



An
Bord
Pleanála

Inspector's Report

ABP-317992-23

Development	Construction of a creche (previously approved) with revised design and associated works
Location	Ard Uisce, Whiterock Hill, Wexford
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20230490
Applicant(s)	Ardamar Developments Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Adamar Development Ltd
Observer(s)	None.
Date of Site Inspection	8 th June 2024
Inspector	Peter Nelson

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History	6
P.A. Ref: 20220400	6
5.0 Policy Context	7
5.1. Development Plan	7
5.3. Natural Heritage Designations	10
5.4. EIA Screening	10
6.0 The Appeal	10
6.1. Grounds of Appeal	10
6.2. Planning Authority Response	10
6.3. Observations	11
7.0 Assessment	11
8.0 AA Screening	15
9.0 Recommendation	15
10.0 Reasons and Considerations	15
EIA	19

1.0 Site Location and Description

- 1.1. The site is located on the Whiterock Road in the southern suburbs of Wexford Town. The site is in front of the Ard Uisce residential development, phases of which are still under construction.
- 1.2. On Whiterock Road, opposite the site, are three single-storey detached dwellings. There is a detached bungalow directly to the north of the site. The area consists mainly of residential development and single detached dwellings.
- 1.3. The site contains builders' rubble and has a concrete panel fence on its southern and eastern boundary that it shares with Ard Uisce. There is an existing entrance off and a tree and hedgerow boundary along Whiterock Road.

2.0 Proposed Development

- 2.1. Permission is sought to amend part of the previously approved masterplan as permitted under planning ref: 20181280. The proposed development will consist of the relocation of the previously approved detached creche building and a revised two-storey design for the proposed creche building, including a detached single-storey commercial/retail building. The development includes associated parking spaces, vehicular access, bicycle parking, refuse bin storage, associated landscaping and public open space. Site development works, including connections to the existing public open space, are also proposed.

3.0 Planning Authority Decision

3.1. Decision

On the 28th June, 2023, Wexford County Council requested the applicant submit further information relating to electric charging points, a biodiversity tree and shrub planting plan, elevations and means of enclosing the creche outdoor play area, and the omission of the proposed laundry area from the plans.

On the 16th August, 2023, Wexford County Council granted permission for the proposed development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the planning report dated the 23rd July 2023 can be summarised as follows:

- A creche has been previously approved at this location.
- The retail unit will serve the existing and future housing in the immediate area.
- The proposed development is considered acceptable.
- A condition to ensure this development is built and occupied before any further site development is recommended.
- The overall design and height of the creche are considered acceptable for this location.
- This is the correct location for a creche and a small retail unit.
- The Planning Authority considered that the crèche should be delivered promptly.
- It is planning policy to tie the duration of the planning permission to alterations to original permissions to the duration of the original permission.
- The planner is willing to consider one additional year to the expiry date of the original permission.

3.2.2. Other Technical Reports

- Roads report dated 7th June 2023 recommends a grant of permission subject to conditions.

3.2.3. Conditions

The permission was subject to 12no. conditions.

- Condition No.2 states:

'The permitted development shall be constructed to a standard ready of use by 28/11/2024.

Reason:

To ensure the timely delivery of community facilities and in the interest of proper planning and sustainable development of the area.'

This condition is the subject of this appeal.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland: No observations.
- Health Service Executive report recommended conditions.

3.4. Third Party Observations

Two observations were received on the planning application. The main points raised can be summarised as follows:

- Increased traffic volume and traffic hazard.
- The retail unit is inappropriate.
- Increase in litter.
- Increase in noise.
- Potential for anti-social behaviour.
- Signage for the development would impact negatively on the rural nature of the area.
- Concern that the overuse of the retail area could lead to a lack of parking and traffic congestion.
- No opening hours are proposed.
- Insufficient details on external lighting.
- Concern that the creche will not proceed and the site will be used for additional retail.
- Issue of traffic on Whiterock Hill.

- Narrow footpaths on Whiterock Hill.

