



An  
Bord  
Pleanála

## Inspector's Report ABP-303524-18

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<b>Development</b>	'Permission' and 'Retention' : Change of Use from exclusively 'Residential' use to 'Residential' and 'Sessional Services – Childcare Facility' Use.
<b>Location</b>	43 Shelmartin Ave, Marino, Dublin3
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	4262/18
<b>Applicant</b>	Lisa Kendellen
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Appellant – 1<sup>st</sup> Party</b>	Lisa Kendellen
<b>Observers – 7no.</b>	Patricia Purdue Mary Scully Eoin Kefeather & Karen Dunne Dympna Clarke Eileen White James & Mary Murray Anne Whelan

**Date of Site Inspection**

16<sup>th</sup> April 2019.

**Inspector**

L. W Howard.

## **1.0 Site Location and Description**

- 1.1 The application site is located at No.43 Shelmartin Avenue, Marino. North Dublin City
- 1.2 The site comprises a 2-storey end of terrace dwelling house, approximately midway along the eastern frontage of Shelmartin Avenue.
- 1.3 The house is separated from its neighbours to the north, by a narrow pedestrian footpath which originally provided rear access to the neighbouring dwelling, but has now been gated.
- 1.4 The area is characterised by similar terraced 2-storey dwellinghouses.
- 1.5 There is a driveway to the front, enabling access directly off Shelmartin Avenue.

## **2.0 Proposed Development**

- 2.1 'Retention' permission and 'planning' permission is sought for development at No.43 Shelmartin Avenue, Marino, Dublin3.
- 2.2 'Retention' permission is sought for the change of use of a total of 48m<sup>2</sup> of ground floor dwelling space from exclusively residential use to residential and sessional services childcare facility use (note : permission was previously granted for 26m<sup>2</sup> of childcare use as per ref.3627/09)
- 2.3 'Retention' permission is also sought for associated external signage and amended hours of operation.
- 2.4 'Planning permission is also sought for the provision of external scooter and bicycle parking with all ancillary works

## **3.0 Planning Authority Decision**

### **3.1 Decision**

- 3.1.1 'Retention' permission and 'Planning' permission 'Refused', for a single (1no.) stated 'Refusal Reason', as follows –

“1. *The subject property is located within a Z2 area the zoning objective of which is to protect and / or improve the amenities of residential conservation area. Dublin City Development Plan 2016-2022 policy for Childcare Facilities states in Appendix 13.1 In existing residential areas,*

*detached houses / sites or substantial semi-detached properties with space for off-street parking and / or suitable drop-off and collection points for customers and also space for an outdoor play area will generally be permitted, provided the premises remains primarily residential and traffic and access arrangements do not interfere with general residential amenity.*

*The expansion in floor area of the facility and increase in numbers of children attending the creche facility to 22no. total in sessional care results in the building no longer being a suitable residential unit as well as generating increased noise, pedestrian and vehicle traffic, and general disamenity over and above that experienced as a result of the previously permitted 12no. childcare places. The dwelling, of modest floor area and within a terrace, is not suited to the scale of the 22no. child childcare facility proposed for retention, and the development would cause serious injury to residential amenities and is therefore contrary to the Dublin City Development Plan 2016-2022, in particular the Z2 Zoning Objective and Appendix 13, and would therefore be contrary to the proper planning and sustainable development of the area”.*

### **3.2 Planning Authority Reports**

The report of the Deputy Planning Officer can be summarised as follows :

#### **3.2.1 Current Context**

- The existing childcare facility on site was enabled under ref.**3627/090**. Existing operations are controlled by the following relevant Conditions attached under ref.**3627/090** –
  - C2 “... shall provide sessional and after school care only. Any change in the use of the facility shall require a grant of permission”.  
**Reason:** To control the development in the interests of residential amenity.
  - C3 “A maximum of 12no. children shall be accommodated ... at any one time”

**Reason:** To control the development in the interests of residential amenity and acceptable use.

C4 “the hours of operation shall be from 09.00am to 06.00pm Monday to Friday only.

**Reason:** To control the development in the interests of residential amenity.

C5 “the open space to the rear of the site shall be used predominantly for residential purposes. Use of this open space by the children shall be restricted to 1-hour per day and the children shall be supervised at all times in the garden”.

**Reason:** In the interest of safety and residential amenity.

- Under ref. **3627/090**,
  - the facility was limited to 12no. children, in a sessional setting, and
  - the layout provides for
    - the rear extension being used as habitable space – a kitchen and family room, with the 2no. original ground floor rooms used for playroom purposes, and
    - the entire 1<sup>st</sup> floor retained as residential.

### 3.2.2 Proposed Development

- Current Layout
  - Ground Floor – entire ground floor used as childcare. 3-classrooms shown, 2no. linked and within original ground floor. 1no. within the rear extension, with small kitchen area.
  - 1<sup>st</sup> Floor – 3no. bedrooms shown
- Proposed Layout
  - Ground Floor

The entire ground floor in use for sessional childcare, with the kitchen area included.

Doors / movable partitions to separate the two front rooms and the rear extension.

Rooms no longer stated as classrooms. Front room described as 'front garden' (which is evidently incorrect), while the rear room is 'study', and the rear extension being 'kitchen' and 'dining space'. The plans indicate hatch marks as "this area of ground floor to be used as part of sessional facility during operating hours and revert to dwelling use once sessional service hours over".

The dining room and study identified as the 2-areas of the ground floor which would be dual function childcare and residential.

◦ 1<sup>st</sup> Floor

Accommodation reduced to 2-bedrooms. Current largest bedroom set out as a 'living room'.

- The number of children to be accommodated now stated as "a maximum of 22, ... a reduction from the originally sought 35 maximum".
- Previous application stated the facility operated a Montessori School from 09h30 – 12h15 for children 3-5years, with 22no. pupils in total. Children arrive between 09h00 – 09h30 and collected afterward.
- Afterschool also provided between 08h00 – 08h40 for children 5-7years, to a maximum of 35. These children then walked to respective boys and girls schools between 08h40 – 08h50. The children then collected and walked back to the childcare facility between 14h15 – 14h30. Children then collected by parents 17h00 – 18h00, with the facility closing at 18h00.
- the proposed arrangement now put forward, would, the applicant argued, result in no overlap between 'Montessori' and 'Afterschool'. Saint V de P girls' school (Griffith Avenue) have offered their facilities from 08h00 – 08h45 to facilitate the accommodation by First Steps (the applicant) of afterschool children for pre-school starts. Montessori children arrive at the Shelmartin facility at 09h15, and collected at 12.15. The afterschool children arrive at the facility after school finishes in early afternoon, and all collected by 18h00. First Steps also utilises the clubhouse of St. Vincent's GAA Club, and now part of the previously accommodated 35 afterschool children are catered for at, and collected from, Saint Vincent's

- Stated that First Steps has discussed with the parents of children attending Saint V de P Infant School and Saint Vincent's GAA Club, a proposal to open the childcare facility at First Steps from 09h00 during term time, but from 08h00 during midterm.  
This represents a change in hours beyond the currently permitted 09h00 – 18h00 range.
- St. Vincent's CLG (Malahide Road) has permission under ref.2087/02, for amongst other things in the extended Clubhouse, a creche / juvenile games room. In principle, the use of part of the clubhouse for 'childcare', is therefore acceptable.  
The question is reasonably asked as to where within the clubhouse, the pre-school facilities are provided, and whether this accords with the 2002 permission.
- Distinguish Saint Vincent's is also outside the 'red line' boundary, and does not form part of this application.

### 3.2.3 Development Plan Policy and Zoning Objective

- As was the case under previously refused application, the relevant City Development plan 'Policy', and the need assessment in terms of these 'policy' provisions, "is still relevant".
- Specific reference made to Appendix 13 – "Guidelines for Childcare Facilities" (see full copy attached).
- At paragraph 13.1 – 'New and Existing Residential Areas', clear guidelines are set out for the selection and assessment of site suitability for 'childcare facility' development and use, as follows –  
Within existing residential areas, detached and / or semi-detached properties ...
  - with space for off-street car parking, and / or suitable drop-off and collection points for customers, and also
  - space for an outdoor play area,
 "will generally be permitted, provided the premises remains primarily residential, and traffic and access arrangements do not interfere with general residential amenity".

- Consider that the existing house still does not comply with the 13.1 requirements, as follows –
  - house is end of terrace dwelling
  - frontage onto a tight residential street
  - existing limited parking, and
  - “the great majority of the layout being set out for childcare”.
- Consider the house as no longer a dwelling unit in any real sense.
- Notwithstanding reduction in number of bed spaces and provision for a ‘sitting room’ at 1<sup>st</sup> floor level, consider that residential amenity is poor. Idea of 1<sup>st</sup> floor residents having use of parts of the ground floor outside of operating hours, considered as “not realistic or desirable”.
- Principle of a childcare facility at this location considered acceptable.
- Sustain view that the scale proposed, continues to be excessive, resulting in a ‘use’ not compatible with the residential character of the street, and Zoning Objective Z2.
- Permitting ‘retention’ of a facility of this scale, even if reduced to the current proposed capacity, within a modest terraced dwelling, located within a ‘tight grain’ conservation area, would set an “unsustainable and undesirable precedent”, contrary to the Z2 Zoning Objective and general residential amenities.
- Note applicants contention that the volume of places, is necessary due to demand. However, such demand “must be weighed against the impact on existing residential amenities and the nature, scale and character of the original dwelling, and the need to maintain the residential component of any childcare facility, given the character of the street.
- Argue that “expressing the need for the facility does not overwhelm the obligation to protect residential amenities of the dwellings in the vicinity”.
- Acknowledge the applicants facility is possibly “a victim of its own success, in being oversubscribed”.
- However, the popularity of the facility with parents “is not a valid reason to permit the ‘retention’ / amendment of the development”.
- Even at lower level of 22no. children at any one time, it would be a considerable facility, having regard to –



- 88no. separate movements to and from facility daily (ie. 22no. Montessori 'in', 22no. Montessori 'out', 22no. Afterschool 'in', 22no. Afterschool 'out')
  - on a street of constrained dimensions,
  - extensive off-street residential parking in an end of terrace house of modest dimensions.
- Even if all children were walked to and from childcare daily, “that is a significant number of people on the street at certain times daily”.
  - This cannot help but have impacts on residential amenity.
  - Note applicants reference to local 3<sup>rd</sup> parties having not raised issues against the operation of the childcare facility at this locality, at an unauthorised capacity, is not convincing grounds for now not considering the proposed use as excessive or harmful to residential amenity.
  - Emphasise Planning Authority as “tasked with facilitating reasonable development whilst endeavouring to protect residential amenity, regardless of whether or not 3<sup>rd</sup> party objections are received. This both for the “greater good of the area”, whilst being mindful of the wider city context, and the potential for precedent becoming established by a decision.
  - Reference several 3<sup>rd</sup> party objections having been received, mainly from residents in the immediate vicinity. Consider this as indicative of local opposition to the proposed scale and intensity of use.
  - Reference also that several 3<sup>rd</sup> party submission received, supporting the current application, from parents of children attending the childcare facility.
  - Planning Authority acknowledges difficulties facing working parents in securing suitable childcare accommodation. However, this is not unique to ‘Marino’, but a widespread challenge across the City.
  - Emphasise that if a clear need exists for childcare facilities, “then these should be provided in buildings suitable for purpose, which this small terraced dwelling is not”
  - Affirm that the same concerns arise in response to the current application, that were identified in response to the previous one –

- the building is not suitable for a childcare function, at the volume proposed
- consequently, a poor-quality residential element would result, and
- an overscaled childcare facility within the middle of a residential conservation area
- The fact that a serious need exists locally for a childcare facility, does not overcome the serious concerns with regard to residential amenity, and the conservation designation of the street.
- The applicant may reference “other childcare facilities in similar circumstances in the area”, however, these are not considered relevant as follows –
  - 22 Addison Road – has permission from 2004, which is an inadequate historic precedent
  - 41 Foyle Road – has no record of permission with APAS records going back to the late 1990’s
  - 25 Malahide Road – similarly, no record of permission.
- Emphasise that “unauthorised or historic land uses do not set reliable precedent”.

