



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320206-24

#### Development

Change of use of dwelling at first floor level, from residential use to use as a creche and Montessori school, to allow for the enlargement of the existing Willow House Childcare facility and all associated site development works.

#### Location

Willow House Childcare,  
Newtownpark Avenue, Blackrock,  
County Dublin, A94 WY28.

#### Planning Authority

Dun Laoghaire Rathdown County  
Council

#### Planning Authority Reg. Ref.

D24A/0308

#### Applicant(s)

Coastdale Ltd.

#### Type of Application

Planning permission.

#### Planning Authority Decision

Grant permission subject to 5  
conditions.

#### Type of Appeal

Third Party

#### Appellant(s)

Richard and Lorna Fry.

**Date of Site Inspection**

24<sup>th</sup> September 2024.

**Inspector**

Sarah O'Mahony

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## **1.0 Site Location and Description**

- 1.1. The 0.0718ha site is situated in a residential area at the corner of Newtownpark Avenue/ R113 regional road and Ardlú Park, 280m northeast of the N11 and 500m north of Foxrock Golf Club.
- 1.2. The site comprises a detached, two storey, 224m<sup>2</sup> structure which operates a Montessori/creche on the ground floor while the first floor comprises an independently accessible unit. It was formerly one single dwelling unit with private open space to the rear which is now an external play area for the service users.
- 1.3. Vehicular access is from Newtownpark Avenue/ R113 while pedestrian access is from Ardlú Park. The pedestrian access serves as a drop off and collection point for all service users in the creche and the vehicular access is used by staff.
- 1.4. Boundaries comprise a mix of tall blockwork walls, hedging and timber fencing.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for development which comprises the following:
  - Change of use of the 64m<sup>2</sup> first floor from residential to Montessori/creche use, and
  - Associated site development works including internal alterations to the floor layout to accommodate an internal staircase and one large classroom. No external works are proposed.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. A notification of decision to GRANT planning permission for reg. ref. D24A/0308 was issued by Dún Laoghaire-Rathdown County Council (the Planning Authority) on 25<sup>th</sup> June 2024 subject to 5 conditions including no. 2 which limit operating hours to 07:00-18:00 Monday to Friday only.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

3.2.1. The Planners report recommendation to grant permission is consistent with the notification of decision which issued.

3.2.2. The report considered that having regard to the existing childcare facility in operation on the site and Policy Objective PHP 6 to encourage provision of childcare facilities, the principle of development is acceptable subject to maintaining residential amenity.

3.2.3. The report further considered that existing residential amenity would be maintained as no external works are proposed and, as the external play area is limited, it could not provide outdoor play for all service users at the same time and therefore the proposed intensification of use would not impact neighbouring residential amenity.

3.2.4. Appropriate Assessment (AA) and Environmental Impact Assessment (EIA) issues are both screened out.

#### **3.2.5. Other Technical Reports**

- Environmental Health Office (EHO): No objection subject to conditions regarding management of refuse and noise from mechanical plant such as air conditioning and kitchen refrigeration units.
- Environmental Enforcement Section: No objection subject to the recommendations of the EHO.
- Transportation Planning: No objection subject to one condition relating to the construction phase and ensuring no dirt or debris is on the public road, any damage is repaired and conflict between construction vehicular movements and public pedestrian and vehicular movements are avoided.
- Drainage Planning: No objection.

### **3.3. Third Party Observations**

Five submissions were received from neighbouring residents objecting to the proposed development on the following grounds:

- A commercial use is out of keeping with established residential area,

- Discrepancies in planning application documentation regarding the number of additional childcare spaces. Lack of information in documentation regarding fire safety, future oversight, ownership and management and provision of adequate external play space.
- Alleged unauthorised development regarding an exceedance of childcare spaces over permitted numbers, installation of an external staircase and use of first floor for residential purposes.
- Traffic hazard.
- Noise and traffic impact to residential amenity and property values,
- Proposal does not comply with the zoning for the area,,
- Existing 2m high fence prevents any external inspection of the facility by passersby, the Local Authority or parents to gauge the number of service users,
- Removal of housing stock from the market during a housing crisis is inappropriate,

#### 4.0 Planning History

The following planning history relates to the site: Reg. Ref. D02A/0346: Planning permission granted for change of use of ground floor of existing dwelling from residential use to use as a creche and Montessori school; use of existing entrance onto Ardlú Park as pedestrian only access to creche and Montessori school. Condition no. 2 states the following:

