



An
Bord
Pleanála

Inspector's Report PL04.248282

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| Development | Change of use and internal fit-out of existing warehouse to pre-school use, alterations to existing elevations, erection of signage and associated site works. |
| Location | Riverstown, Glanmire, Co. Cork. |
| Planning Authority | 17/04041 |
| Planning Authority Reg. Ref. | Cork County Council |
| Applicant(s) | Réaltaí Cúram Leanaí Teoronta |
| Type of Application | Permission |
| Planning Authority Decision | Grant subject to conditions |
| Type of Appeal | First Party v. Condition Third Party v. Decision |
| Third Party Appellants | Jerry & Erika Bate O'Connor Residents of Old Avenue c/o Therese Cronin |
| Observer(s) | Melissa Deasy Joseph & Susan Cronin |

Date of Site Inspection

27th June, 2017

Inspector

Robert Speer

1.0 Site Location and Description

The proposed development site is located at Riverstown, Glanmire, Co. Cork, approximately 6.5km northeast of Cork City Centre and c. 1.0km west of the M8 (Cork-Dublin) Motorway, in a predominantly residential area characterised by conventional suburban housing development which is interspersed with several notable instances of retail, recreational and educational uses, including Glanmire Community College to the east, the Sarsfields Hurling Club to the south, and a recently developed 'Aldi' supermarket and a scout hall (46th / 92nd Cork Glanmire Scout Group) to the west. The site itself has a stated site area of 0.258 hectares, is generally rectangular in shape and is presently occupied by a vacant warehouse-type structure set within a larger enclosed yard area / compound which is defined by a combination of pre-cast concrete post and panel walling to the north and west, further masonry walling and mature hedging etc. to the south, and by a masonry wall and the rear elevations of a series of outbuildings formerly associated with Riverstown House (a protected structure), which are presently in use as 'Dooleys' garden centre, to the east. At present, the primary means of access to the site is via the service road through the adjacent Old Avenue housing estate to the north which extends from Hazelwood Avenue, however, it would appear that the lands in question have also been previously accessed via a narrow laneway which extends west / south-westwards from the site towards East Cliff Road (Local Road No. L3010) in addition to a further access to the east through the grounds of Riverstown House. The site adjoins the Old Avenue estate to the north with the open space serving same extending westwards alongside the site boundary whilst the lands to the immediate south are occupied by the Orchard Manor estate. There is a series of terraced 'mews' housing (which is accessed through the subject site via a masonry archway within the eastern site boundary) and a garden centre to the east. A notable recent addition to the area in the immediate vicinity of the application site has been the construction of a new 'Aldi' supermarket and a scout hall to the northwest / west which has included for the partial development of a new link road between Hazelwood Avenue to the north and East Cliff Road to the south.

2.0 Proposed Development

The proposed development consists of the change of use of an existing potato storage and grading warehouse to use as a pre-school facility with associated changes to the internal layout of the premises, alterations to the external elevations (including the insertion of new doorways and fenestration), the erection of signage, and ancillary site development works. In addition, it is also proposed to provide an external open play area along the rear (southern) elevation of the existing building which will be enclosed by 2.0m high perimeter fencing.

3.0 Planning Authority Decision

3.1. Decision

On 8th March, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 11 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – States that the use of the building as permitted will cease on the expiration of a period of 5 No. years from the date of the grant of permission.

Condition No. 3 – Requires the proposed gates to open inwards.

Condition No. 4 – Prohibits any vegetation or structure within the sight distance triangle from exceeding 1m in height.

Condition No. 5 – Prohibits surface water from the site from flowing onto the public road.

Condition No. 6 – Requires the existing roadside drainage arrangement to be preserved to the satisfaction of the Planning Authority.

Condition No. 7 – Requires a drainage grating, along with a discharge pipe to a soakaway located within the site, to be installed at the site entrance to the satisfaction of the Planning Authority.

Condition No. 8 – States that only foul sewage shall be permitted to discharge to the public sewer.

Condition No. 9 – Prohibits surface water from entering the foul sewer.

Condition No. 10 – Refers to a connection agreement with Irish Water.

Condition No. 11 – Refers to the payment of a development contribution in the amount of €11,091.07

3.2. Planning Authority Reports

3.2.1. Planning Reports:

States that the proposed development site is located on lands zoned as ‘Existing Built-Up Area’ in the Blarney Electoral Area Local Area Plan, 2011 and that the provision of pre-school facilities within an expanding urban area, in close proximity to established residential areas and local schools, would generally be considered to be acceptable on the basis that it would encourage more sustainable mobility patterns. Further consideration is given to the operating hours of the proposed development when compared to the proposal previously refused permission under PA Ref. No. 12/6604 and it is noted that the Area Engineer has not raised any concerns as regards the potential traffic impact of the development proposed. Similarly, it is noted that the noise impact of the proposed development will be less than that expected to have been generated by previous proposals on site. With regard to Objective U-04 of the Local Area Plan which seeks to develop a new link road / upgrade the existing laneway to the southwest of the application site, it is stated that although the Area Engineer has recommended that a condition be included in any grant of permission whereby the site could be accessed at a future date from any upgraded roadway, in the absence of a definitive timeframe for the delivery of the roadway, it is not proposed to include any such condition. However, in light of the concerns expressed by local residents, and in the event that an alternative access to the proposed pre-school may be available from the upgraded roadway at a future date, it is considered reasonable to issue a temporary grant of permission for a period of 5 No. years.

3.2.2. Other Technical Reports:

Area Engineer: No objection, subject to conditions.

3.3. Prescribed Bodies

Irish Water: No objection, subject to conditions.

3.4. Third Party Observations

A total of 5 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- Traffic impact / safety concerns / increased traffic congestion within the Old Avenue housing estate.
- Detrimental impact on residential amenity by reason of increased traffic, pollution, noise and general disturbance.
- Devaluation of property
- The proposed commercial development would be incompatible with the surrounding residential area.
- Adverse impact on the amenity of the public open space serving the Old Avenue estate.
- The proposed development will have a detrimental impact on the character and setting of Riverstown House (a protected structure).
- The existing building on site was historically accessed via 'Dooley's Lane' to the southwest.
- The proposed development should be accessed solely from an upgraded 'Dooley's Lane' thereby preserving the amenity / safety of Old Avenue and its residents.
- There are concerns as regards any future expansion or intensification of the proposed development.