#### 3.2.4 Access, Parking and Traffic

- Detailed reference made to the assessment report of the City Transportation Planning Division (TPD), and recommendation for a temporary permission, subject to Conditions re. –
  - temporary permission of 3-years
  - 22no. child maximum capacity
  - drop-off and collection area for written agreement, and works for the applicant’s expense
  - revised location of proposed scooter parking area
  - all costs incurred by the City, for the applicant’s expense, and
  - compliance with the ‘Code of Practice’.
- Notwithstanding the City TPD recommendation in favour of the proposed development, consider it as unreasonable to provide “special treatment toward the facility in terms of providing a dedicated drop-off / collection area to what is a domestic dwelling rather than a purpose-built facility”.

- The loss of a tree within the ‘public realm’ is also not considered as acceptable.
- the fact that the applicant considers it necessary to seek an indent for short term drop-off parking, indicates the street is not suitable for the volume of traffic to be expected.

### 3.2.5 Conclusion

- Affirm the same concerns raised in response to the ‘retention’ application for 35no. children are considered to still stand for the current scaled down 22no. child facility.
- Whilst having empathy for the situation, the Planning Authority considered that the need for the facility cannot overwhelm the residential amenities of the street, nor the zoning objective of this residential conservation area.
- A 12no. child facility was considered as reasonable. This consideration stands.
- The proposed development is considered not to be consistent with the Dublin City Development Plan 2016-2022, and with the proper planning and sustainable development of the area.
- Having regard to the above, it is considered that permission and retention permission, be refused.

## 3.3 **Other Technical Reports**

### 3.3.1 Internal

Drainage Division –	No objection (15/11/2018)
Transportation Planning Div.	Recommend a temporary permission (07/12/2018), subject to Conditions re. – <ul style="list-style-type: none"> <li>◦ temporary permission of 3-years</li> <li>◦ 22no. child maximum capacity</li> <li>◦ drop-off and collection area for written agreement, and works for the applicant’s expense</li> <li>◦ revised location of proposed scooter parking area</li> </ul>

- all costs incurred by the City, for the applicant's expense, and
- compliance with the 'Code of Practice'.

### 3.3.2 External / Prescribed Bodies

Irish Water –	None.
Irish Rail –	None.

### 3.4 **Third Party Observations**

3.4.1 "In excess of 40no." 3<sup>rd</sup> party submissions referenced as received by the Planning Authority.

3.4.2 c.39no. Submissions referenced as being in 'support' of the proposed development :

- mainly from parents of children attending the existing childcare facility, as well as some neighbours
- emphasise value of the existing facility for working parents
- emphasise convenience and location
- fear that the existing facility would have to close, with consequences for sourcing childcare in the area.
- reference submission by Cllr. D. O'Farrell in support.

3.4.3 c.09no. Submissions referenced as 'objecting' to the proposed development :

- mainly from local residents in immediate vicinity (ie. either side of the existing childcare facility, on the opposite side of Shelmartin Avenue, and from Casino Road to the immediate rear / east)
- noise impact from the facility
- traffic hazard and parking congestion
- failure to comply with previous planning 'Conditions'
- existing building being no longer useably residential
- existing building too small and not suitable for childcare use
- drainage and flooding issues
- childcare use not being consistent with the Z2 – Zoning Objective
- negative impacts on general residential amenity

- submission by ‘Marino Residents Association’ opposing removal of a ‘public tree’ to provide an indented drop-off and pick-up area.
- submission by Senator A. O’Riordan in objection

3.4.4 Planning Authority affirm “all submissions have been considered and are noted”.

## 4.0 Planning History

**3517/18** Permission ‘Refused’ for ‘retention’ of change of use of the childcare services use at ground floor level (48m<sup>2</sup>), on the site and ancillary play area.

Under **3627/09** permission was previously granted on the site for some 26m<sup>2</sup> of ‘childcare’ use

The development was also to consist of the provision of revised external scooter and bicycle parking, signage ‘retention’ and all ancillary works, all at No.43 Shelmartin Avenue, Marino, Dublin 3, for 2no. ‘Refusal Reasons’ –

1. *“The subject property is located within a Z2 area the zoning objective of which is to protect and / or improve the amenities of residential conservation area. Dublin City Development Plan 2016-2022 policy for Childcare Facilities states in Appendix 13.1 “In existing residential areas, detached houses / sites or substantial semi-detached properties with space for off-street parking and / or suitable drop-off and collection points for customers and also space for an outdoor play area will generally be permitted, provided the premises remains primarily residential and traffic and access arrangements do not interfere with general residential amenity”.*

*The expansion in floor area of the facility and significant increase in numbers of children attending the childcare facility results in the building no longer being a suitable residential unit as well as generating increased noise,*

*pedestrian and vehicle traffic, and general disamenity over and above that experienced as a result of the previously permitted 12no. childcare places. The dwelling, of modest floor area and within a terrace, is not suited to the scale of child childcare facility proposed for retention, and the development would cause serious injury to residential amenities and is therefore contrary to the Dublin City Development Plan, in particular the Z2 Zoning Objective and Appendix 13, and would therefore be contrary to the proper planning and sustainable development of the area”.*

2. *“The proposed development, by virtue of its scale, its location on a narrow residential street and lack of provision for appropriate drop-off / collection arrangements would endanger public safety by reason of traffic hazard through the exacerbation of on-street / footpath parking congestion and conflict between pedestrians and vehicles. The proposed development is therefore contrary to the policies and objectives of the Dublin City Development Plan and the proper planning and sustainable development of the area”.*

**3627/09** Permission granted for use of part of dwellinghouse for provision of childcare services, all at No.43 Shelmartin Avenue, Marino, Dublin 3.

**3223/01** Permission granted for single storey extension to rear of dwellinghouse, with intention for ‘play school’, all at No.43 Shelmartin Avenue, Marino, Dublin 3.

Limited permission to expire on 27<sup>th</sup> March 2005.

Appealed to An Bord Pleanála (ref.**PL29N.129255**), decision upheld with permission lasting for 5-years from date of Order.

## **5.0 Policy Context**

## 5.1 Dublin City Dev. Plan (2016 – 2022)

Relevant provisions include (see copies attached):

### S14.8 Primary Land-Use Zoning Categories :

Table 14.1 Primary Land-Use Zoning Categories

<u>Land Use Zoning Objective</u>	<u>Abbreviated Land Use Description</u>
Z2	Residential Neighbourhoods (Conservation Areas)

S14.8.1 Residential Neighbourhoods (Conservation Areas) – Zone Z2  
Zoning Objective Z2 “To protect and / or improve the amenities of residential conservation areas”.

Z2 Permissible Uses – include ‘residential’ and ‘childcare facility’.

(see copy of pg. 239 attached)

## Ch.12 Sustainable Communities and Neighbourhoods

Policy **SN17** “to facilitate the provision in suitable locations of sustainable, fit-for-purpose childcare facilities in residential, employment, and educational settings, taking into account the existing provision of childcare facilities and emerging demographic trends in an area”.

### Appendix 13 **‘Guidelines for Childcare Facilities’**

The Guidelines provide general advice and principles for ‘childcare facilities’ (see copy attached).

#### S13.1 New and Existing Residential Areas

- *“In existing residential areas, detached houses / sites or substantial semi-detached properties with space for off-street car parking, and / or suitable drop-off and collection points for customers, and also space for an outdoor play area will generally be permitted, provided the premises remains primarily residential, and traffic and access*

*arrangements do not interfere with general residential amenity”.*

- *“Primary traffic routes where there is suitable and safe pull-in areas to the front for dropping off children by car are more suitable than tight residential cul-de-sacs”*
- *“Applications for full day-care facilities in premises other than those listed above (eg. terraced houses) should be treated on their merits, having regard to parking / drop-off points, layout and design of the housing area and the effect on the amenities of adjoining properties”.*
- *“In relation to sessional and after-school care, the provision of such facilities may be considered in any residential area as ancillary to the main residential use, subject to parking / drop-off points, layout and design of the housing area and effect on the amenities of adjoining properties”.*

## **5.2 Natural Heritage Designations**

None.

## **6.0 The Appeal**

### **6.1 Grounds of 1<sup>st</sup> Party Appeal – Lisa Kedellen (No.43 Shelmartin Ave.)**

The 1<sup>st</sup> Party (ie. applicant and owners of ‘First Steps’ childcare facility) grounds of appeal are set out fully in the documentation dated 22<sup>nd</sup> January 2019. These may be summarised as follows :

- 6.1.1 Detailed overview of background to the proposed development, the application history and the current appeal.



6.1.2 Referenced affirmation of the extensive rationale for the proposed development, as set out in the original planning application documentation (see application documentation included on the file).

### 6.1.3 Comment on Planners Report

- Pg1 – ‘Pre-planning meetings’
  - Emphasise applicants formal request for a pre-planning meeting was refused by the Planning Authority – “... *it would not be appropriate to carry out a meeting given the strength of the refusal reasons*”.
  - Applicant left with no choice but to prepare and submit the current application, without benefit of input from the Planning Authority.
- Pg2 – ‘3<sup>rd</sup> Party Submissions’
  - 39no. submissions in support of the proposed development, represent a cross-section of the local community, residential, cultural and educational.
  - 09no. submissions in Objection, located in the immediate vicinity (to front and rear).
  - 02no. ‘other’ submissions. Both concerned with possible removal of a tree on the footpath, without objecting to or favouring the proposed development itself (ie. the ‘Marino Tree Group’ and the ‘Marino Residents Association’).
  - Distinguish that the ‘Marino Residents Association’ objected to the previous application (ref.3517/18) but have not objected to the current application. Accordingly, the group seen as the representative body for the area, do not have an objection to the current proposed development.
  - Of the 56no. properties on Shelmartin Avenue, only 05no. residents feel there is an issue with the Montessori. Presume the remaining 51no. residents have ‘no issue’ with the content of the application.
  - Similarly, of the 36no. properties on Casino Road, only 03no. residents feel there is an issue with the Montessori.