4.0 Planning History

P.A. Ref: 20220400

Permission was refused on the 20th May 2022 to amend part of the previously approved Phase 3 Masterplan as permitted under Planning Ref. 20181380. The proposed development will consist of the relocation of the previously approved detached Creche building and a revised two-storey design for a proposed detached Creche building, including a proposed detached single-storey Commercial/Retail building consisting of 3 no. Retail Units all with associated parking spaces, vehicular access, refuse bin storage, associated landscaping/public open space, and site development works with connections to existing local public mains services. This development was refused for five reasons relating to the excessive retail floor space proposed on residentially zoned lands, the location of the creche, the proposed vehicular entrance would endanger public safety, insufficient information on surface water and inadequate information on details of the creche, retention of existing planting and arrangements for pedestrians access and cycle parking.

P.A. Ref: 20230334

Permission was refused on the 24th May 2023 for a mixed residential development of 78 no. dwellings within Phase 5. Phase 5. There were 7no. reasons for refusal. These related to compliance with DMURS, water services, lack of a design statement, boundary treatments, parking, nature-based surface water attenuation and a construction management plan.

P.A. Ref: 20211574

Permission was granted on the 8th April 2022 for a mixed residential development of 99 no. dwellings within Phase 4 at Ard Uisce.

P.A. Ref: 20171679

Permission was granted on the 14th December 2018 for the change of house types of 25 units.

P.A. Ref: 20181380

Permission was granted on the 28th November 2018 for a mixed residential development of 98 dwellings within phase 3 at Ard Uisce.

P.A. Ref: W2008231

Permission was granted on the 9th July 2009 for 16no. fully-serviced dwelling houses.

P.A. Ref: W2008199

Permission was granted on the 8th December 2008 for 22no. dwellings to replace houses that were omitted from previously granted permission reg. 20070402.

P.A. Ref: 20171346

Permission was granted on the 1st December 2017 for a change of house types and erection of 14no. dwellings.

P.A. Ref: 20052508

Permission was granted on the 18th May 2008 to erect 154 fully-serviced dwelling houses and a 3no. retail units and a creche unit.

P.A. Ref: 20070402

Permission was granted on the 30th October 2007 for 87no. fully-serviced dwellings.

Adjoining Site**ABP Ref: 318917**

Third Party appeal on the development of 82 fully serviced dwelling units, creche and all associated services. This site adjoins the Ard Uisce development to the south. A decision has yet to be decided on this appeal.

5.0 Policy Context

5.1. Development Plan

The Wexford County Development Plan 2022-2028 is the operational plan for the area.

Policies

Objective SC01

To facilitate the development of healthy sustainable communities where people can live, work and enjoy access to a wide range of community, health and educational facilities suitable for all ages, needs and abilities.

Objective SC05

To ensure the balanced and equitable provision of social and community facilities including education and health services throughout the county and ensure that these facilities are located in areas that are easy to get to by either public or private transport and are universally accessible.

Objective SC06

To require the provision of purpose-built childcare facilities in new residential developments in accordance with Childcare Facilities: Guidelines for Planning Authorities (Department of the Environment and Local Government, 2001) and 'We Like This Place: Guidelines for Best Practice in the Design of Childcare Facilities' (National Children's Nurseries Association, 2002) and any future update of these guidelines. The indicative standard is one childcare facility, accommodating 20 children, for approximately 75 dwellings. This standard may be modified in any particular case where there are significant reasons for doing so. Criteria that may be taken into account in such an assessment include the existing geographical distribution of childcare facilities and the emerging demographic profile of the area.