*“The creche shall be operated by a person in occupation of the main dwelling.*

*REASON: In the interest of the proper planning and development of the area.”*

- Reg. Ref. D04A/0608, ABP ref. PL06D.208510: Planning permission sought for revisions to previously permitted development under Reg. Ref. D02A/0346 (which comprised a change of use of ground floor of existing dwelling from residential use to use as a creche and Montessori School to accommodate 26 no. children. The revisions comprise reconfiguration of permitted childcare facility at ground floor level, change of use of existing garage (approx. 17 m<sup>2</sup>) to a kitchen to be used ancillary to the creche facility and associated works. The development as proposed will result in

an increase in creche floor area from 140 m<sup>2</sup> to 157 m<sup>2</sup> and allow for the provision of an additional 8 no. child places in the childcare facility, to result in a total of 26 no. child places. The application also proposes deletion of Condition No. 2 as permission D02A/0346. A notification to refuse permission was appealed to An Bord Pleanála and subsequently overturned to a grant subject to 8 conditions including nos. 3 and 4 as follows:

*“The upper floor dwelling unit shall be occupied within one month of the completion of the works for conversion of the garage.*

**Reason:** *To ensure effective control and enforcement of the permission hereby granted.*

*4. The upper floor shall be retained in residential use as long as the use of the ground floor creche subsists. Should the use of the creche be discontinued, the entire property shall revert to residential use.*

**Reason:** *In the interest of residential amenity.”*

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The site is governed by the policies and provisions contained in the Dún Laoghaire-Rathdown County Development Plan 2022-2028 (referred to hereafter as the Development Plan). The site is zoned A where the objective is to provide residential development and improve residential amenity while protecting the existing residential amenities. A childcare service is a use which is permitted in principle under this A zoning objective however this is subject to footnote ‘a’ which states:

*“Where the use will not have adverse effects on the ‘A’ zoning objective, ‘to provide residential development and improve residential amenity while protecting existing residential amenities”*

- 5.1.2. Chapter 12 of the County Plan sets out policies and a framework for developing sustainable neighbourhoods including community infrastructure such as childcare facilities. Section 4.2.1.5 refers specifically to childcare facilities and policy objective PHP 6 is noted as follows:

*“It is a Policy Objective to:*

- Encourage the provision of appropriate childcare facilities as an integral part of proposals for new residential developments and to improve/expand existing childcare facilities across the County. In general, at least one childcare facility should be provided for all new residential developments subject to demographic and geographic needs.*
- Encourage the provision of childcare facilities in a sustainable manner to encourage local economic development and to assist in addressing disadvantage.”*

## **5.2. Childcare Facilities - Guidelines for Planning Authorities (2001)**

- 5.2.1. The guidelines provide a framework to guide assessment of applications for planning permission for childcare proposals. Circular PL 3/2016 however was issued in March 2016 by The Department of Environment, Community and Local Government and states the following:

*“Planning Authorities are requested to exclude matters relating to childcare facility standards outlined in Appendix 1 of the Childcare Facilities Planning Guidelines 2001 – including the minimum floor area requirements per child – from their consideration of planning applications relating to childcare facilities and to solely focus on planning related considerations that fall within the remit of the Planning and Development Act 2000, as amended, in the determination of such planning applications”*

## **5.3. Natural Heritage Designations**

- 5.3.1. The site is situated 2.3km southwest of South Dublin Bay and River Tolka Estuary Special Protection Area, South Dublin Bay Special Area of Conservation and South Dublin Bay proposed Natural Heritage Area.



## **5.4. EIA Screening**

- 5.4.1. See EIA Pre-Screening Form 1 in Appendix 1. The development is not a class of development requiring mandatory or sub-threshold EIA and therefore there is no EIA Screening requirement.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- Local Authority's assessment did not address the increase to childcare spaces and the associated impact to noise, traffic hazard and property devaluation.
- The assessment did not address the alleged previous unauthorised expansion in childcare places and that impact to residential amenity in terms of noise, traffic hazard and property devaluation.
- The impact to foul and surface water also was not assessed, particularly its cumulative impact together with a new school in the area.
- Loss of a residential unit is inappropriate during a housing crisis.
- Non-compliance with previous permissions.
- Report does not address previous recommendation to refuse permission for ref. D04A/0608 which ABP overturned and granted. ABP should question why those reasons for refusal do not apply in this case.
- Concern regarding sustainability.
- Grant of permission contradicts the Local Authorities traffic department report.
- Overlooking from existing first floor windows.
- Modal split data submitted with the application has no clear survey methodology.
- How will permissions be regulated and enforced?
- Is a breach of noise levels considered an 'encroachment'?