4.0 Planning History

On Site:

PA Ref. No. 92/1081. Was refused on 11th June, 1992 refusing G.W. O'Connell permission for a change of use of potato storage, grading and packing unit to industrial unit.

PA Ref. No. 92/2617. Was refused on 16th October, 1992 refusing Gerard W. O'Connell permission for a change of use of potato storage, grading and packing unit to industrial unit.

PA Ref. No. 043092. Was refused on 17th August, 2004 refusing Aidan & Lynda O'Gorman permission for the change of use of potato grading warehouse to an indoor play centre for children, covered bin store, car parking and upgrading of road.

PA Ref No. 126604 / ABP Ref. No. PL04.242435. Was refused on appeal on 18th February, 2014 refusing Pdraig Dooley permission for alterations to elevations, internal alterations, extension to first floor mezzanine area and change of use of potato grading and storage warehouse to a health and fitness centre including new signage, car parking and associated works, for the following reason:

- Having regard to the location of the proposed development off an existing access road serving a housing estate, it is considered that the intensification of traffic use which would be involved in the change of use to a fitness centre together with the hours of operation of such a facility, would lead to increased levels of noise to existing residents, would lead to unacceptable levels of traffic through a residential area, would seriously injure the residential amenity of nearby residents and would, therefore, not be in accordance with proper planning and sustainable development.

On Adjacent Sites:

None.

On Sites in the Immediate Vicinity:

PA Ref. No. 126420 / ABP Ref. No. PL04.242004. Was granted on appeal on 25th September, 2013 permitting Aldi Stores Ireland permission for the construction of a single storey discount foodstore of 1,436m² gross floor area (990m² net) including

the sale of alcohol for consumption off the premises; a scouting hall of 247m², 117 car parking spaces, bicycle stands, loading bay, external plant, bin store, ESB substation, trolley bay, signage, attenuation areas and all associated boundary treatments, landscaping and site development works at a 1.4150 hectares (3.496 acres) site on Hazelwood Avenue (L-2966), Riverstown, Glanmire, Co. Cork. The development also consists of the construction of a new access and link road onto Hazelwood Avenue (L-2966), and part of a new link road between Hazelwood Avenue and Riverstown. The proposed development was revised by further public notice received by the planning authority on the 8th day of April, 2013.

PA Ref. No. 146532. Was granted on 3rd March, 2015 permitting Aldi Stores (Ireland) Limited permission for amendment to opening hours permitted under condition 11 of An Bórd Pleanála Ref. No. PL04.242004 i.e. 0800-2000 hours Monday to Friday, 0800-1800 hours on Saturday and 1000-1800 hours on Sundays or public holidays, to the proposed opening hours of 0900-2100 Monday to Saturday and 1000-1900 hours on Sundays or public holidays. All at the Aldi store, Hazelwood Avenue, Riverstown, Glanmire, Co. Cork.

PA Ref. No. 156594. Was granted on 25th February, 2016 permitting Aldi Stores (Ireland) Limited permission for an amendment to the opening hours permitted under condition no. 2 of Cork County Council register reference no. 14/6532, i.e. 09.00 to 21.00 Monday to Saturday and 10.00 to 19.00 hours on Sundays and public holidays, to the proposed opening hours of 08.00 to 22.00 Monday to Sunday including public holidays. All at the Aldi store, Hazelwood Avenue, Riverstown, Glanmire, Co. Cork.

5.0 Policy Context

5.1. National and Regional Policy

The *'Childcare Facilities, Guidelines for Planning Authorities, 2001'* provide a framework to guide both local authorities in preparing development plans and assessing applications for planning permission, and developers and childcare providers in formulating development proposals. They state that Planning Authorities should encourage the development of a broad range of childcare facilities, i.e. part-

time, full day-care, after-school care, etc., including those based in residential areas, in employment areas and in areas close to where users of such facilities live. The Guidelines provide detailed guidance with regard to appropriate locations for the siting of childcare facilities such as in the vicinity of schools in addition to detailing the development control considerations of proposals for same.

The 'Development Contributions, Guidelines for Planning Authorities' published by the Department of the Environment Community and Local Government in January, 2013 aim to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance was last issued in 2007.

5.2. Development Plan

Cork County Development Plan, 2014:-

Other Relevant Sections / Policies:

Chapter 5: Social and Community:

Section 5.3: Childcare Facilities:

SC 3-1: Childcare Facilities:

Support and facilitate the sustainable provision of childcare facilities in appropriate locations and seek their provision concurrent with development, having regard to population targets for the area and in accordance with the Guidelines on Childcare Facilities and the Childcare (PreSchool Services) Regulations 2006.

Blarney Electoral Area Local Area Plan, 2011 (2nd Ed., January, 2015):-

Land Use Zoning:

The proposed development site is located in an area zoned as 'Existing Built Up Area'.

Other Relevant Sections / Policies:

Section 1: Introduction to the Blarney Electoral Area Local Area Plan

Section 2: Local Area Strategy

Section 3: *Settlements and Other Locations: Main Settlements and Strategic Employment Centres: Glanmire*

Section 3.4.24: *Utilities and Infrastructure:*

U-04: Develop Link Road

Cobh Draft Municipal Local Area Plan, 2016:-

Land Use Zoning:

The proposed development site is located in an area zoned as ‘Existing Built Up Area’.

Other Relevant Sections / Policies:

Section 1: *Introduction*

Section 2: *Local Area Plan Strategy*

Section 3: *Main Towns*

Section 3.3: *Glanmire*

GM-U-04: Develop Link Road

Cork County Council Development Contribution Scheme, 2004:-

The Cork County Council Development Contribution Scheme, 2004 was adopted on 23rd February, 2004 and is intended to operate for a period of twenty years in line with the time periods of the Cork Area Strategic Plan and the North and West Cork Strategic Plan. The Scheme sets out the basis for the determination of the relevant development contributions in respect of the various classes of infrastructure for specified categories of development within the Cork Area Strategic Plan (CASP) and the North and West Cork Strategic Plan (N&WCSP) areas. In accordance with adjustments applicable from 1st January, 2015 the rate of development contributions applicable in respect of ‘non-residential development (other)’ can be summarised as follows

| <i>Breakdown of Development Contribution Scheme Rates for ‘Non-Residential Development (Other)’ applicable from 1st January, 2015 until further notice</i> | | |
|--|----------------|--------------|
| <i>Roads</i> | <i>Amenity</i> | <i>Total</i> |

| | | |
|-------------------------|------------------------|-------------------------|
| €14.29 / m ² | €2.03 / m ² | €16.32 / m ² |
|-------------------------|------------------------|-------------------------|

