



An
Bord
Pleanála

Inspector's Report

ABP-315906-23

Development

Amendment to Condition 1 of grant of permission ABP-308401-20. The proposed amendment will include the following: 1. The omission of the creche facility permitted under ABP-30841-20. 2. The construction of 2 residential units.

Location

Baile Uí Chuiric Thiar, Ballyquirke, Moycullen, Co. Galway.

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

221089

Applicant

Baile Uí Choirc Fearainn Teoranta

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party v. Refusal

Appellant

Baile Uí Choirc Fearainn Teoranta

Observer(s)

Conradh na Gaeilge

Date of Site Inspection

22nd September 2023

Inspector

Ronan O'Connor

1.0 Site Location and Description

- 1.1.1. The appeal site, which has a stated area of 1.325 hectares, is located to the south east of Maigh Cuilinn (Moycullen) Village centre. The appeal site is currently a construction site. Beyond the north western boundary is existing development fronting Church Road and at the junction of Church Road and the N59. To the north east of the site is the Uillinn housing development consisting of two-storey dwellings. Immediately adjacent the north eastern boundary is a single-storey structure in use as a crèche (accessed off Church Road). To the south east are a number of dwellings that back onto the site as well as a terrace of dwellings fronting onto the N59.

2.0 Proposed Development

- 2.1. Amendment to Condition 1 of grant of permission ABP-308401-20. The proposed amendment will include the following: 1. The omission of the creche facility permitted under ABP-30841-20. 2. The construction of 2 residential units.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. The planning authority decided to Refuse permission for the following 2 no. reasons.:
1. Proposal would materially contravene Town Centre C1 zoning/materially conflict with Land Use Zoning Policy Objective MGST 1/Seeks to provide for the development and improvement of appropriate town centre uses/proposed removal of the crèche facility further reduces the appropriate mix of uses for this Town Centre C1 Zoned site.
 2. Insufficient evidence has been provided to indicate that the proposed removal of the crèche would not result in a significant loss of residential amenity and services/to permit the development as proposed would contravene the sequential development of the town centre by potentially generating unsustainable and unnecessary commuting patterns for residents of the overall scheme, and those in the surrounding area.

3.3. Planning Authority Reports

Planning Reports

- 3.3.1. The following comments in the first planner's report [dated 24/11/2022] are relevant to this appeal:
- The proposed omission of the crèche is not considered acceptable in the absence of a robust justification for same.
- 3.3.2. FI was requested on 25th November 2022 in relation to 2 no. specific issues as follows:
1. Submit a Childcare Demand Analysis
 2. Submit a comprehensive justification for removal of crèche having regard to the Town Centre C1 zoning.
- 3.3.3. FI was received 11th January 2023.
- 3.3.4. The following comments within the second planner's report [dated 30/01/2023] are of relevance to this appeal:
- Refers to the submitted Childcare Demand Analysis Report
 - Allocated population growth of 350 persons as predicted in the Core Strategy has not been satisfactorily considered
 - Noted that there is no morning slot availability in the existing childcare facilities surveyed in the area, as per the submitted Analysis Report
 - Refers to the submitted vacancy survey.
 - PA acknowledges there is a level of commercial and retail inoccupancy in Moycullen
 - Considered that unsatisfactory evidence has been submitted to indicate that the proposed removal of the crèche would not result in a significant loss of residential amenity and services to existing and future residents
 - Overall mix of the scheme would almost exclusively be of residential use

- Contrary to the land use zoning
- Notes that Moycullen has experienced a population growth of 9.3% from 2011 to 2016.
- Justification put forward is contrary to Moycullen's Small Growth Town status/contrary to Policy Objective MSGT 1 and MSGT 3

3.3.5. Recommendation was to Refuse permission, as per the reasons for refusal above.

Other Technical Reports

3.3.6. None

3.4. **Prescribed Bodies**

3.4.1. TII – No observations to make.

3.5. **Third Party Observations**

3.5.1. None recorded in the Planner's report.

4.0 **Planning History**

PA Reference 22/353 – Permission granted to amend condition 1 of permission ABP-308401-20 for (1) a change from assisted living to residential use at ground floor blocks 1, 2 & 3, house types A, A2 & B2 (2) redesign of the southern access stairway leading up to the public open space (3) Minor amendments to elevations of Duplex Blocks No. 1, 2, 3. [Final Grant Date 20/06/2022]