- Emphasise that as traffic generated by the Montessori has been argued as an issue by both the Objectors and by the Planning Authority, “it would seem that if traffic were indeed an issue, more than 08no. residents of a combined 92no. houses (11.5%), would have objected to the proposals”.
- Distinguish that a petition supporting the application was included with the application documentation submitted (signed by parents and local neighbours). Petition returned to applicant by Planning Authority (considered as not being an acceptable document to accompany a planning application).
- Pg2 – ‘Reports from other Departments’
  - Notwithstanding concerns regarding traffic and parking provision, reference that the City ‘Transport Planning Division (TPD)’ advised “*no objection subject to Conditions*”.
  - Emphasise this as “*a central consideration for the application as a whole*”.
  - Of the 09no. 3<sup>rd</sup> party Observations lodged, 06no. specifically cite traffic as a core issue with the Montessori.
  - Significantly, whereas the ‘TPD’ recommended ‘refusal’ of previous application – ref.3517/18, they now support the current application, advising that “*Planning permission is granted for a limited period of 03years from the date of this grant at which date the permission shall cease and the use hereby approved shall cease unless a further permission has been granted before the expiry of that date.*”
  - Assert therefore that any issue with traffic and / or parking should not be seen as material in deciding to ‘refuse’ permission.
  - However, notwithstanding the TDP “supporting the application”, the Planning Authority have “disregarded this recommendation, noting “*it is considered unreasonable to provide special treatment toward the facility in terms of providing a dedicated drop-odd / collection area to what is a domestic dwelling rather than a purpose-built facility. The loss of a tree in the public realm is also not acceptable. The fact that the applicant feels it necessary to*

*seek an indent for short terms drop-off parking indicates the street is not suitable for the volume of traffic which might be expected”*.

- In response to the Planning Authority, consider :
  - Whereas the report references provision of a dedicated drop-off / collection area to what is a domestic dwelling, distinguish that the application site currently benefits from planning permission for part of the dwelling to be used as a childcare facility.
  - Noting the expressed unacceptability of the proposed removal of the tree, distinguish that the very next tree to the north has been removed for several years (400mm high stump remains).
  - Other spaces exist to the north along Shelmartin Avenue where trees removed.
  - Accordingly, inconsistency apparent by the Planning Authority in their consideration of this element.
  - the Consider the Planning Authority statement as a “misrepresentation” of the City Transport Planning Division (TPD) assessment.
  - The TPD, “whilst noting the suggestion to remove the tree, do not request this to be required in order for their recommendation to grant permission to be upheld”
  - Rather, TPD state that more detailed proposals be submitted to the Planning Authority, and if acceptable, works necessary to be undertaken at the applicant’s expense.
  - Emphasise as being clear that “even if they do not accept the proposals, they are still willing to support the application”.
- Notwithstanding, with respect to the proposed removal of the tree to facilitate a car parking bay, “this was a suggestion, rather than forming part of the planning application, as relating to works outside of the boundary of the subject property, it could not form part of the application”.

- Pg3 – labelling of rooms in the drawings
  - Acknowledge the Planning Authority’s reference to discrepancies in the labelling of rooms as shown on the drawings submitted (ie. rooms not stated as being classrooms, but as ‘front garden’.
  - Confirm “corrected drawing, with the appropriate nomenclature” included with the appeal submission.
- Pg3 – use of St. Vincent’s GAA Club
 

Clarify –

  - whilst previous application sought permission for 35no. children to be catered for in the ‘afterschool’ facility, only 30no. enrolled.
  - in July, these children will leave First Steps and move on to St. Vincent’s GAA Club, as they will then be in 2<sup>nd</sup> Class (Senior Primary).
  - this arrangement has always been in place – when children attending First Steps complete 1<sup>st</sup> Class, they move up to St. Vincent’s GAA Club.
  - First Steps facility only caters for children from Junior infants to First Class.
  - the proposal is then that from September 2019, only 22no. will be accommodated in First Steps, rather than the 30no. currently accommodated.
- Pg4 – Appendix 13.1 of the City Development plan 2016-2022
  - Reference Planning Authority opinion that proposed development does not satisfy Appendix 13.1 requirements, as the existing house is a ‘terraced’ dwelling
  - Response :
    - Rather, being an end of terrace, the house is more like a ‘semi-detached’ property, than a ‘terraced’ dwelling.
    - Having a floor area of 110m<sup>2</sup>, whether the dwelling is “substantial” or otherwise, is subjective. However, it would exceed the average floor area of houses in Marino. Those without an extension would be c.90m<sup>2</sup>.
    - Reference that use of part of a house (ie. a mid-terraced house at 30 Annadale Drive), c.500m from the application

site, as a childcare facility, was granted planning permission under ref.**3123/10** (upheld on appeal – **PL29N.237896**), with permission extended in 2014 under ref.**2277/14**.

- Affirm opinion that the site suitability from a ‘traffic’ and ‘parking’ perspective has been established. This is supported by the City TPD.
- Accordingly, the application site is compliant with those elements of Appendix 13.1, “and does not interfere with general residential amenity”.
- the Reference that –  
an outdoor play area is provided  
the proposed layout allows for the entirety of the 1<sup>st</sup> floor and the majority of the ground floor (ie. outside of operational hours), to accommodate residential use.
- This assures compliance with Appendix 13.1 requirement that the dwelling remains primarily residential.
- Applicant bemused Planning Authority statement that the house is “no longer a dwelling unit in any real sense”, with “poor” residential amenity, and that the idea of residential use of parts of the ground floor outside of operating hours “is not realistic or desirable”.
- Consider statement “to be unusual, given the direct precedent ... established in this regard”.
- Remind that the application site currently benefits from planning permission (ref.**3627/09**), where this exact arrangement was permitted.
- Similarly, the comparable childcare facility permitted at 30 Annadale Drive (ref.**3123/10**), enables reversion to family / residential use after hours. Note the 2014 permission granted under ref.**2277/14**, enabled the extension of use on site from the original ‘temporary’ permission to a ‘full’ planning permission.
- Applicant now at a loss as to, whereas the principle of “shared use of part of the existing dwelling was considered reasonable

and acceptable” under 3no. planning permissions granted, “the exact same principle as contained within this application is said to be “not realistic or desirable””.

- Reference inclusion of updated plans indicating when the Montessori is in operation, and usage when it is not.
- Pg4 – proposed development would set “an unsustainable and undesirable precedent”.
  - Yet, An Bord Pleanála in their consideration of cases within the City, state that “each application is considered on its merits”.
  - Therefore, any permission that might be granted for the elements set out in the current application, “would not be seen to set an unsustainable or undesirable precedent, as any future application must be considered on its own merits”.
- Pg4 – ‘First Steps’ childcare facility as victim of its own success
  - The volume of letters of support are clear indicators of popularity with parents.
  - These should be seen as a ringing endorsement for the facility, and its suitability to cater for the numbers of children proposed within this application (ie. a reduction in numbers from previously accommodated).
  - Reference the positive interactions with inspectors from the City ‘Building Control’ and the ‘HSE’, as reinforcing the acceptability and suitability of the proposed development.
  - Planning Authority reference to ‘First Steps’ as a victim of its own success, is “somewhat narrow in focus”.
  - Reference the applicants research of occupancy’s of 5no similar childcare facilities in the area, all of which are “fully booked until 2021”, 1no. fully booked until 2022, and 2no. with a long waiting list in addition.
  - Therefore, assert that the pattern of oversubscription repeats itself across all other childcare facilities in the area.

- Reference the Marino catchment area as undergoing significant demographic change, with a corresponding growth in demand for childcare facilities. Estimate c.606no. childcare places required to serve Marino alone.
- Emphasise the area as being overwhelmingly under-supplied with regard to childcare facilities.
- The existing local need for childcare facilities is further compounded when having regard to the new housing developments, either benefitting from planning permission, currently under construction or recently completed.
- Therefore, having regard to the existing calculated 606no. childcare space shortfall required to serve the existing Marino houses, together with the significant shortfall anticipated to serve new residential developments in the Fairview / Marino area, “the oversubscription of ‘First Steps’ (and the other facilities in the area) is down to more than it just being a victim of its own success”.
- Pg4 – the lower 22no. child capacity still results in up to 88no. separate movements to and from the childcare facility daily
  - Movements broken down as – 22no. Montessori ‘in’, 22no. Montessori ‘out’, 22no. Afterschool ‘in’, 22no. Afterschool ‘out’
  - Applicant acknowledges these figures. However, consider it reasonable to contextualise further that each of the 4no. occasions through the day, when children arrive or leave ‘First Steps’. “will tend to occur over the space of c.15mins” (eg. the 12h30 closing for the morning session sees children being collected from 12h15 onwards).
  - Averaged out, this equates to a child and parent / guardian pedestrian movement every 41 seconds, through each 15minute block.
  - Assert that a child and parent / guardian passing a house (all set back from the street by a garden) “every 41 seconds for 4 x 15min periods a day, cannot in any real way be said to have a detrimental impact on residential amenity”.

- In fact, argue these pedestrian movements add to, rather than detract from residential amenity locally.
- Pg4 – the fact that no issues raised locally, whilst ‘First Steps’ operating at an unauthorised capacity, “is unconvincing grounds for not considering the use excessive or detrimental to residential amenity”
  - However, question what more reliable data could be used to establish whether residential amenity has been negatively impacted or not.
  - Assert from the 3<sup>rd</sup> party objections lodged, that the 3<sup>rd</sup> parties locally “are more than capable of setting out their concerns, as they have a right to do.”
  - Distinguish that prior to lodgement of application ref.3517/18 in mid-2018, no 3<sup>rd</sup> party complaint had been lodged with the Planning Authority.
- Pg5 – Planning Authority acknowledge the challenges facing working parents in finding suitable childcare facilities. This challenge is not unique to Marino, but extends city-wide. If such a clear need exists, such service “should be provided in buildings suitable for purpose, which this small terraced dwelling is not”.
  - Notwithstanding, the applicant emphasises that the need “is acute in the immediate vicinity.
  - Notwithstanding the principle of childcare services being provided in purpose-built facilities, the reality is that extensive residential development has occurred without the necessary pro-rata quantum of childcare facilities being built.
  - This serious shortage has served to exacerbate the pressure on existing, well-established childcare facilities such as ‘First Steps’.
  - Argue that “the Planning Authority cannot have it both ways”.
  - As a consequence of the high demand for land for residential use, land used for residential purpose has a greater economic return than land used to provide childcare facilities and associated services.