Objective SC17

To facilitate the provision of childcare facilities in accordance with Childcare Facilities: Guidelines for Planning Authorities (Department of the Environment and Local Government, 2001) and any future update of these guidelines.

a) The development of new purpose built childcare facilities will be facilitated on well-located sites within or close to existing built up areas including within new or existing places of work, residential areas, educational establishments, town centres, rural villages and adjacent to public transport nodes. Where these childcare facilities are proposed to be located within established residential areas, applications for such uses will be assessed having regard to the likely effect on the amenities of adjoining

properties, the availability of space for off-street parking and/or suitable drop-off and collection points and outdoor playspace.

b) In the case of a change of use of an existing dwelling within a housing estate to a childcare facility, the proposal will only be considered where the dwelling house is detached, where there is adequate separation distances between the dwelling house and other dwelling houses in the vicinity, where the use as a childcare facility will not detract from the residential amenities of the estate, where the development will not give rise to a traffic hazard and where the car parking requirements for the child care facility are provided in addition to the car parking requirements of the housing estate. This will not apply to the use of an existing dwelling for child minding⁶ in accordance with the exempted development provisions of Article 10(5) of the Planning and Development Regulations, 2001 (as amended).

c) The development of small-scale rural appropriate childcare facilities associated with an existing residence (where the primary use is retained as the residence of the operator) at locations outside of rural villages will be considered on a case-by-case basis having regard to the location of the site, the nature of the road serving the site and traffic safety, residential amenity and environmental considerations.

5.2. National Policy

Childcare Facilities, Guideline for Planning Authority 2001.

2.4 Appropriate Locations for Childcare Facilities

New communities/Larger new housing developments. Planning authorities should require the provision of at least one childcare facility for new housing areas unless there are significant reasons to the contrary for example, development consisting of single-bed apartments or where there are adequate childcare facilities in adjoining developments. For new housing areas, an average of one childcare facility for each 75 dwellings would be appropriate. The threshold for provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas. Authorities could consider requiring the provision of larger units catering for up to 30/40 children in areas of major residential

development on the basis that such a large facility might be able to offer a variety of services – sessional/drop in/after-school, etc.

5.3. Natural Heritage Designations

The Slaney River Valley Special Area of Conservation is approximately 1.5km east of the site.

5.4. EIA Screening

See Form 1 and Form 2. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- The first party appeal is pursuant to Condition No.2 of the Notification of Decision to Grant Permission.
- This is a standalone permission for a creche.
- Wexford County Council did not attempt to link the permission lawfully back to the governing permission.
- Wexford County Council acted *ultra vires*.
- The condition is unimplementable.
- The overall 'Ard Uisce' development does not require the creche immediately.

6.2. Planning Authority Response

- None

6.3. Observations

- None

7.0 Assessment

7.1. The First-Party Appeal only relates to Condition No. 2 attached to the Planning Authority's Notification of Grant Permission, which is related to a time frame for completing construction works for the proposed development. I consider that the substantive issues in this appeal to be considered are as follows:

- **The Planning Permission as Lodged.**
- **The Principle of Development**
- **Condition No.2**

7.2. The Planning Application as Lodged.

- 7.2.1. In the appeal, the applicant states that the planning application pertains to a Section 34 planning application aimed at amending an already permitted creche facility under P.A. ref: 20181380. It is stated that the fact that this application was submitted as a standalone application requires that it is assessed independently, i.e., *de novo*, without any immediate association with new or existing developments.
- 7.2.2. The application description in the public notices and application form states clearly that permission is sought 'to amend part of the previously approved Phase 3 Masterplan as permitted under Planning Permission Ref: 20281280.'
- 7.2.3. I consider that the application, as presented, clearly is associated with the existing development granted under Planning Permission Ref: 20281280 and that the Local Authority was correcting in dealing with it as a planning application amending an existing permission. Therefore, I will assess this application as an amendment to the parent permission.

7.3. The Principle of Development.

7.3.1. A creche has previously been approved on this site to the front of the Ard Uisce residential development. The scale of the creche has increased, and is now a two-storey structure. A free-standing commercial unit is also proposed to serve the existing and future residential development. I note that the planning authority considers the uses and proposed development acceptable. I am satisfied that the proposed relocation of the previously approved detached creche building and revised two-storey design for a proposed detached creche building, including a single-storey commercial/retail building, is in accordance with the proper planning and sustainable development of the area.