ABP Reference 308401 (PA Ref 20/1005) – Permission granted on appeal for the demolition of outbuilding and construction of 48 residential units, community facilities and access routes. An NIS accompanies this application. [Decision Date 25/03/2021]

5.0 **Policy Context**

Section 28 Guidelines

Childcare Facilities – Guidelines for Planning Authorities (2001)

Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2023)

Galway County Development Plan, 2022-2028

- 5.1.1. The Development Plan was adopted by the elected members on the 9th May and came into effect on the 20th day of June 2022.

Volume 1

Moycullen/Maigh Cullen is designated a Small Growth Town (Settlement Category 5) - Small Towns with local service and employment potential. There is a need to promote regeneration and revitalisation of towns and support local enterprise and employment opportunities to ensure their viability as service centres for surrounding rural areas.

CF 1 Childcare Facilities Encourage and support the sustainable provision of childcare facilities in appropriate locations and seek their provision concurrent with development, having regard to the distribution of the residential populations and population targets for the area and in accordance with the Guidelines on Childcare Facilities: Guidelines for Planning Authorities (DoEHLG, 2001), the Childcare (PreSchool Services) Regulations 2006 and any other relevant statutory guidelines which may issue during the period of this Plan.

CF 3 Creche Facilities Require where appropriate the provision of crèche facilities in mixed use/residential developments in accordance with the ministerial guidelines for Planning Authorities on Childcare Facilities published in 2001. In general, childcare facilities outside of established settlements shall only be permitted adjacent to or in close proximity to existing educational or social facilities.

Volume 2 – Small Growth Towns

Table 4.12 – Projected Population increase between 2022-2028 is 350 no. persons.

Section 7.1 - Maigh Cullen Small Growth Town

Policy Objective MSGT 1 Sustainable Town Centre

Promote and support the development of the Town Centre as an intensive, high quality, well-landscaped, human-scaled and accessible environment, with an

appropriate mix of uses, including residential, commercial, service, tourism, enterprise, public and community uses as appropriate, that provide a range of retail services, facilities and amenities to the local community and visitors to the town. The town centre and associated main streets shall remain the primary focus for retail and service activity within Maigh Cuilinn.

MSGT 3 Community Facilities and Services

To encourage and support the development of local facilities and services to meet the needs of the local community. In particular in the case of Maigh Cuilinn encourage the provision of additional community services such as a new school, local library or other civic use to the benefit of the local community.

5.2. Natural Heritage Designations

- 5.2.1. The subject site is located approximately 1km to the west of Lough Corrib SAC (Site Code 000297).

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal is a **1st Party Appeal Refusal** of Planning Permission Reg. Ref. 22/1089. The main points of the grounds of appeal are as follows:

Reason for Refusal No. 1

- Development as permitted by ABP consists of 48 no. units/below the threshold of 75 units required to provide a childcare facility.
- Fire Cert capped the number of children in the facility at 40 children
- Lack of interest from operators/concerns about an absence of demand for spaces
- Rather than constructing a non-viable crèche, the application is proposing 2 additional units
- Proposal is still considered to be a mixed-use development/community café is located to the east of Block 02

- Remains consistent with the land use zoning objective 'Objective LU1 Village Centre/Commercial (C1)'
- Vacancy Survey Report was prepared by MKO/submitted at FI stage
- Highlights level of existing commercial vacancy within Moycullen/higher than the national average at 14.9%/conducted December 2022
- Report also considered planning precedents/Feb 2021 discount store was refused, reason no. 2 referred to a high level of retail vacancy/overprovision of existing and permitted retail space in the village (Ref 20/1918). This was allowed on appeal (309636-21)
- Applicant has engaged with at least 3 crèche operators/all of whom concluded that a new crèche in Moycullen is not financially viable due to absence of identified demand for child spaces
- Construction of the crèche which would likely remain vacant/would injure village further/there is a demand for homes