- The consequent economic reality is that ‘childcare service providers’ cannot compete economically with ‘housing developers’, when sourcing properties.
- Accordingly, without the requirement for housing developments to include the pro-rata childcare facilities, there is little chance that new facilities can be provided.
- Pg5 – reference to “residential conservation area” and to the “conservation designation of the street”
  - It is unclear how the ‘conservation designation of the street would be impacted in any way by the proposed development.
  - Clarify that the western side of Marino, including Shelmartin Avenue, was laid out and constructed in the late 1920’s / early 1930’s.
  - Unfortunately, much of the architectural detailing which defined the area, and which would be of particular value in conservation terms, has been lost.
  - Whilst Shelmartin Avenue is generally tidy, well-kept and pleasant in its bearing, it cannot be realistically claimed that the proposed development has any bearing on the street in terms of its conservation status.
  - The original pebble-dash finish to all houses along Shelmartin Avenue, including the application site, has been retained and will not be impacted by the proposed development.
  - The original roof slates of all houses have been retained (just 1 no. exception) and will not be impacted by the proposed development.

#### 6.1.4 **Comment on Observations submitted opposing the application**

- Applicant should find an appropriate location and not use a residential property for business .... Locating a childcare facility within a residential catchment, where children walk to and from childcare, “represents the ideal of what would be considered an appropriate location” .... Many other childcare facilities do not use a residential property for their business.

- Response
  - These assertions do not hold true in the locality.
  - Of the 05no. other childcare facilities referenced, 02no. are accommodated within former dwellings.
  - Of the 03no. 'precedents' referenced in the application documentation, all are accommodated within former dwellings.
  - The current application site (permission for partial use as a childcare facility) and that referenced located at 30 Annadale Drive, are both accommodated on residential properties.+
  - “While the ideal may be for purpose-built premises suitably located (within residential areas) to provide all childcare required, this is simply not the reality”.
- Applicant contends the number of child places is necessary due to demand .... But such demand to be weighed against
  - the impact on existing residential amenities
  - the nature scale and character of the original dwelling, and
  - the need to maintain the residential component of any childcare facility, given the character of the street.
  - Expressing need for the childcare facility, does not overwhelm the obligation to protect proximate residential amenities.
  - If a clear local need for childcare exists, “then these should be provided in buildings suitable for purpose which this small terraced dwelling is not”.
  - The Planning Authority endeavours to protect residential amenity, both locally, and in the wider City context.
- **Response:**
  - Consider the requirement is to weigh up the limited impact on the residential amenity of properties immediately adjacent the application site, against the wider societal impact of the additional traffic volumes and loss of community, that would arise consequent of the removal of the majority of the children from the existing Montessori, would have.
  - Of the 08no. houses immediately adjacent the application site, 05no. submitted observations against the proposed development

- (03no. are on Casino Road to the rear, 02no. immediately adjacent along Shelmartin Avenue) – the threat of impact on their residential amenity.
- “However as the Traffic Planning Division have concluded that the proposals are acceptable, the only remaining issue which it can be fairly claimed in realistically impacting on the residential amenity of the adjacent properties is any noise which may be generated by the childcare facility”.
  - Having regard to the open space serving the facility being located to the rear, it can be reasonably asserted that such noise may impact adjacent properties to the rear, or to the side.
  - 04no. such properties have submitted observations, “and all cite noise as an issue”.
  - However, assert the observations by the Casino Road properties are misleading. Express view that these observations misrepresent the noise generated by limited numbers of children, enjoying supervised external play, for set periods of time. Rather, these objections “do not reflect the reality”.
  - Reference the scale of use of the external play area included in the planning application documentation submitted.
  - The ‘Development plan’, the ‘Planners Report’ and many of the ‘Observations’ opposed to the development “cite the impact on Residential Amenity”.
    - However, there is no accepted definition of what constitutes Residential Amenity.
    - “As such, any analysis has to be somewhat subjective”.
    - “Requiring children catered for in First Steps and other similar Montessori and childcare facilities will have a clear impact on the residential amenity of the area as it will inevitably give rise to increased vehicular traffic generated by parents who are now required to drive their children to other facilities (wherever they may be) as opposed to walking to the current facility as the majority currently do.”

### 6.1.5 Comment on Refusal Reasons

- The ‘refusal reason’ centres on –
  - The usability of the property as a dwelling, in conjunction with the ‘Montessori’ use
  - Noise levels generated consequent of the proposed scale of the Montessori
  - Traffic generated consequent of the proposed scale of the Montessori, and
  - The number of children proposed to be catered for in the childcare facility.
- **Response:**

Of these 4no. criteria, the applicant has demonstrated that –

  - the property can accommodate shared residential and childcare uses (including by way of citing directly related precedent)
  - noise levels generated are controlled to protect residential amenity of immediately adjacent properties (rear and side)
  - traffic generated is not a planning concern (as stated by the Dublin City Transport Planning Department)
  - the childcare facility can cater for the number of children proposed (opinion supported by the “extremely positive observations in support of the application submitted by parents of the children attending the facility”).

### 6.1.6 Summary

The proposed development submitted as part of ref.**4262/18**, and discussed in the 1<sup>st</sup> party appeal submission, are in accordance with the proper planning and sustainable development of the area.

### 6.2 Planning Authority Response

None.

### 6.3 Observations

Seven (7no.) Observations were received in response to the 1<sup>st</sup> party appeal, as follows –

The majority of the 3<sup>rd</sup> party Objectors were residents locally. However, a good proportion were resident up to c.4.5km away from the application site / creche. This fact consequently generated up to approximately 32 return vehicle trips to the creche. (ie. 64 trips)

Shelmartin Avenue is a quaint narrow treelined residential street, characterised by minimum onsite car parking provision.

### 6.3.1 **Observer – Patricia Purdue (15/02/2019, No.42 Shelmartin Avenue)**

- Contextualise her residence and ‘home office’ with respect to the application site and operational crèche, directly across Shelmartin Avenue.
- The owners now lodge an appeal, having been ‘refused’ permission and retention permission twice during 2018.
- The refusal reasons were clearly set out in the Planning Authority ‘planning report’, with the ‘refusal’ based on “planning regulation and zoning laws”.
- The planning regulations were established in conjunction with the Dublin City Development Plan
- The City Development plan is a holistic approach for everyone in Dublin.
  - Integral is the zoning map, ensuring “the city is developed in an inclusive way”.
  - No dispute regarding the need for childcare services.
  - Rather, object to a full time, commercial creche located within a protected residential Z2 zoned community, ... in violation of ‘planning regulations and framework provided under the Dublin City Development Plan’.
- Support for the Planning Authority for upholding the planning and zoning regulations.
- 1<sup>st</sup> party grounds of appeal contain several incomplete and inaccurate information.
- The appeal submission “fails to recognise that the creche has been operating illegally, in direct violation of numerous Conditions stated in the 2009 granted permission.
- Rather, the appeal “attempts to justify these violations”.

- The “major issues” for response –
  - The modest dwelling, end of terrace, is not suited to the :
    - scale of childcare facility proposed.
    - Serious injury to residential amenities will result.
    - Therefore, contrary to the City Development Plan, particularly, the Z2 Zoning Objective and Appendix 13.
  - Appendix 13.1
    - The existing house does meet the requirements, being a terraced dwelling, on a tight residential street with limited car parking, and with the majority of the layout set out for childcare
    - the house is no longer a dwelling unit, in any real sense.
    - regardless of the reduction in bedrooms, and provision for a living room at 1<sup>st</sup> floor, the residential amenity is poor.
    - the idea of 1<sup>st</sup> floor residents having access to / use of the ground floor scape, outside of operating hours, “is not realistic or desirable”.
    - Note the 1<sup>st</sup> party appeal was lodged as a ‘commercial business’, with the appropriate fee. Hence, it appears the primary purpose is ‘commercial’ and not ‘residential’ as required.
    - Point out that no one resides at the application site, “and have not done so since the crèche owners moved out a number of years ago”.
  - Traffic Safety and Tree Removal
    - Having regard to :
      - ~ proposed scale of development
      - ~ location on a narrow residential street, and
      - ~ absence of appropriate drop-off / collection arrangements,

the proposed development endangers public safety by reason of traffic hazard, due to

- ~ the exacerbation of on street / footpath parking congestion, and
- ~ conflict between pedestrians and vehicles.
- Note applicant’s proposal, in mitigation, to remove a tree and have the footpath narrowed, in order to construct a parking bay.  
Argue concern that the landscape of the street should require alteration in order to facilitate a ‘commercial operation’.  
Consider this as “unacceptable”, consistent with the ‘Marino Residents Association’ and the ‘Marino Tree Group’.
- Note 1<sup>st</sup> party appeal submission as “dismissive of the need to remove the tree and sets out to undermine some letters of objection”. However, they need to remove the tree in order to construct a parking bay. Note that this was also the Observation of the Dublin City ‘transportation division’.
- Precedent – No.30 Annadale Drive
  - Notwithstanding the appeal submission references as a precedent, assert that “this is far from a reasonable comparison”.
  - Whilst 30 Annadale Drive is a mid-terrace property, they :  
were limited to 14no. children  
had off road access, and  
only had ‘Montessori’ operations from 09h30-12h00
  - 30 Annadale Drive was primarily residential. The owners lived in the house and converted rooms after hours.
  - Note, childcare services at this address ceased in 2017.
  - 30 Annadale Drive is not comparable with the application site – 43 Shelmartin Avenue, where :
    - ~ the owners have vacated the premises, and
    - ~ it has not been occupied for several years.

Therefore, not a reasonable comparison and cannot be argued as precedent.

- No other comparable locations are apparent to act as a precedent for a fully commercial creche, located within a Z2 protected community.
  
- o letters of support
  - Distinguish that of the 39no. letters of support for the proposed development referenced in the 1<sup>st</sup> party appeal submission, only 3no. are from Shelmartin Avenue addresses.
  - There appear inconsistencies in the 3no. letters :
    - ~ One (1no.) is from a family member, who no longer lives in the home.
    - ~ One (1no.) where the address in the title, is different from the address in the body of the letter
    - ~ In all, these 3no. letters referenced, fall short of trying to reflect resident support for this creche.
  - The 36no. letters :
    - ~ 31no. from parent with children attending, or who have attended the creche.
      - These letters of support, are self-serving, solely focussed on the childcare service, with no consideration of the impact on the local community.
      - Distinguish that more than half (64%) of the letters are from parents with addresses more than 2km away from the creche (ie. they do not live in Marino). Assert doubt that these parents walk their 3-5ydear old children c.4kms to and from the creche.
      - These 'observations' substantiate the view that 68% of children are being driven to and



from creche by vehicle (ie, car, SUV and 'people carrier'), and not walking.