7.4. Condition No.2.

7.4.1. Condition No. 2 requires that '*The permitted development shall be constructed to a standard ready of use by 28/11/2024.*' The stated reason for the condition is 'To ensure the timely delivery of community facilities and in the interest of proper planning and sustainable development of the area.'

7.4.2. In the appeal, the applicant considers that the application was submitted as a standalone application, which requires that it is assessed independently without any immediate association with new or existing development. As stated in section 7.2.3, I consider this an application for amendments to the parent permission P.A. ref: 20181380.

7.4.3. I refer the Board to the High Court Judgement of *South-West Regional Shopping Centre v ABP* [2016] IEHC 84. This case related to amendment applications to aspects of a parent permission. The case recognised the planning authority's or the Board's power to accept and adjudicate upon applications to amend existing permissions. In this case, the duration of the permission remained the same as the duration of the parent permission. This was achieved by way of condition of the grant of a parent permission.

7.4.4. The appellant submits that the above High Court Judgement outlines the fact that permission must be granted for a period of not less than 5 years except for instances where an application is made a clear amendment to a governing planning permission. I do not agree with the applicant's interpretation of the case, which would be contrary to Section 41 (1) of the Planning and Development Act 2000 (as

amended), which allows a planning authority or the Board, as may be appropriate may, having regard to the nature and extent of the relevant development and any other material consideration, specify the period during which the permission is to have effect.

- 7.4.5. The appellant submits that the Planning Authority did not attempt to link the grant of permission back to the parent permission. I consider this to be the case as there is no condition attached to the grant of permission requiring the proposed development to be carried out and completed in accordance with the conditions of the parent permission. Condition No.2 also did not reference the parent permission.
- 7.4.6. I note that the planning report states that the Planning Authority considers the development an important facility that needs to be delivered promptly. It also states that it is the planning policy to tie the duration of permission to alterations of permission to the original expiration date of the parent permission; however, in this instance, the planner was willing to consider one additional year, i.e., 28th November 2014.
- 7.4.7. I consider that allowing for the date from the final grant of permission and the provisions of Section 251(1) and 251(A) of the Planning and Development Act 2000 (as amended) the expiry date of the grant of parent permission reg. 20181380 is the 11th April 2024 not the 28th November 2023 as stated in the Planning Report.
- 7.4.8. The appellant states that Condition No.2 is unimplementable and unreasonable with regard to the construction timeframe, claiming that it could take a minimum of 28 months to bring the proposed development to a level ready for use. I consider that a period of 14 months is unrealistic to bring a development of this size and nature to a level ready for use. I, therefore, consider, given the nature and scale of the development, that Condition No.2 is not reasonable.
- 7.4.9. The attaching of the Condition No. 2 would have only allowed for a period of less than 14th months, which would be contrary to Section 41 (1)(a) of the Planning and Development Act 2000 (as amended), which limits planning authorities or the Board to grant a permission to develop land for a limited period of not less than 2 years.
- 7.4.10. I refer the board to the approach of the High Court in *Friends of the Irish Environment v ABP* [2019] IEHC 80, where the High Court stated that an application

for extending the duration of a permission can only be made pursuant to the provisions of section 42.