## 6.2. Applicant Response

- The response highlights a childcare needs assessment submitted with the application demonstrating a need for additional childcare facilities and positions in the area. It also highlights policy and general text in the Development Plan which supports provision and expansion of childcare facilities.
- In relation to noise the Applicant contends that sound of children playing is an expected feature of suburban life and that the creche has been operating at the site for over 20 years. It also states that an additional 8 no children will not result in a significant increase in noise levels.
- Regarding the number of childcare spaces permitted on the site, the Applicant refers to a Warning Letter received by the Applicant from the Local Authority concerning this matter, which the Applicant responded to, and the appeal response states that the enforcement file was subsequently closed. It also states that Túsla inspection reports carried out onsite confirm that the existing ground floor facility can accommodate 40 childcare spaces.
- The Applicant considers that property devaluation is not a planning matter and that impacts to property value are subjective depending on personal circumstances. It also states that no external works are proposed and therefore no overlooking or overshadowing will occur and that it considers the 8 additional childcare spaces would not impact on adjoining residential amenity. It considers the development to be beneficial for the community.
- Regarding the Appellant's claim of overlooking from first floor windows, the Applicant highlights that the windows are existing with no change proposed and that there is a separation of 19m between the opposing windows above ground level at the site and the Appellants property.

## 6.3. Planning Authority Response

- *"It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development."*

## 7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that main issues in this appeal are as follows:

- Principle of development
- Impact on residential amenity – noise, traffic, overlooking and property devaluation
- History of unauthorised development
- Traffic impact
- Noise
- Impact to foul and grey water drainage

7.2. The land use zoning for the site provides that childcare facilities are acceptable subject to maintaining residential amenity as the area is primarily residential as reflected in the A zoned lands. Issues including noise and traffic impact appear to be the primary factors outlined in the appeal which would affect residential amenity if the development went ahead. I therefore intend to address these topics before assessing the principle of development in order to determine what, if any, impacts would occur to residential amenity. That conclusion will then inform a determination as to whether the principle of development is established and acceptable, or not, as the case may be.

### 7.3. **Unauthorised Development**

- 7.3.1. The appeal refers to previous non-compliances with planning permissions and unauthorised increases to childcare spaces, with an associated increase to noise and traffic etc. It contends that permitting the proposed development would serve to regularise and grant retention permission for the alleged unauthorised aspects of development.
- 7.3.2. I note references to a warning letter received by the Applicant from the Planning Authority regarding the additional 14no. childcare spaces which emerged over the permitted 26no., but that the case is closed with no enforcement action taken. I also

note the Local Authority's planning report which states there are no live enforcement cases on the site.

- 7.3.3. While it is not clear if the increase to childcare spaces from 26 to 40 benefit from planning permission or not, I do not consider that assessing this planning application, and potentially granting permission for the proposal, would result in a de-facto grant of retention permission for those breaches of childcare spaces. This also applies to any other alleged unauthorised development such as the referenced installation of an external staircase. None of the physical elements of alleged unauthorised development would facilitate operation of the first floor as part of the creche facility and therefore, in my opinion, there are no grounds in this case for An Bord Pleanála to refuse permission due to alleged unauthorised development on the site.
- 7.3.4. Ultimately enforcement is a matter for the Local Authority and there is no mechanism to regularise any element of retention permission through a planning appeal. Additionally, each planning application is assessed on its own merits which in this case relates to an increase of 8no. childcare spaces or intensification by 20% above the current scenario of 40 spaces. I therefore propose to assess the proposed development and its potential impacts against that baseline.
- 7.3.5. I also highlight that the matter of regulating childcare facilities including the number of childcare spaces permissible is a matter for Túsla. As per Circular PL 3/2016 of March 2016, Planning Authorities may only assess planning related matters and may not limit the number of childcare spaces achievable at a particular facility.