5.3. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

First Party Appeal:

- With regard to the inclusion of Condition No. 11 as imposed by the Planning Authority in its notification of a decision to grant permission for the proposed development, the Board is referred to the '*Development Contributions, Guidelines for Planning Authorities*' published by the Department of the Environment, Community and Local Government in January, 2013 which require planning authorities to include the following in their Development Contribution Schemes:
 - A reduction of 50% for temporary grants of permission of up to 5 No. years duration.
 - Waivers in the case of change-of-use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure.
 - Provision to charge only net additional development in cases of redevelopment

The Cork County Council Development Contribution Scheme has yet to be updated to reflect the aforementioned requirements despite the issuing Departmental Circular PL15/2013 which sought '*to ensure compliance with the recently published Development Contributions, Guidelines for Planning Authorities*'.

The Guidelines also expressly state that *'development contributions are not cash-cows'* whilst Circular PL15/2013 further states that development contribution schemes should seek *'to achieve the right balance between funding necessary infrastructure through planning gain and supporting / promoting economic activity and job creation by reducing cost to business'*.

Having regard to the foregoing, it is submitted that the subject proposal satisfies the 3 No. criteria set out above as follows:

- *A reduction of 50% for temporary grants of permission of up to 5 No. years duration:*

Condition No. 2 of the notification of the decision to grant permission has limited the term of the permission to 5 No. years, however, development contributions have been applied on the basis of the full rate for the entirety of the existing floor area. Therefore, it is submitted that a reduction of at least 50% in the applicable contribution rate would be appropriate in this instance.

- *Waivers in the case of change-of-use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure:*

The proposed development does not require any new or upgraded infrastructure / services nor will it result in any significant intensification of demand on existing infrastructure. Therefore, on the basis of the foregoing, the proposed development should be exempt from any requirement to pay development contributions.

- *Provision to charge only net additional development in cases of redevelopment:*

The proposed change of use can be categorised as comprising 'redevelopment' whilst the Development Contribution Scheme sets out the same rate of development contribution for both the existing (warehousing) and proposed (pre-school) uses.

On the basis that there is no net additional floor area and as the same development contribution rate is applicable in respect of the existing and proposed use, it is submitted that development contributions should not be levied on the subject proposal.

Third Party Appeals:

Jerry & Erika Bate O'Connor:

- Objectives have been included in both the Blarney Electoral Area Local Area Plan, 2011 and the Draft Cobh Municipal District Local Area Plan to develop a north-south link road to the west of the site (part of which has already been completed). The Planner's Report dated 7th March, 2017 indicates that the use of this means of access would be preferable to that proposed in the subject application.
- The existing Old Avenue estate already experiences problems attributable to its outdated design, deficiencies as regards off-street parking, the substandard design of the exit onto the Hazelwood Road, the lack of supervision of an area of public open space, the operation of an adjacent garden centre and the presence of a footpath / cycleway between the turning area within the estate and an unsupervised overgrown laneway.
- Whilst the applicant has stated that there have never been any traffic issues at its existing facility in Fernwood, that premises comprises a purpose-built facility which formed an integral part of the design and construction of the wider estate whilst it is also situated at the entrance to the scheme thereby avoiding any requirement for traffic to pass through more residential areas.
- The proposed development will have a detrimental impact on the adjacent area of public open space, particularly in light of the vehicle movements at the site entrance.
- The '*Childcare Facilities, Guidelines for Planning Authorities*' require one childcare facility providing 20 No. childcare spaces for every 75 No. dwelling houses, however, the Old Avenue estate comprises only 59 No. dwelling houses and thus does not satisfy the aforementioned requirement. It should

also be noted that the Guidelines require the provision of only 20 No. places for each 75 No. dwellings.

- Section 3.4.2 of the *'Childcare Facilities, Guidelines for Planning Authorities'* specifically discourages the use of temporary permissions. Whilst a temporary grant of permission may be acceptable in terms of the consideration of noise or nuisance, or for an interim use pending relocation, it is unacceptable to avail of same as regards concerns pertaining to access, congestion and traffic safety within a residential estate. A temporary permission will result in uncertainty to both the applicant and local residents in addition to the Council which may have to consider other development proposals for the area in the interim.
- The *'Residential Estate Guidelines'* issued by Cork County Council in 2011 state that *'Schools should not be located on a road terminating in a cul-de-sac'*.
- Several proposals for the redevelopment of the subject site have been refused permission, including on the basis that they would lead to unacceptable levels of traffic through a residential area.
- From a review of PA Ref. No. 12/6604 it would appear that access to the existing warehouse (when it was in active use as an agricultural factory) was obtained from the laneway to the southwest as opposed to through the Old Avenue estate. Notably, the landowner from whom the applicant is seeking to lease the subject site is most likely in the best position to verify same as his family retain ownership of both the warehouse and the laneway. Furthermore, in its assessment of PA Ref. No. 12/6604 the Planner's Report noted that *'a grant of permission could be considered in the event that alternative access via the existing laneway to the southwest could be provided'* and that *'the access proposal through the Old Avenue estate is unsatisfactory and will have an undue negative impact on residential amenity'*. In this regard the Board is requested to consider the possible alternative means of access to the application site in light of the recent Aldi and Scout Hall developments to the west.

- There are several concerns with regard to the overall design and layout of the submitted proposal:
 - The intention would appear to maintain the access through the site to the adjacent mews housing, however, this will result in a pre-school site surrounded by vehicular access routes that will be also accessible to said traffic from 3 No. separate points.
 - The proposed outdoor play area will be adjacent to a vehicular access route and is also deficient in terms of its overall area.
 - It would appear to be the intention of the applicant to retain an existing vehicular access ramp through the site to the adjacent garden centre. The continued usage of this access for deliveries etc. is not considered to be compatible with a pre-school use.
 - There are concerns as regards the visibility available for traffic both entering and exiting the site given the height of the fencing and the position of the site entrance relative to the adjacent turning area, footpath and public open space within the Old Avenue estate. It is also likely that pick-up / drop-off activities associated with the proposed development will be conducted from within that area used for the turning of vehicles and as parking by local residents.
- The concerns identified in previous planning applications on site with regard to access and traffic safety remain unresolved.
- With regard to PA Ref. No. 126604 / ABP Ref. No. PL04.242435, it is submitted that traffic volumes in that instance would have been spread across a longer period of the day, however, the subject proposal will result in traffic volumes being concentrated during pick-up and drop-off times thereby intensifying the impact on local residents.
- There are concerns as regards any potential future expansion or intensification of use on site and the likely impacts associated with same.
- When taken in conjunction with the considerable level of traffic presently associated with the garden centre and the mews housing to the east of the application site, it is considered that the proposed development involves an

unacceptable intensification in the use of the site and the access road within the Old Avenue estate.