- 7.4.11. As the application is to amend part of a previously approved development under P.A. ref: 20181280, I consider that not attaching a condition requiring the same duration of permissions as that of the parent permission would have the effect of extending the duration of the parent permission.
- 7.4.12. The applicant makes a case that Ard Uisce does not immediately require a creche and that the reason for the condition is not justifiable have regard to the quantum of childcare facilities in the area. The applicant has carried out an initial childcare assessment which, it is claimed, demonstrates that there are ample childcare provisions in the immediate area to cater for the receiving environment. The applicant lists the existing creches within a 2km radius of the application site. Given the lack of immediate need, the applicant requests that condition no.2 be omitted.
- 7.4.13. While I accept that there are a number of creches operating in the area and note that the residential element of the development as granted under P.A. ref: 20181280 has been completed, the current application is clearly described in the development description as being a *'planning permission to amend part of the previously approved Phase 3 Masterplan as permitted under Planning Ref. 20181280'* and therefore I consider that the duration of a grant of permission should be the same as the duration of the parent permission.
- 7.4.14. I note the planning application was applied for on 9th May 2023, less than a year from the expiration date of the parent permission, which it is proposed to amend.
- 7.4.15. Notwithstanding the question of the exact date of the expiry date of the parent permission as discussed in section 7.4.7 of this report, planning permission P.A. Ref: 20181380 has expired, and there is no record of an application for an extension of duration of the parent planning permission under section 42 of the Planning and Development Act 2000 (as amended). Therefore, I consider that permission for the proposed development, which is to amend part of the previously proposed Phase 3 Masterplan as permitted under Planning Ref. 20181280, cannot be granted as the parent permission has expired and in accordance with section 40(1) of the Planning and Development Act 2000 (as amended) ceases to have effect.

8.0 A.A. Screening

- 8.1. I have considered the proposed dwelling in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.2. The subject site is c.1.5 km from the Slaney River Valley Special Area of Conservation.
- 8.3. The proposed development comprises a two-storey creche building and a single-storey retail building.
- 8.4. No nature conservation concerns were raised in the planning appeal.
- 8.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
- The small scale and nature of the development.
 - The location from the nearest European site and lack of connections.
 - Taking into account screening report and determination by LPA.
- 8.6. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.7. Likely significant effects are excluded, and therefore, Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.
- 8.8. This does not preclude further consideration of this matter in a subsequent and more detailed application pursuant to a grant of outline permission.

9.0 Recommendation

I recommend that permission be refused for the following reason.

10.0 Reasons and Considerations

1. The proposed development for a two-storey creche and single-storey commercial/retail building has been described as an amendment to the development as permitted under Planning Permission Reference no. 2081380. The expiry date for the duration of this planning permission has passed, and therefore, the planning permission ceases to have effect. It is considered that the Board is precluded from granting permission to amend the development as granted under Planning Permission Reference no. 2081380 as this permission ceases to have effect.

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.

Peter Nelson

Senior Planning Inspector

28th August 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317992-23		
Proposed Development Summary	Permission to amend part of the previously approved Phase 3 Masterplan as permitted under Planning Ref: 20181380. The development will consist of the relocation of a creche building and a revised two-storey design for a proposed detached Creche Building including a detached commercial/ retail building.		
Development Address	Ard Uisce, Whiterock Hill Wexford.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes	X	10.(b)(iv) Infrastructure projects-urban development	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____**Date:** _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	317992-23	
Proposed Development Summary	Permission to amend part of the previously approved Phase 3 Masterplan as permitted under Planning Ref: 20181380. The development will consist of the relocation of a creche building and a revised two-storey design for a proposed detached Creche Building including a detached commercial/ retail building.	
Development Address	Ard Uisce, Whiterock Hill Wexford.	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? Will the development result in the production of any significant waste, emissions or pollutants?	A creche and commercial/retail unit in this residential area is not exceptional in the context of the existing environment. The proposed creche and commercial/retail unit will not result in the production of any significant waste, emissions or pollutants.	N
Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having regard to other existing and/or permitted projects?	The size of the two-storey crèche and single-storey commercial/retail unit is not exceptional in the context of the existing environment. There are not any significant cumulative considerations having regard to other existing and/or permitted projects.	N

<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The nearest protected site is the Slaney River Valley Special Area of Conservation, which is approximately 1.5km east of the site.</p> <p>The two-storey crèche and single-storey commercial/retail unit are not located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location</p> <p>The proposed development does not have the potential to significantly affect other significant environmental sensitivities in the area</p>	<p>N</p>
<p style="text-align: center;">Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p>	<p>There is a real likelihood of significant effects on the environment.</p>

Inspector: _____

Date: _____

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)