Reason for Refusal No. 2

- Childcare Demand Assessment submitted at FI stage/provides a detailed analysis of demographic trends in Moycullen among children of crèche going age/provides a survey of the existing childcare capacity in the village
- Crèche going population has remained the same for a period of 5 yrs at 158 no. children/overall population has increased by 145 people/reduction therefor in the percentage of population that is of crèche going age (by 0.8%)
- Capacity study of existing crèches was conducted in Dec 2022
- Five operational crèches had surplus capacity in the afternoons
- Two of the five existing crèches in the area are within two minutes walk of the appeal site
- Reports from the Dept. of Education predict primary enrolments will decline over the coming years
- Submission made by the Dept. of Education on the Draft Galway County Development Plan 2022-2028 highlighted there is no requirement for additional

primacy school spaces in Moycullen/considered there would also be no requirement for any additional crèche spaces in Moycullen

- Existing vacant commercial spaces within the town at a similar scape to that of the permitted crèche
- Would be more appropriate for a crèche if demographic and demand projections change in the future.
- Encl: Decision Notice (Appendix 1); Vacancy Survey Report (Appendix 2); Childcare Demand Assessment (Appendix 3).

6.2. Planning Authority Response

6.2.1. No response received.

6.3. Observations

6.3.1. 1 no. observation on the appeal was received from Conradh na Gaeilge. The issues raised are summarised as follows (as translated from the Irish):

- Development Plan shall include objectives to protect the linguistic and cultural heritage of the Gaeltacht
- Statutory duty to take into account these specific objectives in the Development Plan
- PA did not impose condition regarding language matters (application was refused)
- Conradh na Gaeilge recommends rejecting the application or if it is allowed that language conditions are applied/or that a Linguistic Impact Statement be requested and a Language Inurement Clause for 15 years be applied to the development/at least 35% of the people who settle in the development will have a B2 TEG standard of Irish
- Refer to the provisions of the Section 28 Guidelines – Development Plans Guidelines for Planning Authorities (2007) – Mandatory Objective 12 Gaeltacht Areas – Government Policy recognises that conditions must be applied to

developments to ensure that the development will benefit the linguistic and cultural heritage of the Gaeltacht

- Refer to Acht na Gaeltachta 2012
- Goal of the Galway County Development Plan 2022-2028 that the Council will support language planning in the Gaeltacht Language Planning Area/Maigh Cuilinn is a Language Planning Area
- Development would undermine the goals of the Language Plan for Maigh Cuilinn, approved under the Gaeltacht 2012 and supported by the Development Plan
- Necessary that a language condition be applied to a development of this magnitude
- Refer to previous JR proceedings (Comharchumann Ráth Chairn v. An Bord Pleanála [2021] IEHC 703 – in relation to decision by ABP to permit a 30 unit estate and hotel in County Meath/no Language Condition imposed
- Refer to the provisions of the Treaty of the European Union including Articles 2, 3(3) and 107.

7.0 **Assessment**

7.1. I propose to assess the appeal under the following headings:

- Town Centre Zoning and Mix of Uses
- Childcare Demand
- Other Issues

7.2. **Town Centre Zoning/Mix of Uses**

7.2.1. The Planning Authority's First Reason for Refusal refers to a material contravention of the Town Centre C1 zoning, as result of the proposed omission of the creche, citing the lack of an appropriate mix of uses, and states the proposed development would materially conflict with Policy Objective MGST 1. Policy Objective MSGT 1 'Sustainable Town Centre' seeks to promote and support the development of the Maigh Cullen Town Centre with an appropriate mix of uses.