#### **7.4. Traffic Impact**

- 7.4.1. The appeal submits that there is already a traffic hazard and traffic nuisance associated with management of the facility. It contends that the existing increase in childcare spaces over the permitted number, together with the proposed increase of an additional 20%, would contribute to a traffic hazard by means of vehicles parking in Ardluís Park cul-de-sac and additional traffic entering Newtownpark Avenue/R113.
- 7.4.2. I note the contents of the Local Authority Transportation Department report which states no objections to the existing or proposed development subject to a condition regarding management of construction works.

- 7.4.3. I also note a modal split provided in the Applicant's Planning Statement accompanying the planning application which suggests that 49% of trips to the facility are made by car and that the facility also operates a private bus which parks within the curtilage of the site. The Appellants question the survey methodology, which is not provided, and I also note assertions in a third-party submission to the Local Authority on the application that up to 10 vehicles at a time have been observed parking and turning in Ardluí Park to collect/drop off children.
- 7.4.4. I carried out a site inspection on 24<sup>th</sup> September 2024 from 16.30-17.00pm which I consider coincides with a peak collection time. I noted 4 vehicles parked outside the premises on the Ardluí Park access road as well as signs on the boundary wall of the site saying 'No parking, set down area only' together with the facility's name and branding logo. I also noted the presence of double yellow lines on both sides of the Ardluí Park access road, close to the junction with Newtownpark Avenue, to prevent car parking. There is a longer distance of these painted lines on the southern side of the Ardluí road than the north adjacent the site and this differential effectively serves to facilitate the car parking spaces at the north while simultaneously maintaining sightlines and safe access to the estate by preventing car parking on both sides of the road.
- 7.4.5. Having regard to all of the above, as well as the maximum increase proposed of 8 childcare spaces, which equates to an additional 8 vehicles potentially accessing the site, in my opinion no significant impact would occur to the safe operation of traffic flows in the area due to the small scale of the proposal.
- 7.4.6. The Appeal also considers that the same increase in traffic would contribute to increased nuisance and disturbance from vehicles turning in resident's driveways. This is a civil matter which cannot be managed by a planning consent.
- 7.4.7. If the Board deems it necessary then a condition could be inserted requiring the Applicant to implement mobility management measures to encourage a more sustainable modal split and reduce the number of vehicles accessing Ardluí Park, thereby reducing nuisance also however I consider that the current provision of 4no. car parking spaces and stated modal split is acceptable having regard to the observations I made during the site inspection and the likely traffic generation associated with the proposed development.

## **7.5. Noise**

- 7.5.1. The appeal refers to noise from the outdoor play area and claims that it severely impacts residential amenity, particularly for the Appellants who reside adjacent the site at the northwest and are home during operational hours of the creche.
- 7.5.2. The Applicant argues that noise from children is a typical suburban feature and that the development has been in place at the site for 20 years.
- 7.5.3. I note the Appellants argument about the scale of change since a childcare facility was first permitted on the site and the associated increase of nuisance noise however, as previously set out, the assessment of this proposal is made against the backdrop of the current scenario.
- 7.5.4. I noted 19 children in the external play area during the site inspection and I considered the noise was low and acceptable to maintain residential amenity for the majority of the time I was present. I did also however note spells of impulsive and tonal noise associated with children playing.
- 7.5.5. Lastly, I note that the most recent grant of permission (Reg. Ref. D04A/0608, ABP ref. PL06D.208510) enables operation of the facility until 8pm at night whereas the proposed development seeks permission to operate until 6pm which also represents a 15% reduction in operating hours.
- 7.5.6. I do not consider that the addition of another 8 children and 1 staff member would significantly increase the noise levels above the current baseline scenario. By way of mitigation however to address existing noise levels, I recommend insertion of a condition to stagger outdoor play times. This would limit the number of children in the play area at any one time which should help to reduce noise levels and improve residential amenity.

## **7.6. Residential Amenity**

- 7.6.1. The Appellants raise a concern about overlooking from the two first floor windows on the site to the one first-floor window in their dwelling, all of which are in place already and I note no physical works are proposed to the windows. One of the windows on the site serves a bathroom and therefore has no overlooking opportunities as the window is finished with opaque glazing.

7.6.2. I also note there is a separation of 19m between the remaining window and that on the adjoining property which I consider is sufficient to uphold residential amenity. In this regard I do not consider that overlooking from the proposed development would negatively impact residential amenity of adjoining residences.