~ Of the 5no. remaining letters, 4no. are from 'educational' and 'childcare' facilities, and 1no. other Dublin City Councillor.

All 5no. support childcare services, but are silent on 'planning regulations' and the impacts on the local community.

– the 1<sup>st</sup> party appeal submission fails to reference the local residents living directly across, behind and adjacent to the applicant site / creche. These residents are the most impacted. Rather, these residents are referenced disparagingly, as "limited number of objections" (ie. "1400 people living in Marino, against these few objectors").

Argue these 3<sup>rd</sup> party objections are from the homeowners who are most impacted.

Emphasise that the 'Marino Residents Association' are not only against tree removal and construction of vehicular drop-off area, but also the operations of a creche in the locality.

◦ Dublin City Transport Planning Division (TPD) and 'Traffic Surveys'

– Assert that the 1<sup>st</sup> party appeal submission provides "their interpretation of the DCC Transport Planning Division (TPD). In this the applicant claims to have the support of the TPD for the proposed development (ie. claim "the TPD have concluded that the proposals are acceptable).

– In response, assert the applicant's interpretation is wrong.

– No where does the TPD expressly support the proposed development.

– Rather, at best, clarify that the TPD report states "it may be appropriate to grant a temporary permission".

- Emphasise this “is far from an approval”, but rather more of an input to the Planning Department for their consideration.
- Whereas the 1<sup>st</sup> part appeal submission would appear to assert that “the TPD fully supports this proposal”, assert in response that they do not.
- Distinguish that the TPD report references that the volume of traffic is based on the survey completed by the applicant’s consultant group – ‘transport Insights’. The TPD qualifies use of this survey, stating “the survey was only undertaken on one day”.
- Accordingly challenge the accuracy of the survey data sets.
- Confirm undertaking of own 3<sup>rd</sup> party Observer ‘traffic survey’, over 5-days and without notice. Results show :
  - ~ On average 68% of children are dropped off and picked up each day (differs from the 3no. children or 18% claimed by the applicant’s survey)
  - ~ Acknowledge survey as not accurate and does not reflect the increased volumes of traffic and associated noise.
  - ~ Having regard to the addresses on parent letters, reference that more than half are at least 2km from the crèche. Assert parents are driving back and forth daily, as witnessed by 3<sup>rd</sup> party Observers
  - ~ Assert as unreasonable to think they are walking 3-5year old children back and forth daily, for more than a total of 4km.
- Summary
  - The 1<sup>st</sup> party appeal challenges the city planning and zoning laws, in attempting to establish a commercial business in a protected Z2 zoned community.
  - This would set a serious, undesirable and unwelcomed precedent, threatening the tranquillity of the local community.

- Rather operation of a full-time commercial crèche should be in an area and in an environment that has been designated for this type of activity.
- This would ensure that they would be properly regulated as a commercial business, operating a childcare service, subject to all certifications and safety regulations
- Accordingly, wish the applicant success in such a business endeavour, “but not in a Z2 protected residential community, and not at our expense.
- Request the Board, “reject this Appeal”.

### 6.3.2 **Observer – Mary Scully (14/02/2019, No.54 Shelmartin Avenue)**

- Urge that the Board dismiss the 1<sup>st</sup> party appeal, and uphold the decision by the Planning Authority to refuse ‘planning’ and ‘retention’ permission under ref.**4262/18**.
- Reference ‘active Enforcement Notice’ for blatant breach of planning permission **3627/09**, with date for compliance set as 15/03/2019.
- Main concern relates to the volume of cars bringing children to and from creche daily (ie. morning and evening) –
  - This has resulted in increased traffic and noise in the neighbourhood
  - Cars park on the footpath daily, with consequent difficulty for both drivers and pedestrians making their way around these vehicles.
  - Shelmartin Avenue is narrow, and cannot safely handle this traffic
  - Traffic volumes, all coming within a short time period, is excessive and poses a danger to residents, pedestrians and children.
- A large scale creche facility, “in this residential, protected ‘**Z2**’ Zoning area”, is undesirable and unwelcome.
- The creche owners, should not be allowed to expand their operations.
- Accordingly, affirm request that the Board dismiss this appeal, and uphold the Planning Authority decision to ‘refuse’ ‘permission’ and ‘retention permission’ as applied for.

### 6.3.3 Observer – Eoin Kilfeather & Karen Dunne (15/02/2019, No.48 Shelmartin Avenue)

- Emphasise –
  - the proposed development will negatively impact their residential amenity,
  - the zoning and residential impact, needs to be taken into account, and
  - planning law must be adhered to.
- express full agreement with the Planning Authority in their decision dated 19<sup>th</sup> December 2018, regarding application Ref.4262/18, and which reflects their concerns.
- 2009 Conditions
  - Reference the 2009 permission granted under Ref.3627/09, for use of part of the dwellinghouse at 43. Shelmartin Avenue (application site), for the provision of childcare services for up to 12no. children between 09h00 and 18h00, all subject to a number of Conditions.
  - Reference the Condition prescribing the maximum number of children, was “to control the development in the interests of residential amenity and acceptable use”.
  - Reference the Condition prescribing the ‘hours of operation’, was “to control the development in the interests of residential amenity”.
  - Reference that the 2018 ‘retention’ application indicates that the 2009 Conditions are not being met. Argue that “commercial operations should not be allowed to escalate services outside of planning Conditions, particularly in residential areas”.
- Zoning
  - Proposed development is not compliant with the ‘Z2’ zoning objective – “to protect and / or improve the amenities of residential conservation areas”.

- Permission for a 'commercial' operation, at the scale proposed, would set a precedent for other 'commercial' entities to set up locally, within a 'residential' neighbourhood.
- Dublin City Development Plan 2016-2022
  - Reference the 'Childcare Facilities' Guidelines, at Section 13.1, Appendix 13 as follows –
    - within existing residential areas, detached and / or semi-detached properties ...
    - with space for off-street car parking, and / or suitable drop-off and collection points for customers, and also ...
    - space for an outdoor play area,
    - "will generally be permitted, provided the premises remains primarily residential, and traffic and access arrangements do not interfere with general residential amenity".
  - Distinguish that No.43 Shelmartin Avenue :
    - is not 'detached' or 'semi-detached'. Rather it is 'end of terrace'.
    - has no suitable 'drop-off' and 'collection' points, and
    - is not used as a 'residence'.
  - At present, nobody is living at the house.
  - If the dwellinghouse was primarily residential, as required by the Dublin City policy guidelines, the numbers of children would necessarily have to be lowered, in order to make it habitable.
  - Allowing for the proposed 'retention' would constitute a significant change for a dwellinghouse, within a 'Z2' residential conservation area.
  - Increased traffic movements, particularly in bad weather, is an issue, resulting in traffic hazard for pedestrians (particularly children and the elderly)
- Other 'Observations'
  - Distinguish that whilst many of the 3<sup>rd</sup> party letters lodged in support for the 2018 application, referred to the quality and convenience of the childcare facility, they did not address the consequential impact on residential amenity.

- Emphasise “this is a planning issue”. Childcare facilities need to be properly provisioned, in suitable premises.
- The Brennan Furlong report – 22<sup>nd</sup> January 2019
  - Disagree with the statement at page 3. that “...only 5no. residents feel there is an issue with the Montessori, the remaining 51no. presumably have no issue with th3e content of the application”.  
Rather, assert the converse statement as equally valid, such that the 51no. households have not supported the application.  
Emphasise that “no valid inference can be made from their statement”.
  - The objections submitted are from residents directly affected by the ‘heightened activity’ on the application site, and must be considered as serious, in terms of residential impact.
  - Reference adjoining residential houses, for whom noise impact must also be considered.
  - re. page 4. statement confirming the removal of “the very next tree” to the front of Nos. 41 and 39, has been removed for several years.
  - Respond clarifying that the above referenced tree is part of a 15-year ‘Marino Pear Replacement Plan’, in place to remove and replace fruiting trees
  - Confirm the ‘Residents Association’ have a longstanding policy to maintain street trees.
- Conclusion
  - Childcare services must be accommodated in proper and sustainable premises.
  - Planning rules must be upheld.
  - The house at No.43, “is simply not suitable for a commercial operation of the scale proposed”.
  - Request that the Board dismiss the 1<sup>st</sup> party appeal, for the reasons outline above.

#### 6.3.4 Observer – Dympna Clarke (14/02/2019, No.54 Casino Road)

- Resident to the rear of the application site for 60 years, in what “has always been a very quiet and peaceful residential neighbourhood”.
- Request that the Board uphold the decision by the Planning Authority to refuse ‘retention’ and ‘planning permission’, for the following reasons –
  - the application site is designated with the zoning objective ‘Z2’ – “to protect and / or improve the amenities of residential conservation areas”
  - the Conditions attached to the original permission granted (Ref.No.3627/09) have not been complied with. These “serve as crucial evidence as to why this appeal should be rejected”.
  - emphasise that at 91 years of age, having lived in her home for 60 years, the locality “has always been a very quiet and peaceful residential neighbourhood”.
  - located to the rear, the application site at No.43 Shelmartin Avenue, is a small terraced house that has been used as a ‘childcare facility’, with up to 60no. children on site daily, for the last number of years.
  - the noise level generated “is unacceptable. The constant shouting and roaring all day long ...” –
    - is very irritating, causing the windows and doors to be closed, and
    - has rendered her small rear garden, “which I take great pride in, unusable”. Emphasise that her garden has been a means of keeping herself active and independent.
  - Assert an entitlement “to a decent and peaceful quality of life, like all citizens, without being subjected to constant and persistent noise”.
  - Emphasise that most residents locally, are elderly, and should not be negatively impacted by issues consequent of the childcare activities being carried out on the application site.
- Accordingly request that the Board uphold the decision by the Planning Authority to refuse ‘retention’ and ‘planning permission’.

### 6.3.5 Observer – Eileen White (17/02/2019, No.56 Casino Road)

- Resident directly to the rear of the application site for 59 years.
- The neighbourhood “was a very peaceful area until the creche was established in 2009”.
- Request that the Board uphold the decision of the Planning Authority to refuse ‘retention’ and ‘planning permission’ to the owners of ‘First Steps Creche’.
- Distinguish that the current 1<sup>st</sup> party appeal to the Board follows on from the ‘refusal’ by the Planning Authority of two (2no.) separate applications for ‘retention’ and ‘planning permission’.
- Weighted reference to the 2009 permission granted to the applicants to open a ‘creche’ on the application. The 2009 permission granted, was subject to specific Conditions including –
  - a limit of 12no. children attending the facility at any one time, and
  - a daily restriction of 1-hour on the use of the rear garden for creche activities
- In recent years, –
  - the numbers attending the facility, have far exceeded the limit Conditioned under the 2009 permission, and
  - the amount of time the creche made use of the rear garden, far exceeded the daily time limit prescribed under Condition.
- Consequently, there has been a high volume of noise from the rear garden, on a daily basis, over the years (other than over weekends, when the creche is closed).
- Apart from the seriousness in itself, of the breaches of the 2009 Conditions, the levels of noise now generated are inappropriate and unacceptable within a settled, tightly packed suburban context.
- The noise levels generated, “has diminished my quality of life, and peaceful enjoyment of my garden”.
- Distinguish the 2<sup>nd</sup> application refused by the Planning Authority, now the subject of the current 1<sup>st</sup> party appeal, was for 22no. children to attend at any one time.