- There has been no clear consideration given to the adequacy of the Old Avenue estate road for the additional traffic volumes consequent on the proposed development.
- Whilst there is a long-standing objective in the Local Area Plan to provide a north-south link road further west, there is no evidence to suggest that this roadway will actually be constructed or any indication of an expected timescale for the completion of same.
- The location / siting of the proposed development does not accord with the policies and objectives set out in Chapter 5 of the Cork County Development Plan, 2014 which states that any such facilities should be located so as not to impact on residential amenity and that they should also be developed in tandem with the wider development of an area.
- The proposal is contrary to Objective Nos. SC3-1 & SC4-1 of the Development Plan which also refer to the guidance contained in Cork County Council's Residential Estate Development Guidelines.
- The proposed development will have a detrimental impact on the level of amenity afforded to the residents of Old Avenue by the adjacent area of public open space and will also reduce the overall aesthetic appeal and environmental quality of the estate as a whole.
- The Engineering and Planning Reports on file have all indicated a strong preference for access to the site to be obtained via the laneway to the southwest.
- The schedule of conditions imposed by the Planning Authority makes no reference to any future use of the laneway to the southwest and this lack of specificity could result in any subsequent use of the laneway being difficult to implement at a later stage.
- The proposed development is premature pending the completion of the necessary infrastructural improvements required to provide suitable access

i.e. the delivery of the link road required by Objective U-04 of the Local Area Plan.

- The proposed development will have a detrimental impact on residential amenity by reason of increased traffic and noise etc.

Residents of Old Avenue c/o Therese Cronin:

- The application site is wholly unsuitable for the nature and scale of development proposed.
- The proposed development represents a significant intensification of use on site which will not be in any way complementary to the adjacent residential area through which access to the proposal will be obtained. In this respect it is submitted that the increase in traffic movements consequent on the proposed development will occur over concentrated periods of time, such as during the morning when the legitimate on-street parking activities of local residents within the Old Avenue estate serve to narrow the width of the service road available to passing / through traffic.
- When taken in conjunction with the considerable level of traffic already using the access road associated with the existing garden centre and the mews housing to the east of the application site, it is considered that the proposed development would result in an unacceptable increase in traffic thereby endangering public safety.
- Refuse trucks already encounter difficulties in servicing the Old Avenue housing estate, particularly between the hours of 08:00 and 10:00, and presently use the hard surfaced area adjacent to the site entrance in order to perform turning manoeuvres.
- The *'Childcare Facilities, Guidelines for Planning Authorities'* require one childcare facility providing 20 No. childcare spaces for every new residential development comprising 75 No. houses or more. In this regard, and in order to put the scale of the subject proposal in context, it should be noted that the Old Avenue estate comprises 59 No. dwelling houses yet the size of the proposed development will cater for the equivalent of 300 No. dwellings.

- From a review of the planning history of the application site, as supported by aerial photography, it is apparent that the proposed development site previously formed part of a larger agri-business operation undertaken within the landholding and that access to the property was obtained via either of two access roads extending from East Cliff Road (Local Road No. L30010) to the south. However, it would appear that some time after the construction of the Old Avenue and Orchard Manor housing schemes (post-2000), the subject site incrementally began to utilise an entrance via Old Avenue as its primary means of access. Notably, usage of the prior access to the site from the northeast is now effectively blocked off by the existing garden centre whilst a set of gates have been erected across the access road to the southwest. Therefore, it is questionable if the subject site has planning permission to use the Old Avenue estate as its primary means of access.
- It should be noted that the 4 No. mews dwelling houses permitted under PA Ref. No. 98/3822 are accessed through the proposed development site (and Old Avenue) which will therefore give rise to conflicting traffic movements.
- Given the developmental history of the application site and the adjacent lands, it is submitted that the site is capable of being independently accessed without having to pass through a neighbouring residential scheme. The onus should be on the applicant to secure adequate interest in an alternative access route and to upgrade same as necessary and in this regard it should be noted that the other access roads to the site in question are under the control of the same landowners as the subject site. In addition, the Board is advised that the access road to the southwest of the application site has sometimes been used by articulated lorries making deliveries to the garden centre which serves to demonstrate that it is fully capable of being used, with perhaps some upgrading works.
- It is an objective of the Blarney Electoral Area Local Area Plan, 2015 to secure the provision of an access road connecting the recent Aldi development to the East Cliff Road and the benefit of such a link road would be to provide an alternative means of access to the subject site. Therefore, the subject proposal is premature pending the realisation of the foregoing objective.

- The reason for the refusal of PA Ref No. 126604 / ABP Ref. No. PL04.242435 is equally applicable to the subject proposal in that the development proposed will lead to a significant and unacceptable increase in traffic with the Old Avenue estate which would have a detrimental impact on local residents as regards safety, noise and general disturbance.
- The proposed development does not comply with the '*Childcare Facilities, Guidelines for Planning Authorities*' for the following reasons:
 - The application site is not suitable for a childcare facility of the scale proposed. The internal configuration of the building, the proposed access arrangements and the outdoor open space provision are not conducive to a child friendly environment or a facility which would be able to operate without having a significant adverse impact on neighbouring properties.
 - It is good planning / design practice to locate childcare facilities at / near the entrance to residential developments thereby avoiding unnecessary traffic movements through the estate which could give rise to concerns as regards noise, nuisance and safety. In this regard it should be noted that the applicant already operates a childcare facility located at the entrance to the nearby Fernwood estate. Notably, the development of the Fernwood estate was specifically designed to accommodate the childcare facility whilst the roadway between it and the main public road is free from dwellings and on-street parking. Such an arrangement clearly shows the advantages of purpose-built facilities within residential developments.
 - The proposed outdoor play area is likely to have a detrimental impact on the residential amenity of the existing housing to the east by reason of noise and nuisance.
 - The site location is not convenient to public transport nor is it conducive to facilitating people wishing to travel by foot.
 - Vehicle movements to / from the site will occur within a residential estate and directly adjacent to an area of public open space which is intensively used by local children and residents.