7.7. I note the concerns raised in the grounds of appeal in respect of the devaluation of neighbouring property due to a depreciation of residential amenity. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

#### **7.8. Principle of Development**

7.8.1. In my opinion the proposed increase of childcare spaces by 8no. additional positions would not adversely impact residential amenity. I also note Policy Objective PHP 6 which seeks to *encourage the provision of appropriate childcare facilities* and the A zoning objective which permits childcare facilities in residential areas.

7.8.2. I therefore consider that that the principle of development is established and the proposal is acceptable for the area as it would not significantly impact on residential amenity or cause a traffic hazard in the area. This also leads to the conclusion that the loss of a residential unit is acceptable in these circumstances as the proposed development also supports the surrounding residential area by providing a community facility.

7.8.3. I recommend however that a condition is inserted requiring the site to revert to residential use in the event the childcare use ceases, in order to protect the residential character of the area.

#### **7.9. Impact to Foul and Grey Water Drainage**

7.9.1. No external works are proposed and therefore I consider there will be no change to the current surface water regime.

7.9.2. The appeal questions impacts to the foul network due both to additional loading from the development and cumulatively with a new 1000 pupil school due to commence construction on a site 100m southwest of the subject site. No clear evidence is provided or highlighted by the Appellant or Local Authority however regarding any

drainage capacity issues in the area. In this regard I note the Local Authority's Drainage Department report which states 'no objection'.

- 7.9.3. In my opinion, having regard to that report as well as the fact that the site is already connected to the foul system and operating as a creche, I consider there is no likely impact to the foul system as a result of additional loading.

## **8.0 AA Screening**

- 8.1.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.1.2. The site is not situated within or adjacent to any European Site. The subject site is located 2.3km southwest of South Dublin Bay and River Tolka Estuary Special Protection Area, South Dublin Bay Special Area of Conservation and South Dublin Bay proposed Natural Heritage Area.
- 8.1.3. The proposed development is set out previously in this report in more detail but in summary comprises the change of use of the first floor of a detached two-storey structure from residential to a childcare use.
- 8.1.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:
- 8.1.5. The small scale and domestic nature of the proposed development in a serviced urban area, distance from European sites and urban nature of intervening habitats, absence of ecological pathways to any European sites as well as a lack of any external physical works.
- 8.1.6. Taking into account the screening determination by Dún Laoghaire-Rathdown County Council.
- 8.1.7. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.



## 9.0 Recommendation

- 9.1. I recommend that planning permission be granted, subject to conditions, for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

- 10.1.1. Having regard to the location and character of the site and surrounding area in a serviced urban area together with the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 including Policy Objective PHP 6, as well as the 'A' zoning objective for the area, it is considered that, subject to compliance with the conditions set out below, the scale and nature of the development is acceptable. The development would not seriously injure the visual or residential amenity of the area. The development is, therefore, in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The childcare facility shall only operate between the hours of 07:30-18:00 Monday to Friday only.</p> <p>Reason: In the interest of residential amenity.</p>
3.	<p>Should the use of the crèche be discontinued, the entire property shall revert to residential use.</p> <p>Reason: In the interest of residential amenity.</p>

4.	Prior to the commencement of development, the Applicant shall submit for the written agreement of the Planning Authority, plans and particulars to reduce noise arising from the outdoor play area. This shall include staggering outdoor play sessions and limiting the number of service users in the outdoor play area at any one time. Reason: In the interest of residential amenity.
5.	All foul sewage and soiled water shall be discharged to the public foul sewer. Reason: In the interest of public health.

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.

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Sarah O'Mahony  
Planning Inspector

25<sup>th</sup> October 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	320206-24			
<b>Proposed Development Summary</b>	Change of use of first floor from residential to childcare facility.			
<b>Development Address</b>	Willow House Childcare, Newtownpark Avenue, Blackrock, County Dublin, A94 WY28.			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)			<b>Yes</b>	x
			<b>No</b>	No further action required
<b>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?</b>				
<b>Yes</b>				
<b>No</b>	x		Proceed to Q.3	
<b>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]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>	x	N/A		No EIAR or Preliminary Examination required
<b>Yes</b>				

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_**Date:** 25<sup>th</sup> October 2024