On this, share the opinion by the Planning Authority “that the creche, due to its size and location, is not suited to having more than the 12no. children permitted under the original permission” (ie. 2009).

Emphasise that strict adherence to the Conditions attached to the 2009 permission granted, should be enforced by the Planning Authority / Dublin City Council.

- Express concern that the increase from 12no. children to 22no. children attending the crèche, would put strain on the public sewerage system.
- Concern that should there be an emergency in the facility, how would the children be able to exit the property in a safe manner. This would be of particular concern having regard to the proposed increase in the number of children attending.
- Express ongoing concern regarding the waste water discharge coming from the creches back garden into the lane to the rear, causing it to flood. This threat “leaves my garden very vulnerable to flooding”.
- Accordingly request that the Board uphold the decision by the Planning Authority to refuse ‘retention’ and ‘planning permission’.

#### 6.3.6 Observer – James & Mary Murray (15/02/2019, No.45 Shelmartin Avenue)

Request that the Board reject this 1<sup>st</sup> party appeal, for the following reasons –

- Application site zoned ‘Z2’, with the Zoning objective “to protect and / or improve the amenities of residential conservation areas”.
- Ref.4262/18 – Applicant refused ‘Permission’ and ‘retention’ on 18 Dec 2018
- Ref.3517/18 – Applicant refused ‘Permission’ and ‘retention’ on 10 Sept 2018
- Multiple violations of Conditions attached to existing permission Ref.3627/09, as follows –
  - C1 Change of use of the facility shall require a grant of permission*  
Over recent years, the childcare facility “has expanded to a large commercial business”.
  - C2 a maximum of 12no. children shall be accommodated on site at any one time*

Up to 60no. children use the facility everyday, 5 days a week, all year

C3 *Hours of operation shall be 9am – 6pm, Monday to Friday*

Operating from 7.45am – 6pm.

C4 *Open space to the rear, shall be used predominantly for residential purposes, and use by the children shall be restricted to 1-hour per day, supervised.*

Consistent and persistent noise, with no supervision, for up to 5 hours daily (during school holidays 8am to 6pm).

- A live 'Enforcement' file is currently open.  
A warning letter issued – 27 Sept. 2018  
After several site visits, an 'enforcement notice' issued – 06 Dec.2018 (ref.**E0553/17**), for full compliance with Conditions attached under Ref.**3627/09**
- Concern amongst local residents that applicant is frustrating the planning 'enforcement' process, by way of repeated new applications.
- Ref.**3627/09** – 'permission' granted on a residential basis. For the last several years, the applicant no longer resides at the property. Therefore, question the validity of the planning permission.
- Question why the applicant allowed to appeal the current refusal decision. Applicant has violated numerous planning regulations for years, without consequence. Question why Dublin City Council have not taken action (ie. fines etc.) in response to the applicant's passed and current violations.
- Note applicants reference to 30 Annandale Drive, Drumcondra, as precedent. Comment –
  - it is outside the red line area
  - it is a family home, off the main road
  - permission for Montessori only, with limited operating hours
  - apparent there were persistent problems with noise and nuisance car parking
  - this business closed – Aug 2017
- Dublin City Development Plan 2016-2022 – 'Childcare Facilities'
  - policy, at Appendix 13.1 states –

“within existing residential areas, detached and / or semi-detached properties ...

with space for off-street car parking, and / or suitable drop-off and collection points for customers, and also ...

space for an outdoor play area,

childcare facilities “will generally be permitted, provided the premises remains primarily residential, and traffic and access arrangements do not interfere with general residential amenity”.

- The floor area expansion, and the significant increase in numbers of children attending the childcare facility :
  - results in the building no longer being suitable as a residential unit, and
  - generates increased noise, pedestrian and vehicle traffic.
- Having regard to –
  - the scale of development,
  - its location on a narrow residential street, and
  - the lack of provision for appropriate drop-off / collection arrangements,

the proposed development conflicts with the policies and objectives of the Dublin City Development Plan 2016-2022, and the proper planning and sustainable development of the area.
- Impact on Neighbours
  - The childcare facility has a very detrimental effect “on us as close neighbours”
  - The persistent noise is unbearable –
    - rendering our gardens unusable, and
    - are unable to leave windows and doors open.
  - This is a violation of their rights –
    - use of their gardens has been denied, and
    - the peaceful enjoyment of their homes.
  - The situation has intensified since 2009. Several complaints have been lodged.
  - Applicant is therefore well aware of all the problems, but chooses not to deal with them.

- No respect is shown to neighbours, living in extremely close proximity.
- Urge the Board to “reject this appeal”.

### 6.3.7 Observer – Anne Whelan (18/02/2019)

- Introductory overview of the 2no. applications for retention and permission for increased numbers of children attending childcare services on the application site, ‘refused’ by the Planning Authority / Dublin City Council, during 2018.
- Impact
  - confirm resident at adjoining / neighbouring property – No.45 Shelmartin Avenue)
  - proposed intensification of use causes concern and distress due to –
    - increased traffic, noise, and
    - general disruption and disturbance consequent of living beside a large childcare facility in an end of terrace house, on a quiet narrow street in Marino.
  - Object to the large increase in unauthorised numbers to be accommodated at the site, in breach of the applicant’s planning permission (ref. Ref.3627/09)
  - Permission granted in 2009 for childcare services for a maximum of 12no. children, as part of the residential home (ref. Ref.3627/09). 10no. Conditions attached in the interests of residential amenity.
  - The number of children attending has increased substantially above the 12no. for which permission granted, and in breach of planning permission. Clarify that currently – 22no. in Montessori and 22no. in Afterschool
  - Clarify the 2009 permission granted, whilst applicant and family were resident at No43. Shelmartin Avenue (ie.the application site). The house was primarily a family home. The family no longer reside on site, and the house is no longer used “for any residential purposes” (to best knowledge).

- Use of the residential building solely for commercial purposes, is contrary to the Z2 Zoning Objective, and with the prevailing residential amenity
- Reference relevant provisions of the Dublin City Development Plan 2016-2022 as follows –
  - Z2 Zoning Objective – “To protect and / or improve the amenities of residential conservation”.
  - 14.8.2 “In considering other uses, the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area”
- The proposed scale of ‘childcare’ facility is more suitable as part of a planned purpose-built development.
- ‘Retention’ Applications
  - Reference 2no. separate applications for ‘retention’ lodged with the Planning Authority in 2018 – **3517/18** and **4262/18**.
  - both were ‘refused’ ‘retention’ permission.
  - Application 4262/18 is the subject of the current 1<sup>st</sup> party appeal to the Board.
  - **3517/18**
    - lodged July 2018
    - submitted for 22no. children in the ‘Montessori’ and 35no. children in the ‘afterschool’ session. Total of 57no. children daily.
    - the facility operated from 08h00 daily, in breach of the original permitted hours of 09h00 to 18h00 daily.
    - ‘retention’ permission ‘refused’ – September 2018
  - **4262/18**
    - lodged October 2018
    - submitted for 22no. children in each session (ie. total of 44no. children daily)
    - ‘retention’ permission ‘refused’ – December 2018
    - now subject of current 1<sup>st</sup> party appeal to the Board

- Reference the Planning Authority / Dublin City Council refusal reasons for both applications “focussed on the original Conditions applied to the 2009 grant of permission ie. the residential amenity, traffic concerns, noise and Z2 Zoning”.
- Dublin City Development Plan 2016-2022 – Appendix 13.1 ‘Childcare Facilities’

The ‘Guidelines’ state that ‘childcare facilities’ may be accommodated –

  - within existing residential areas, detached and / or semi-detached properties ...
  - with space for off-street car parking, and / or suitable drop-off and collection points for customers, and also ...
  - space for an outdoor play area,
  - childcare facilities “will generally be permitted, provided the premises remains primarily residential, and traffic and access arrangements do not interfere with general residential amenity”.
  - No.43 Shelmartin Ave. does not comply with the ‘Guidelines’, having regard to –
    - it is an end of terrace house
    - has no off-street car parking, or suitable drop-off and collection points
    - the premises is not residential
    - it does interfere with the residential amenity
  - The substantial growth in numbers attending, from the permitted 12no. children, to the current 22no. for the Montessori session and 22no. for ‘Afterschool’ session, has resulted in “a huge increase in traffic, noise and general disruption for residents”. This impact is particularly felt by those in the immediate vicinity.
  - Both the street and the property, “are entirely unsuitable for such a large-scale childcare development”.
- Enforcement (E0553/17)
  - Consequent of investigation, ‘Enforcement Notice’ issued on 06<sup>th</sup> December 2018, requiring full compliance with Condition No.3 attached to the original planning permission granted in 2009.

- Condition No.3 specified a maximum of 12no. children to be accommodated at any one time. This restriction was made in the interests of residential amenity and acceptable use.
- Traffic
  - Argue
    - that the application does not reflect the reality of the traffic situation, and
    - fundamental disagreement with applicant’s assertions regarding traffic.
  - The childcare facility is not served with off-street car parking. Comment that it is common place for several SUV’s to arrive at the same time, and park on the pavements outside neighbouring houses. This causes disruption and safety concerns, particularly having regard to there being 3no. separate drop-off and pick up times for 22no. children.
  - Over the course of a day, there are up to 88no. visits to the house, with almost 50no. people (staff and children) using the premises daily.
  - By any standards, this is a huge operation and the disruption within an end of terrace house, in a narrow, confined street, and with the volume of traffic several times during the day, has a huge impact on residential amenity.
  - Disagree with the applicant’s opinion that –
    - drop-off and collection occurs over approximately 15-minutes, and
    - most of the children are walked to childcare.
  - By way of example reference activity on 08<sup>th</sup> February 2018, as follows –
    - 20no. children dropped off between 09h04 and 09h31 (ie. 27 mins)
    - The majority were driven in large vehicles (eg. SUV), with 1no. child arriving by scooter.
  - Parents routinely socialise outside the Childcare Facility and the Observers (neighbouring) house, whilst children run up and down

the pavement, and across the street. 3-4no. SUV's routinely arrive at the same time, with engines left running whilst children are dropped off.

- Argue the majority of the children are dropped off and picked up by large vehicles. "The majority do not walk or use bicycles or scooters".