- The proposed development will give rise to concentrations of traffic during pick-up / drop-off times which will result in the disturbance of local residents in the Old Avenue estate.
- Having regard to the *'Best Practice Guidance: We Like This Place – Guidelines in Best Practice in the Design of Childcare Facilities'* published by the Department of Children and Youth Affairs in 2004, it is submitted that the external play area is considerably below the required standard.
- The site location cannot be considered to be sustainable as the majority of trips will most likely occur by way of private car. Furthermore, the site is unsuited to multi-purpose trips and will most likely result in cars travelling to the area from a considerable distance away.
- The applicant has indicated by way of unsolicited additional information that it proposes to transfer its pre-school facility at Glanmire Business Park to the subject site. It is considered that this serves to demonstrate that the proposed development is aimed at serving a wide catchment area. The proposed facility will not primarily serve a local need and has no site specific need to locate at the selected site.
- The surrounding area is already well served by a number of pre-school facilities and the applicant has failed to establish whether there is any need for the proposed development.
- Given the size of the proposed pre-school, it should be located directly adjacent to complimentary facilities and services (e.g. parks and schools) in a sustainable location where the use of public transport / walking can be encouraged, and where there are adequate drop-off / pick-up facilities available.
- The scale of the proposed development would fundamentally and adversely change the character of the surrounding residential area.
- The Planning Authority's assessment of the subject application has not given due consideration to the cumulative impact of the proposal when taken in conjunction with the nearby Aldi development.

- Whilst the objective in the Local Area Plan to provide a link road further west has been used to justify a grant of permission for the proposed development, it should be noted that this remains as an objective only at this time.
- The Planner's Report raises specific concerns about the concentration of traffic in the morning peak period which clearly serves to acknowledge the traffic problem with the proposed development.
- The Planning Authority would appear to have accepted the proposal to stagger the opening hours as a means of mitigating the concerns of local residents, however, in reality, it is submitted that parents will drop off children to suit their own needs with little regard for the residential amenity of the area.
- The Area Engineer does not appear to have assessed road widths / safety within the Old Avenue estate when residents' cars are parked along the roadside. Indeed, the scale and nature of the proposed development would warrant the preparation of a road safety audit.
- The temporary grant of permission is of no consolation to concerned residents.
- Whilst the *'Childcare Facilities, Guidelines for Planning Authorities'* allow for temporary grants of permission in 'exceptional circumstances' they also state that this should be avoided if at all possible. There are no exceptional circumstances as regards the subject proposal as it amounts to a speculative development with no specific need to locate at this site.
- The previous decision of the Board with respect to ABP Ref. No. PL04.242435 has established the inappropriateness of using an existing residential access road to serve a commercial development.
- The proposed development does not satisfy any of the criteria set out in the *'Development Management, Guidelines for Planning Authorities, 2007'* as regards the granting of a temporary permission.
- The traffic impact of the proposed development would not appear to have been assessed by the Area Engineer. The Old Avenue estate was never designed to accommodate the anticipated increase in traffic levels as evidenced by the extent of on-street car parking.

- The following traffic concerns would not appear to have been assessed by the Planning Authority:
 - The impact of overflow parking and pick-up / drop-off activities which cannot be accommodated within the confines of the application site on the Old Avenue estate, including that area used for parking by local residents.
 - The inadequate sightlines available from the proposed site entrance onto Old Avenue.
 - The cumulative traffic impact when taken in conjunction with the adjacent garden centre.
 - The existing traffic impact / congestion and haphazard parking associated with the operation of Glanmire Community College on the surrounding road network.
 - The conflicting access arrangements through the application site to the adjacent mews housing.
 - Concerns with regard to the impact of the proposal on pedestrian / cycling safety within the Old Avenue estate, particularly during peak times.
- The proposed development will have a detrimental impact on residential amenity within the Old Avenue estate by reason of noise, nuisance, traffic and general disturbance.
- There is a substantial precedent for similar developments in comparable circumstances having been refused permission and in this regard the Board is referred to ABP Ref. Nos. PL04.129348, PL06F.204679 & PL06F.244836.
- There are concerns as regards the potential for the proposed use to intensify / expand following any grant of permission.

6.2. **Response of Third Parties to the First Party Appeal:**

Response of Jerry & Erika Bate O'Connor:

- *A reduction of 50% for temporary grants of permission of up to 5 No. years duration:*

The temporary grant of permission issued by the Planning Authority is contrary to accepted planning policy including the *'Childcare Facilities, Guidelines for Planning Authorities'*. Furthermore, the applicant did not apply for a temporary grant of permission and the substantial nature of the works proposed would indicate that the applicant intends to operate from the site on a permanent basis.

- *Waiver where a change-of-use does not lead to the need for new or upgraded infrastructure / services or a significant intensification of demand placed on existing infrastructure:*

The applicant's assertion that the proposal will not give rise to any requirement for new or upgraded infrastructure / services and that it will not place a significant demand on existing services is rejected as follows:

- The increased traffic volumes consequent on the proposed development will place an additional demand on existing road infrastructure in the area. In addition, it is considered that the level of development proposed would be more appropriate in the context of a large residential development with appropriately designed and located roads infrastructure rather than within an estate that would not be even required to provide a crèche with 20 No. places under current guidance.
- Concerns have previously been raised with regard to the inadequate roads infrastructure within the Old Avenue estate, including issues arising from parking on footpaths and the use of the residents' overflow parking area as a turning circle by delivery lorries etc. The congestion anticipated as a result of the proposed pre-school is likely to give rise to increased incidences of parking along footpaths thereby adding further to the need to repair / renew damaged areas.
- Although the applicant has suggested that it will access the proposed development via the new link road (Objective U-04 in the Local Area Plan) when this becomes available, it has nevertheless pursued an

application for access through the Old Avenue estate which will place an increased demand on the estate's road and footpath infrastructure.