- 7.2.2. The appellant is of the view that the proposal is consistent with the land use zoning and a mixed use development would be retained as the café use is still being delivered.
- 7.2.3. I note the zoning of the site is C1 'Town Centre'. Volume 2 Section 4.4 refers to Land Use Zones and for 'Town Centre/Commercial' zoning, the Policy Objective is 'To provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic/community uses and to provide for "Living over the Shop" scheme Residential accommodation, or other ancillary residential accommodation'. Section 4.6 of Volume 2 refers to Land Use Zoning Objectives for the Small Growth Towns and within same Land Use Zoning objective SGT 3 Town Centre seeks to *inter alia* protect and enhance the vitality and viability of town centres.
- 7.2.4. The proposal seeks to omit the creche facility that was originally proposed to the eastern boundary of the site, in a location that is set well in from the main street, and to replace same with 2 no. duplex units. The main issue, to my mind, is to determine if the omission of the creche unit would undermine those objectives for the town centre as cited by the Planning Authority, and as contained in the Development Plan, which are essentially to secure an appropriate mix of uses within Moycullen Town Centre. I am of the view that it does not. The potential contribution of the creche to the vitality and viability of the town centre is limited, in my view, having regard the limited scale of the creche and the location of same to the rear of the site. The development would still contain a community café use, with associated paved civic space, located directly adjacent to the main street, which would contribute in a more meaningful manner to vitality and viability of Moycullen Town Centre. I also share the view of the previous reporting Inspector, in relation to the parent permission (308401), that the delivery of residential on this site may help to support existing and future commercial services within the town centre, and in this regard the delivery of 2 no. additional units would further support same.

7.3. **Childcare Demand**

- 7.3.1. The second reason for refusal notes that the applicant failed to provide sufficient evidence that the removal of the creche would not result in a significant loss of

residential amenity and services, referring also to potential generation of unsustainable and unnecessary commuting patterns for residents of the scheme.

- 7.3.2. The first party appellants note that the originally proposed development of 48 no. units is below the threshold of 75 units, where it is required to provide a childcare facility, making reference to the Childcare Facilities Guidelines for Planning Authorities (2001). Reference is made to the Childcare Demand Assessment submitted at Further Information Stage which *inter alia* provides a capacity study, noting that one of the five operational crèches contacted had surplus capacity in the afternoons. It is further set out that there is existing vacant commercial spaces within the town at a similar scale to the permitted creche, which would be more appropriate if there was a demand for the creche at a future date.
- 7.3.3. I note that Policy Objectives CF1 Childcare Facilities and CF 3 Creche Facilities of the Development Plan note that regard will be to the provisions of the Childcare Facilities Guidelines for Planning Authorities (2001) when considering applications relating to childcare. DM Standard 3: Apartment Developments (Urban Areas) notes that apartment type developments should be guided by Design Standards for New Apartments – Guidelines for Planning Authorities (2018) (or as updated), for all issues related to apartment development. The proposed development consists of a mixture of duplex units and terraced housing, and as such I am of the view that the Design Standards for New Apartments – Guidelines for Planning Authorities (updated 2023 version) apply here.
- 7.3.4. Section 3.3.1 of the Childcare Facilities Guidelines for Planning Authorities (2001) note that ‘in relation to new housing areas, a standard of one childcare facility providing for a minimum 20 childcare places per approximately 75 dwellings may be appropriate. This is a guideline standard and will depend on the particular circumstances of each individual site’. Appendix 2 of the Guidelines outlines how an alternative threshold for provision may be calculated, noting that the threshold for provision should be established having had regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of the area.
- 7.3.5. Section 4.7 of the Design Standards for New Apartments – Guidelines for Planning Authorities (updated 2023 version) provide that ‘*Notwithstanding the Planning Guidelines for Childcare Facilities (2001).....threshold for provision of any such*

facilities in apartment schemes should be established having regard to the scale and unit mix of the proposed development and the existing geographical distribution of childcare facilities and the emerging demographic profile of the area. One-bedroom or studio type units should not generally be considered to contribute to a requirement for any childcare provision and subject to location, this may also apply in part or whole, to units with two or more bedrooms.'