- Noise

- The appeal has no regard to the real issues and concerns of local residents living proximate to the Childcare Facility with regard to 'Noise'.
- Rather, the applicant undermines the concerns and reasons for objection by particularly elderly residents, with respect to noise.
- This is particularly consequent of the intensification of the 'Child Care Facility'.
- 'Noise' impact is an issue consequent of the 22no. children playing outdoors in a very small confined space.
- Excessive noise has on several occasions prevented use of their outdoor area, particularly during the summer time.
- Rather, the applicant "suggests that elderly residents have exaggerated their claims".
- It is impossible and unreasonable to expect large number of children to play quietly, in a very confined outdoor space. Consequently, proximate residents are going to be impacted on by noise.
- Reference having spoken with staff and the owner on several occasions over the last years, regarding noise levels and general disturbance.
- Untrue for applicant to state complaints have not been made. Rather, in an attempt to "maintain amicable relations", complaints have been made directly to staff, and when possible the owner, "rather than through official's routes".

- Childcare Places

- Acknowledge need for a variety of facilities serving needs of communities (e.g. childcare)



- However, demand should never override ‘planning permission’, or the rights of local residents to peaceful enjoyment of their homes.
  - Childcare facilities need to be provided in suitable premises, at suitable locations, and to operate within ‘planning laws’.
  - Everyone benefits from compliance with proper and sustainable planning laws.
  - No understanding as to why the applicant included details and numbers relating to the lack of provision of Childcare Facilities within new developments, or why this is relevant to the application site, being No.43 Shelmartin Avenue.
  - Reference the existing planning permission, for accommodation of 12no. children for childcare services on site, and operating as part of a residential dwelling, for a reason. “The reason being that it is not suitable to accommodate more than that number”.
  - Emphasise the applications site, 43 Shelmartin Avenue, as a modest sized end of terrace site / property.
  - Confirm no off-street car parking, and that the road is narrow.
  - Many of the local residents, including self, rely on on-street car parking, as no driveways exist.
- Signage and External Proposals
    - Reference the signage for the Childcare Facility, on the outside, to the front of the house.
    - The ‘Signage’ –
      - is not in keeping with the residential area, and
      - indicates that it is a ‘business’, rather than a ‘residential house’
    - reference the last ‘application’ set out proposals –
      - to erect scooter and bicycle racks outside,
      - to cut down a tree to facilitate car parking, and
      - to widen the path to facilitate a car parking bay.

- Assert that these proposals, in themselves, are an acknowledgement of the traffic issues caused by the development.
- Sustain objection to the 'signage' and to the proposals referenced above.
- Observation Letters
  - Consider as important, reference to the Observation letters submitted in response to the last application – ref.4262/18
  - Clarify that of the 39no. letters of support –
    - 77% were parents currently using, or who previously used the Childcare Facility.
    - 10% were from Institutions who work with the Facility
    - 3no. residents and 2no. local councillors offered their support
  - There were 9no Objection submissions from local residents on Shelmartin Avenue and Casino Road (directly to the rear)
- Urge the Board “to reject this appeal, and to ensure ... full compliance with the planning permission”.

#### 6.4 Further Responses

None

### 7.0 Assessment

7.1 I have examined the file and available planning history, considered the prevailing local and national policies, physically inspected the site and assessed the proposal and all of the submissions. The issue of appropriate assessment also needs to be addressed. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. The relevant planning issues relate to :

- Planning history of the site and of the Environs
- Principle, Need for and Location of the proposed 'Childcare Facility'
- Overdevelopment of the Site
- Visual Amenity Impact / Streetscape – Shelmartin Avenue 'Residential Conservation Area'.

- Residential Amenity Impact.
- Road Access and Traffic Safety.
- Appropriate Assessment.

## 7.2 Planning History of the Application Site and of the Environs

7.2.1 I have taken careful note of the relevant planning history referenced by parties both on the application site and in the surrounding area.

Planning history documentation has been provided, may be found referenced in this report, and included with the appeal file bundle. I note that each of the component uses comprising the proposed development (ie. 'residential' and 'childcare facility') are "permissible uses" on the application site, within the "Z2" zone (see paragraph 7.3 below). I am of the opinion however, notwithstanding this historical planning background comprising both 'grant' and 'refusal' decisions for similar proposed developments on the application, that each case must be considered on its own merits, and that the current application be deemed a new application.

7.2.2 However, as acknowledged by all of the applicant, the Planning Authority and the 3<sup>rd</sup> party observers, this 'Shelmartin Avenue' / 'Casino Road' neighbourhood of Marino, located within the designated 'Z2' Residential Neighbourhoods (Conservation Areas) Zone, has a distinctive contextual built character, pattern of development and associated amenity, which requires careful maintenance. The current proposed development itself, notwithstanding comparison to the existing unauthorised scale and extent of childcare operations by 'First Steps' (applicant's childcare business) on the application site, challenges the existing contextual pattern of development and associated character, as well as the residential amenity enjoyed by the adjacent established residential community (3<sup>rd</sup> party objectors / observers). Notwithstanding the need to consider each application on its individual merits I believe that the permissions historically both 'granted' and 'refused' on the application site, and the surrounds, provide a benchmark or reference against which the merits of the current application may be measured for its compliance with prevailing statutory planning and development frameworks, which facilitate the proper planning and sustainable development of the area.

### 7.3 Principle, Need for and Location of the proposed 'Child-Care' facility

7.3.1 In my view, the planning 'principle' of a 'montessori' and 'after-care' childcare facility development at No.43 Shelmartin Avenue, Marino, has been established, not least of which by way of the planning permission granted under ref.3627/09. Clearly zoned "Z2 – Residential Neighbourhoods (Conservation Areas)", with the objective "to protect and / or improve the amenities of residential conservation areas", the applicable zoning matrix designates 'residential' and 'childcare facility' land uses as being 'permissible' within the zone. The general objective for "Z2" zoned neighbourhoods is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

7.3.2 The 'Z2' zoning provisions clarify further, that whilst the principal land use within 'Z2' residential conservation areas is housing, a limited range of other uses can be included. The 'Z2' Zoning Objective provides that in considering other such uses (eg. 'childcare facility' as 'permissible'), "the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area" (ref.S.14.8.2, pg.239 – copy attached). Further emphasis is given within 'residential conservation areas' such that development proposals should not "alter the physical character and fabric of the streetscape".

7.3.3 The challenge to the applicant, understood owner and operator of 'First Steps' Childcare facility therefore, having regard to both national policy, and the relevant requirements of the Dublin City Development Plan 2016-2022, is to ensure the proposed childcare facility development, has no disproportionate adverse impact on the scale & character of the existing residential conservation area at Shelmartin Avenue itself, and no unacceptable and disproportionate impact on the amenities enjoyed by the surrounding neighbours.

7.3.4 Within the 'Z2' residential conservation zoned areas of Marino, Dublin City, I note reference made to several existing childcare facilities, which on the information available, operate from conventional residential properties. Whilst

all parties acknowledge these existing childcare facilities, no clear reference is made to their relative proximities to, or separation distance from the current application site at No.43 Shelmartin Avenue.

7.3.5 At a national policy context, I note that Departmental Circular PL3/2016 clearly outlined the extension to the 'Early Childhood Care and Education' (ECCE) Scheme. The anticipated consequence of such extension, is that this will result in a doubling of the number of children availing of the ECCE Scheme. This increase in demand must itself be reasonably expected to manifest itself locally within Marino, Dublin City generally, and at 'First Steps' childcare facility at No.43 Shelmartin Avenue specifically. This significant demand increase for child places, emphasised by the applicant, must accordingly be expected to exceed the existing supply of childcare facility services referenced by the applicant, as existing locally. In this regard I note the applicant's arguments, consequent of their own survey of 5no. childcare facilities locally, that at present, all 5no. are "fully booked until 2021", 1no. is fully booked until 2022, and 2no. have a long waiting list, in addition. Also, the existing oversubscribed supply of childcare facility spaces, must be expected to be further undermined by the anticipated increase in residential development with consequent release of housing stock to market, and with consequent growth in the local population.

7.3.6 I have carefully noted, and understand the applicants causal link motivated, such that the volume of child places proposed within the current application (ie. 22no. reduced down from 35no. previously refused under ref. **3517/18**) is necessary due to the overwhelming demand for childcare places across Dublin City, inclusive of Shelmartin Avenue, Marino.

7.3.7 However, whilst this acute need is clear, the weighted motivation made on this basis by the applicant, does not exempt or set aside the obligation to ensure both protection of the residential character of the 'residential conservation area', and associated residential amenities, and that the proposed development "not alter the physical character and fabric of the (Shelmartin Avenue) streetscape". I share the Planning Authority's expressed conviction in this regard, and further that the popularity of the 'First Steps' childcare facility with parents, in and of

itself, “is not a valid reason to permit the ‘retention’ / amendment of the development”.

7.3.8 The fact that an acute need exists locally for a childcare facility, does not in itself overcome the serious concerns with respect to residential amenity impact, and the ‘conservation’ designation of Shelmartin Avenue. I reflect that these are clearly not new, or unique issues to the current application. In fact these were relevant considerations under the historical applications on the application site ref. **3517/18**, and which substantiated the relevant / respective ‘Refusal Reasons’ given by the Planning Authority at that time.

7.3.9 With respect to location, I note that within ‘New and Existing Residential Areas’, Appendix 13 – ‘Guidelines for Childcare Facilities’ of the Dublin City Development Plan 2016-2022 prescribes at Section 13.1 that within “existing residential areas, detached houses / sites, or substantial semi-detached properties with space for off-street parking and / or suitable drop-off and collection points for customers, and also space for an outdoor play area, will generally be permitted, provided the premises remains primarily residential and traffic and access arrangements do not interfere with general residential amenity”. These prescriptions are further sharpened in my view, having regard to the site’s location within the ‘**Z2**’ residential conservation area.

7.3.10 In the first instance, I distinguish that No.43 Shelmartin Avenue is neither a ‘detached’ or a ‘semi-detached’ dwellinghouse. Rather, it is a modest ‘end of terrace’. Further, it is a moot point whether reasonable capacity, or not, exists for on-site car parking at all. This for the residential occupant first and foremost, and then having regard to the ‘First Steps’ childcare facility staff car parking provision. In this regard I reference that given the sites location within the ‘**Z2**’ zoned ‘residential conservation area’, Section 16.10.18 – “Parking .... In Conservation areas” highlights that car parking space provision within conservation areas can have an adverse effect on the special interest and character of conservation areas. For this reason therefore, Section 16.10.18 provides that proposals for off-street car parking in the front gardens of such properties located within ‘residential conservation areas’, “will not normally be

acceptable where inappropriate site conditions exist, particularly in the case of smaller gardens where the scale of intervention .... can lead to the erosion of the character and amenity of the area”.