- On the basis of the figures presented in the application, it is envisaged that there will be an additional 90 No. people using the available water and wastewater services in the area. This represents a substantial increase in usage.
- In light of the increased levels of traffic and usage of water / wastewater infrastructure, it is submitted that the proposed development will result in a significantly increased demand being placed on existing infrastructure and thus the levels of contributions sought by the Planning Authority are appropriate.

Response of Residents of Old Avenue c/o Therese Cronin:

None.

6.3. Response of Applicant to Third Party Appeals:

- It is clear from a review of the Cork County Development Plan, 2014 and the '*Childcare Facilities, Guidelines for Planning Authorities*' that the proposed pre-school use is both compatible and desirable within a residential area.
- Whilst the scale of the development proposed (in terms of child capacity) is higher than that required for new residential areas, the '*Childcare Facilities, Guidelines for Planning Authorities*' only lay down a minimum standard of provision and do not set an upper limit.
- The Guidelines do not suggest that childcare facilities within any estate should be for the sole and exclusive use of the residents of that estate and it is reasonable to expect any such facility to attract customers from beyond the immediate surrounds.
- The proposed development site is located in the heart of a much larger residential / urban area where there is an overall deficiency in the provision of suitable pre-school childcare and thus it is ideally and centrally positioned to address this deficit.

- Contrary to the appellants' assertions, the proposed development is located within walking distance of a host of complimentary services including:
 - 2 No. primary schools;
 - A secondary school;
 - John O'Callghan public park;
 - A scout hall;
 - 2 No. GAA clubs;
 - GACA community pitches;
 - The Hazelwood and Crestfield shopping centres; and
 - 3 No. supermarkets.
- The precedents cited by the appellants as regards the refusal of childcare facilities within residential areas all involved the conversion of a residential property and thus are not comparable to the subject proposal.
- The *'Childcare Facilities, Guidelines for Planning Authorities'* do not place any restriction on the siting of childcare facilities at or near the entrances to developments.
- The developments previously refused permission on site would have resulted in a far higher intensity of traffic movements over a prolonged period than the subject proposal. The usage pattern of the proposed development will involve capped numbers of traffic movements (by virtue of capacity) over a limited portion of the day. The nature of the pre-school use is that it will only be operational during school terms and at a time when many cars will have left the Old Avenue estate for work etc. In this regard the potential for conflicting traffic movements is extremely unlikely and a comparison with previous applications for dissimilar uses is inequitable.
- It is proposed to carry out significant works to the existing building in order to make it suitable for the intended use. Whilst the structure was originally built for a different purpose there is no reason why it cannot be converted to provide an excellent pre-school facility.

- The *'Childcare Facilities, Guidelines for Planning Authorities'* state that *'a minimum of 9m² per child is recommended based on the specific number of children for which space is intended to be used at any one time'*. It is not intended that the external play area will be used by all attending children simultaneously and staff at the proposed facility will be aware of the appropriate levels of open space provision. Furthermore, there is ample scope to increase the provision of outdoor play area in the event that the Board should deem this necessary.
- The existing site access was constructed with the Old Avenue housing estate and the applicants have provided no evidence to support the suggestion that the access may not have the benefit of planning permission. The applicant is unaware of any planning issues or enforcement action as regards this access route.
- The existing laneway to the southwest is substandard and is neither suitable or available for use by the applicant.
- It is the applicant's understanding that the laneway to the southwest is being actively pursued by the Local Authority in order to provide a local link road. In this respect it should be noted that the applicant is amenable to amending the access to the proposed development in order to avail of the new link road in due course if deemed desirable / necessary by the Council / An Bord Pleanála.
- The photographs submitted in support of the grounds of appeal show cars not associated with the application site illegally parked on footpaths. It is also noted that despite the provision of a convenient and accessible public open space, the appellants have suggested that the public road is a more suitable playground for local children.
- The existing road infrastructure is adequate and capable of accommodating the proposed development without negatively impacting on the amenities of local residents.
- The appellants have correctly highlighted that the use of temporary permissions should be avoided if at all possible. In this respect it is submitted that the subject application was for an unrestricted permission and thus the

Board is requested to consider the proposal 'de novo' and to omit Condition No. 2 in the event of a grant of permission.

6.4. **Planning Authority's Response**

None.

6.5. **Observations**

Melissa Deasy:

- The proposed development will significantly increase traffic levels within the Old Avenue housing estate thereby giving rise to concerns as regards public safety, traffic congestion, increased noise / disturbance and general nuisance etc. noise.
- The proposal will result in the devaluation of the observer's property.

Joseph & Susan Cronin:

- There are concerns with regard to the increased traffic volumes consequent on the proposed development and the impact of same on safety within the Old Avenue housing estate.
- The existing warehouse would require major refurbishment works in advance of any occupancy by a prospective business.
- Inadequate car parking has been provided on site
- The proposed car parking spaces will be located too close to an existing play area in addition to an area used by local residents for overflow parking.
- The proposed outdoor play area to the rear of the existing building will be located adjacent to the entrance to a private residence and will also occupy a space presently used as a turning area by delivery / refuse vehicles etc. serving the adjacent garden centre and 4 No. dwelling houses.
- The increased noise levels attributable to the proposed development will have a detrimental impact on the residential amenity of nearby housing.

- Consideration should be given to accessing any future development on site via the Old Avenue laneway.

6.6. Further Responses

Response of Cork County Childcare Committee Ltd. to Section 131 Notification:

- The Tusla Child and Family Agency is the deciding authority as regards the suitability of a premises to be used as an Early Years' Service.
- Planning conditions should stipulate that the building must comply with the Childcare Act, 1991 (Early Years Services) Regulations, 2016. Particular attention should be given to Regulation 20.2 which states the following:

'A registered provider of a full day care service, a part time day care service, a sessional preschool service or a childminding service that is registered for the first time on or after 30 June 2016, shall ensure that a suitable, safe and secure outdoor space to which the preschool children attending the service have access on a daily basis is provided on the premises'.