- 7.3.6. I note the contents Childcare Demand Analysis submitted by the applicant, and of note is that the percentage of the population that is 0-4 years of age declined slightly from 10.1% in 2011, to 9.3% in 2016 (noting that in 2016 the population of Maigh Cullen was 1,704 in 2016 and 1,559 in 2011). While this may have an impact on future demand, what is also of note is that there appears to be little existing capacity within the surveyed childcare providers, with only 1 of the 5 facilities having capacity in the afternoon, with 3 of the facilities having no capacity at all (there is no data for one of the facilities). I note also that the two creches located in closest proximity to the site (Knollcrest Nursery, directly to the north of the development site and Little Stars Creche, located to the south-east) have no capacity at all. The only childcare service with capacity is located at the Tuairini Montessori, which is 4.2km from the proposed development, and this facility has an available capacity of 10 spaces in the afternoon period only, with no capacity in the morning slot.
- 7.3.7. While there is some limited demographic analysis within applicant's Childcare Demand Analysis, this does not set out the expected childcare demand that is expected to be generated by the proposed development, having regard to the proposed number of units, and unit mix, and it is likely that there will be some demand, both from the development itself, and potentially from any increase in population experienced in Moycullen, and as per Table 4.1 of the Development Plan (Volume 2 Small Growth Towns), the town of Moycullen has an allocated population growth of 350 persons during the Development Plan period (2022-2028). I am of the view that the analysis submitted by the applicant is insufficient in its scope, having regard to the provisions of Appendix 2 of the Guidelines (which outlines how an alternative threshold for childcare provision may be calculated) and Section 4.7 of the Apartment Guidelines (which require *inter alia* the scale and unit mix of the proposed development to be considered, in order to determine the potential childcare demand for same).

- 7.3.8. The applicant contends that should demand for additional creche spaces arise, the existing vacant commercial units within the town centre would be more appropriate for same. While this would serve to reduce the existing commercial vacancy rate within the town centre, and would also serve to reduce the potential for unsustainable commuting patterns that could be generated by the proposed development, there is no guarantee that there are suitable spaces within the town centre, having regard to any specific needs of a childcare facility, including but not limited to, drop off spaces close to same.
- 7.3.9. While I note the applicant's contention that there is likely to be a drop off in creche spaces, noting the submission of the Department of Education on the draft Development Plan, and the contents of Appendix 1 of the Childcare Demand Analysis, which states that there will be no need for additional primary school spaces, the evidence is that there is limited capacity for creche and childcare spaces within Moycullen currently, and in the absence of any evidence to the contrary, it is likely that proposed development, and any future population growth in the wider area, would likely result in at least some additional demand for such spaces.
- 7.3.10. In conclusion then, I am not satisfied that sufficient evidence has been put forward to support the omission of the creche facility, having regard to the considerations above, and having regard to the provisions of the Childcare Facilities Guidelines for Planning Authorities (2001) and the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023) and I recommend that the application is refused on this basis.

7.4. Other Issues

- 7.4.1. Language Condition - The submission from Condradh na Gaeilge recommends rejecting the application or if it is allowed that language conditions are applied, that a Linguistic Impact Statement be requested and a Language Inurement Clause for 15 years be applied to the development. I note that Condition No. 3 of the parent permission (ABP Ref 308401) requires the application to enter into an agreement under Section 47 of the Planning and Development Act, 2000, providing a portion of the residential units for the occupation of Irish speakers. I am satisfied that this condition is appropriate and I am not of the mind that the Board needs to revisit the issue within the context of this current appeal.

8.0 Recommendation

- 8.1.1. Having regard to the above assessment, I recommend that permission be **REFUSED** for the proposed development.

9.0 Reasons and Considerations

1. Having regard to the provisions of the Childcare Facilities Guidelines for Planning Authorities (2001), and the provisions of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023), insufficient evidence has been put forward to support the omission of the permitted creche facility, having regard to the documentation submitted with the application which indicates very limited capacity in existing childcare facilities. As such, the proposal is contrary to said Guidelines and is therefore contrary to Policy Objective CF1 Childcare Facilities, CF 3 Creche Facilities and DM Standard 3: Apartment Developments (Urban Areas) of the Galway County Development Plan 2022-2028.

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.

Rónán O'Connor
Senior Planning Inspector

7th November 2023