- 7.13. In summary, I consider that the provisions of the Council's Development Contribution Scheme (2015-2022) have been properly applied in this case by the Planning Authority. However, as the 2023-2029 Scheme took effect from 1<sup>st</sup> January 2023 I consider that Condition No. 17 of the Planning Authority's Decision should be amended to reference a contribution amount of €29,884.00.

## **8.0 Recommendation**

- 8.1. I recommend, based on the reasons and considerations below, that the terms of the Council's Development Contribution Scheme for the area have been properly applied in respect of Condition No. 17.
- 8.2. However, as the Kildare County Council Development Contribution Scheme 2023-2029' took effect on 1<sup>st</sup> January 2023 and a revised development contribution rate now applies, I recommend that the Applicant be required to pay to the Planning Authority a financial contribution of €29,884.00.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to the provisions of the Kildare County Council Development Contribution Scheme 2023-2029, the Guidelines for Planning Authorities on Development Contributions (2013), and Section 48(10)(b) of the Planning and Development Act, 2000 (as amended), it is considered that the terms of the Council's Development Contribution Scheme for the area have been properly applied by the Planning Authority in respect of Condition No. 17.
- 9.2. However, it is considered that the condition should be amended to reflect the terms of the Council's current Development Contribution Scheme (2023-2029) for the area, as follows:

## 10.0 Conditions

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| 1. | <p>The developer shall pay to the planning authority a financial contribution of €29,884.00 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 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. The application of any indexation required by this condition 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.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission</p> |
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Ian Boyle  
Planning Inspector

12<sup>th</sup> January 2023