7.0 Assessment

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the third party appeals are:

- The principle of the proposed development
- Overall design and layout
- Impact on residential amenity
- Traffic implications
- Appropriate assessment
- Other issues

These are assessed as follows:

7.1. **The Principle of the Proposed Development:**

With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is located within the development boundary of Glanmire on lands zoned as *'Existing Built-Up Area'* in the Blarney Electoral Area Local Area Plan, 2011 (2nd Ed., Jan. 2015) and that within such areas development proposals are to be assessed in light of the objectives of the County Development Plan, any general or other relevant objectives contained in the local area plan, the character of the surrounding area, and any other planning and sustainable development considerations relevant to the proposal or its surroundings. In this regard I would advise the Board that Section 3.3.4 of the Local Area Plan has identified the poor provision of social infrastructure as a significant constraint to development in Glanmire and that the *'Childcare Facilities, Guidelines for Planning Authorities, 2001'* promote the provision of childcare facilities within existing residential areas subject to certain criteria, including the overall suitability of the selected site for the type and size of facility proposed, the availability of an area for outdoor play and details of the management of same, convenience to public transport nodes, the adequacy of the proposed parking arrangements, local traffic conditions, the number of such facilities in the area, and the intended hours of operation.

Therefore, having considered the available information, with particular reference to the site location within an established built-up area which is primarily residential in character, and in light of the former use of the application site for commercial / industrial purposes, I am generally satisfied that the overall principle of the proposed development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties and the overall character of the wider area.

7.2. **Overall Design and Layout:**

The modifications required to the internal layout of the premises and the associated alterations to the elevational treatment are relatively minor and do not give rise to any significant implications as regards the amenities of neighbouring properties or the character of the existing structure or its immediate surrounds. More specifically, whilst I would accept that the existing building would appear to be located within the historical curtilage of Riverstown House, which is a protected structure by reason of its inclusion in the Record of Protected Structures contained in the County

Development Plan, given the nature of the development proposed (i.e. a change of use), the relatively minor works proposed to a structure of no historical or architectural merit, the presence of intervening features / structures between the application site and the main house, and the existing site context, including its positioning and setting relative to Riverstown House, I am satisfied that the subject proposal will have no significant impact on built heritage considerations.

7.3. **Impact on Residential Amenity:**

Concerns with regard to the potential impact of the proposed development on the residential amenity of neighbouring housing primarily relate to the increased traffic volumes / movements within the Old Avenue estate in addition to the noise emissions attributable to same. In this regard I would refer the Board to my assessment of the wider traffic impact of the proposed development as set out elsewhere in this report and my concerns in relation to the likely concentrations of traffic associated with the proposal at particular times of the day, with specific reference to the peak morning period. On balance, it is my opinion that the increased traffic volumes consequent on the proposed development through a settled housing area, in addition to the increased noise and general disturbance associated with same, would be likely to have an adverse impact on the residential amenity of that estate.

7.4. **Traffic Implications:**

The proposed development will be accessed via the existing entrance arrangement onto the service road through the adjacent Old Avenue housing estate to the north which extends from Hazelwood Avenue and in this respect it is of particular relevance to note the previous decision of the Board with regard to PA Ref No. 126604 / ABP Ref. No. PL04.242435 (which concerned a proposal to develop the existing warehouse into a health and fitness centre) wherein permission was refused on the basis that the development then proposed, having regard to the site location off an existing access road serving a housing estate, would lead to an unacceptable increase in the levels of traffic travelling through a residential area (i.e. Old Avenue) which would seriously injure the residential amenity of nearby residents. Accordingly, given that the access arrangements to the proposed development are directly comparable to those previously refused permission under ABP Ref. No.

PL04.242435, it is necessary to determine whether or not the traffic impact of the subject proposal is such as to warrant a further refusal of permission or if the traffic movements likely to be associated with the proposed development can be accommodated by the existing road network without undue impact on the amenities of neighbouring residences.

The proposed development involves the change of use of an existing (vacant) warehouse to use as a pre-school facility which will accommodate a total of 80 No. child places in addition to 10 No. staff members and in this respect the supporting correspondence provided with the initial planning application has sought to assert that the actual nature of the proposed use will serve to alleviate concerns as regards the potential for an intensification of traffic over a prolonged day through the adjacent residential area. More specifically, it has been submitted that the limited hours of operation, when taken in combination with the proposal to stagger class times by ensuring that the 4 No. classes commence at intervals between 08:30 and 09:30 hours and finish from 11:45 to 12:45 hours, will alleviate traffic congestion and will also serve to avoid continued traffic movements to and from the site via Old Avenue throughout the day. It has also been suggested that the proposed operating arrangements will ensure that traffic movements will primarily occur during normal working hours at times when on-street parking within Old Avenue will be lessened as a result of local residents having drove to work etc. In addition, it has been emphasised that the proposed pre-school will not be in use in the evenings or at weekends thereby further minimising the potential impact on residential amenity.

Having reviewed the available information, whilst I would concede that the nature of the proposed use, with particular reference to its operating hours, is likely to result in lesser overall traffic volumes than the development proposal previously refused permission on site under ABP Ref. No. PL04.242435, I would nevertheless have serious reservations that the proposed development will generate considerable volumes of traffic and associated vehicular movements through the Old Avenue estate during the peak morning period. Indeed, rather than traffic volumes associated with the proposed usage being spread throughout the day, the subject proposal will serve to concentrate traffic volumes into a more confined period of time thereby potentially exacerbating traffic congestion and endangering public safety within the estate. In this regard I would suggest that the traffic impact associated with

the proposed development will have a detrimental impact on the residential amenity of the occupants of neighbouring housing within the Old Avenue estate and that the Board's concerns as previously expressed in its determination of ABP Ref. No. PL04.242435 remain unresolved.

With regard to the possibility of providing an alternative means of access to the subject site which would not entail traffic movements through an established housing estate, I would advise the Board that since its determination of ABP Ref. No. PL04.242435, a notable recent addition to the area in the immediate vicinity of the application site has been the construction of a new 'Aldi' supermarket and a scout hall to the northwest / west which has included for the partial development of a new link road between Hazelwood Avenue to the north and East Cliff Road to the south pursuant to Objective No. U-04: '*Develop Link Road*' of the Blarney Electoral Area Local Area Plan, 2011 (2nd Ed., January, 2015). Notably, the completion of this link road remains an objective of the current Local Area Plan and a comparable objective has also been included in the Draft Cobh Municipal Local Area Plan, 2016. In this respect I would advise the Board that the applicant has acknowledged the potential for the completion of this link road to serve as an alternative means of access to the subject site and that the Council is understood to be in the process of acquiring the existing land to the south / southwest of the application site, presumably with the intention of completing the link road. At this point it is of particular relevance to note that the lands required for the completion of the link road would appear to be in the same ownership as the proposed development site and, therefore, it would seem feasible for the subject site to be accessed via that link road (even if the roadway were not to be completed in its entirety as far as East Cliff Road).

By way of further observations, I would advise the Board that the terraced 'mews' housing to the immediate east is presently accessed through the application site and that it would appear to be intended to maintain this access arrangement as part of the proposed development. In this regard I would have reservations as regards the potential for conflicting traffic movements on site and I would further question the appropriateness of such an open access arrangement through the grounds of a proposed childcare facility. In addition, I note the concerns raised by the appellants as regards the potential for a further expansion / intensification of activities on site and the possible additional traffic impact associated with same.

7.5. **Appropriate Assessment:**

From a review of the available mapping, including the Cork County Development Plan, 2014 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that although the proposed development site is not located within any Natura 2000 designation, it is situated approximately 1.7km northeast of the Cork Harbour Special Protection Area (Site Code: 04030) which has been designated as such due to its ecological interest on the basis that it contains a high number of species (and wetlands) listed for protection under the E.U. Birds Directive. In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 10 of the Cork City Development Plan, to protect, enhance and conserve designated areas of natural heritage, biodiversity and protected species, and I would refer the Board in particular to Objective 10.7: *'Designated Areas and Protected Species'* of the Plan which states that development projects and plans likely to have significant effects on European Sites (either individually or in combination with other plans or projects) will be subjected to an appropriate assessment and will not be permitted unless they comply with Article 6 of the Habitats Directive. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, a designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

Having reviewed the available information, including the screening assessment undertaken by the Planning Authority, and following consideration of the 'source-pathway-receptor' model, it is my opinion that given the nature and scale of the development proposed, the availability of public services, the site location outside of the protected site, the current site context and its limited ecological value, and the separation distance between the proposed works and the nearby Natura 2000 designation, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of any

Natura 2000 site. Therefore, I am inclined to conclude that the proposed development would not be likely to significantly affect the integrity of the foregoing Natura 2000 site and would not undermine or conflict with the Conservation Objectives applicable to same.

Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

7.6. **Other Issues:**

The First Party Appeal:

This is an appeal made under the provisions of Section 48 of the Act and concerns whether or not the Planning Authority has properly applied the terms of its Development Contribution Scheme in seeking the payment of a development contribution in the sum of €11,091.07 towards *'public infrastructure and facilities benefitting development in the area of the Planning Authority'* in respect of the subject proposal as imposed by Condition No. 11 of the notification of the decision to grant permission. Following a review of the grounds of appeal it is clear that the key issue in respect of this appeal is whether or not the proposed development is entitled to avail of certain exemptions / waivers / reductions with regard to the payment of development contributions as set out in Chapter 2 of the *'Development Contributions, Guidelines for Planning Authorities'* published by the Department of the Environment, Community and Local Government in January, 2013. More specifically, the applicant has asserted that consideration should be given to the applicability of the following provisions:

- Reduced rates for temporary permissions: 50% of normal rate for permissions of up to 5 years;
- Waivers in the case of change-of-use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure (including, for example, transport infrastructure); and

- Provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totalling 200m² of which 150m² is replacing existing development, contribution should only be levied on the additional 50m²).

Having reviewed the available information, whilst I would accept that there may be some merit to certain aspects of the arguments put forth in the grounds of appeal as regards the applicability of the identified waivers / reductions specified in the *'Development Contributions, Guidelines for Planning Authorities, 2013'* with respect to the development contributions sought by the Planning Authority, with particular reference to the 50% reduction envisaged in the Guidelines for temporary grants of planning permission of up to 5 No years, I would advise the Board that although the *'Development Contributions, Guidelines for Planning Authorities'* were published under Section 28 of the Planning and Development Act, 2000, as amended, and whilst planning authorities and An Bord Pleanála are required to have regard to same in the performance of their functions under the Planning Acts, it is of relevance to note that the Guidelines themselves comprise non-statutory guidance and that the Board is not obliged to implement same. More notably, the Guidelines state that the statutory basis for the operation of a development contribution scheme is set out in the Planning and Development Act, 2000, as amended, before subsequently acknowledging that the making of a scheme is a reserved function of the elected members of the local authority. In this regard it is further stated that contributions may only be levied in accordance with a development contribution scheme formally drawn up by the planning authority and approved by the elected members following a public consultation process.

At this point I would advise the Board that although the Guidelines state that all planning authorities should commence a review of their existing development contribution schemes by 31st March 2013 to ensure compliance with the content of the guidance, it would appear that Cork County Council has not amended / reviewed its current Development Contribution Scheme to take cognisance of the Guidelines (as has been acknowledged by the applicant in the grounds of appeal). Therefore, it is my opinion that the Board is obliged to implement the Cork County Council Development Contribution Scheme, 2004 as presently adopted. In support of the foregoing, I would refer the Board to the ruling made in respect of *Cork City Council*

v. An Bord Pleanála [2007] 1 I.R. 761 wherein it was held that the Board's function is confined to considering whether the terms of a development contribution scheme have been properly applied and that the Board is not entitled to consider the merits of the scheme. Furthermore, given that the adoption of the development contribution scheme is a reserved function, I would suggest that parallels can also be drawn with the ruling in the case of *Blessington Heritage Trust Ltd. v. Wicklow County Council* wherein it was held that in the 'case of the determination of a particular planning application, and where a difference is apparent, or where a test is more or less stringent in one than in the other, the "solemn and common public contract" contained in the development plan must prevail' i.e. in the event that there is a perceived conflict between a development plan (or in this instance a development contribution scheme) and Ministerial Guidelines, the development plan should prevail.

Therefore, given that the current Cork County Council Development Contribution Scheme, 2004 does not include for any exemption or reduction in the rate of development contributions to be applied in respect of the type / nature of development proposed, it is my opinion that the Planning Authority has correctly applied the terms of its Development Contribution Scheme in respect of Condition No. 11.

8.0 Recommendation

Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations and subject to the conditions set out below.

9.0 Reasons and Considerations

1. Having regard to the location of the proposed development off an existing access road serving a housing estate, it is considered that the intensification of traffic use which would be involved in the change of use to a pre-school facility together with the hours of operation of such a facility, would lead to increased levels of noise to existing residents, would lead to unacceptable

levels of traffic through a residential area, would seriously injure the residential amenity of nearby residents and would, therefore, not be in accordance with proper planning and sustainable development.

Robert Speer
Planning Inspector

28th June, 2017