7.3.11 Clearly, having regard to the above, no capacity exists at all, for the on-site provision of suitable drop-off and collection space. Notably, Section 13.1 of Appendix 13 does not clearly enable for off-site / on-street provision of suitable drop-off and collection space. I acknowledge that the City ‘Transport Planning Division’ in their recommendations to the Planning Authority (07/12/2019), include allowance for on-street ‘drop-off’ and ‘collection’ space. However, this is determined as being at the public cost of the loss of the mature tree standing to the front of the application site onto Shelmartin Avenue. I will address this further below at 7.6 – ‘Road Access and Traffic Safety’.

7.3.12 Whereas Section 13.1 of Appendix 13 prescribes for the provision of ‘space for an outdoor play area’, no qualification is provided with respect to area, type, composition and proximity to neighbours. Simply, the existing ‘First Steps’ childcare facility is served with a small hard surface enclosed area to the rear of the application site. From inspection, this appears to be the entire area of the rear yard / domestic garden once serving the needs of the residents of the 2-storey end of terrace dwellinghouse. As discussed fully at paragraph 7.5 – ‘Residential Amenity Impact’ below this rear space would be seriously challenged to effectively fulfil the role both of ‘outdoor play area’ for the children accommodated within ‘First Steps’ childcare facility, and as a ‘private amenity space’ for the residential occupants of No.43.

7.3.13 In further consideration under Section 13.1 of Appendix 13, together with the ‘Z2’ Zoning Objective, I express reservation that at the time of physical inspection, it was not clearly apparent that the ‘First Steps’ 2-storey end of terrace dwellinghouse was used as a residence at all. In this regard, I note the strong opinions asserted by the 3<sup>rd</sup> party ‘Observers’ to the 1<sup>st</sup> party appeal, that over the recent past, no sustained residential occupancy of the application site has occurred. This current absence of primary residential occupancy and use of the 2-storey end of terrace dwelling house would be contrary to the

permission granted under ref. **3627/09**, as well as Zoning Objective ‘**Z2**’ and Section 13.1 of Appendix 13. Of relevance in my view, is that the permission granted under ref. **3627/09**, Condition No.3 attached thereto prescribed that “a maximum of 12no. children shall be accommodated ... at any one time”. Having regard to the information available I understand that c.35no. children are currently accommodated within the ‘First Steps’ childcare facility. This is significantly higher than that granted under ref. **3627/09**, and notwithstanding the applicants emphasised arguments regarding the acute, overwhelming need for ‘childcare’ places within such formal, established and successful facilities, must be regarded as ‘unauthorised’.

7.3.14 Having regard to further discussions below, I believe that the proposed development is not sufficiently compliant with the relevant provisions of all of the Dublin City Development Plan 2016-2022 and the ‘Childcare facilities – Guidelines for Planning Authorities’, June 2001 and Departmental Circular PL3/2016, and would therefore, be contrary to the proper planning and sustainable development of the Shelmartin Avenue ‘residential conservation area’.

#### **7.4 Overdevelopment of the Site**

7.4.1 Overdevelopment of a property is a threat to the character of and associated amenity enjoyed within ‘residential conservation areas’ such as at Shelmartin Avenue. Precautionary guidance in this regard is provided by the relevant provisions of the Dublin City Development Plan 2016-2022 including : Section 14.8.2 ‘Residential Neighbourhoods (Conservation Areas) – Zone ‘Z2’, Sections 16.10.18 and 16.10.19 ‘(Residential) Parking’ and ‘Non-residential and Commuter Off-street parking’ respectively, within the Curtilage of Protected Structures and in Conservation Areas”, Section 12.5.5 “Sustainable Provision and Optimum Use of Social Infrastructure (PolicySN17)”, and Appendix 13 – ‘Guidelines for Childcare Facilities’, particularly Section 13.1 ‘New and Existing Residential Areas’ thereof.

7.4.2 Development potential of the application site is constrained by the –

- modest size both of the site and the 2-storey house itself,



- the 2-storey house being an end of terrace house located within a ‘residential conservation area’ where the general layout of the local area is finely grained, with modest frontages onto Shelmartin Avenue and where Section 16.10.18 provides that “off-street parking .... will not normally be acceptable”,
- the provision for car parking spaces and a ‘drop-off /collection point’ will need to be accommodated off-site,
- the on-site capacity to enable both ‘private amenity space’ and an ‘outdoor play area’ is restricted to the modest rear enclosed yard only, and
- where the majority share of internal layout and space is enabled for ‘childcare’

7.4.3 Having regard to my observations at the time of physical inspection, and to all of the information available on the appeal file, I am inclined to share the consideration expressed by the Planning Authority that at present, with an unauthorised accommodation for c.35no. children, the 2-storey house is “no longer a dwelling unit in any real sense”. This view is expressed both having regard to the internal spaces provided, as well as the functional split between ‘residential’ and ‘childcare’ facility. The subordination of the ‘residential’ use element to what has become the ‘predominant’ ‘childcare’ element is contrary to the ‘Z2’ Zoning Objective and Section 3.1 of Appendix 13 of the Dublin City Development Plan 2016-2022. Each of these key references provided in the City Development Plan 2016-2022 require that “the premises remains primarily residential ...”.

7.4.4 Noticeably, the applicant has proposed a reduction in the number of child places to be accommodated at ‘First Steps’. Specifically, a maximum of 22no. childcare places is now proposed, reduced down from the 35no. previously refused under ref.**3517/18**. Notwithstanding, and whilst clearly a reduction down from the understood 35no. child places currently accommodated without planning permission, this correspondingly remains a significant increase from the 12no. child places authorised by the planning permission granted under ref.**3627/09** (ie. Condition No.3).

7.4.5 In this regard, I note the applicant's motivation that the current unauthorised 35no. child places represents a response to the acute shortage of and demand for childcare places in the area, and is indicative of the popularity of the 'First Steps' facility with parents. Notwithstanding however, as already discussed, demonstrated compliance with the relevant statutory planning references (ie. 'Z2' Zoning Objective, Appendix 13 -Section 13.1) is necessary from the applicant.

7.4.6 In my view, having regard to the permission granted under ref.3627/09 (ie. 12no. child places) and the refusal of planning permission under ref.3517/18 (ie. 35no. child places), the applicant in the current application (ie. 22no. child places) is challenged to demonstrate the development now proposed under ref.4262/18 would not result in overdevelopment of the modest, restricted application site. This application requires assessment against the relevant prevailing planning legislation, planning guidelines and statutory development plans. Precaution against overdevelopment of the site is therefore assured.

## 7.5 **Visual Impact / Streetscape – Shelmartin Avenue 'Residential Conservation Area'**

7.5.1 The sense of place of the Shelmartin Avenue residential conservation neighbourhood is clearly influenced by the architectural style, design, and general finishing with respect to materials and colouring of the existing generally 2-storey terraced houses, all set in a local topographical and environmental context. The historical background to, and the evolution of this neighbourhood within North Dublin City has been clearly referenced by the applicants, c/o Brennan Furlong. All parties to the current case, in my understanding, aspire to preserve this amenity, itself the objective of the 'Z2' Zoning Objective. I have taken note of the established, contextual scale and pattern of residential development along either side of Shelmartin Avenue generally, and proximate to No.43 specifically. What is certain in my view, and weighting reference to my own observations made at the time of physical inspection, is that as one moves along Shelmartin Avenue, no visibility is possible at all, of the rear of any of the houses, and including and specifically,

the rear of No.43. In fact, if it were not for the address as known, of the application site, and for the modest, discreet signage plaque attached to the front elevation wall adjacent the entrance door, it is not obviously apparent from visual appearance that No.43 is used for the purposes of a childcare facility.

7.5.2 However, whereas no structural change or additional element is proposed to the existing external built form at No.43, compliance with the relevant provisions of the Dublin City Development Plan 2016-2022 and the recommendations of the Dublin City Transportation Planning Division, regarding enabling 'road access', car parking and associated traffic safety, will directly and in my view negatively impact the existing 'residential conservation area' streetscape and associated visual amenity for which there are explicitly set out objectives to preserve and protect (ie. 'Z2' Zoning Objective).

7.5.3 In the first instance, having particular regard to Section 16.10.18 – "Parking ... in Conservation Areas", onsite car parking spaces provision would not be possible, due to the existing inappropriate site conditions, in this instance the small, shallow depthed front garden with modest frontage onto Shelmartin Avenue. The consequence of this circumstance is that car parking space requirements generated by both of the 'residential' and 'childcare facility' uses at No.43, will be required to be accommodated on-street, with knock-on consequences for what appears as an already over-subscribed on-street car parking scenario, along both frontages of the narrow Shelmartin Avenue.

7.5.4 Secondly, no capacity exists at all, for the on-site facilitation of suitable 'drop-off' and 'collection' spaces, as required by Section 13.1 of Appendix 13 of the City Development Plan 2016-2022. This need is emphasised further by the 'City Transportation Planning Division', who in their own right recommended that a 3-year temporary permission be granted for the proposed development, subject to several recommended Conditions. One of these Conditions requires for provision of a 'drop-off / collection' space to the front of the application site, and which as proposed by the applicant, would comprise the widening of the Shelmartin Avenue carriageway, to provide an indented bay to accommodate the collection and drop-off of children. Whilst assuring a satisfactory

carriageway width (c.3.4m) and footpath (c.1.8m) would be maintained, no drawings in this regard are apparent amongst the drawings submitted by the applicant. Notably in this regard, is that this space is not included within the 'red-lined' boundary of the application site, and if the application were to be successful would require resolution between the applicant and the City Council to ensure implementation, which does not fit cleanly within the scope of the current application.

7.5.5 Rather, in my view, were planning permission to be granted, subject to provision of such an off-site indented bay on Shelmartin Avenue for the 'collection' and 'drop-off' of children, the introduction of such a new, adhoc, engineered feature into the Shelmartin Avenue streetscape would indeed be the sought of negative visual externality which the 'Z2' Zoning Objective seeks to prevent. The fact that construction of such a bay, with the widening of Shelmartin Avenue carriageway, requires the removal of one of the established mature trees within the 'public realm', further emphasises the negative visual externality.

7.5.6 In my view, this new engineered physical feature within the Shelmartin Avenue streetscape, with consequent loss of an established mature tree within the public space, and where Shelmartin Avenue enjoys the visual benefit of treelines along both frontages, would be the unacceptable and disproportionate impact on both the visual and residential amenities enjoyed by the surrounding residents of the 'residential conservation area', which the 'Z2' Zoning Objective expressly seeks to prevent. In my view, this disproportionate public cost within the 'residential conservation area', by way of what must be regarded as 'special treatment' for what is required to be primarily a domestic residential dwellinghouse, with subordinate 'childcare' use / function, rather than a purpose built facility, would be contrary to the 'Z2' Zoning Objective, Section 13.1 of Appendix 13 of the City Development Plan 2016-2022, and to the proper planning and sustainable development of the area.

## 7.6 Residential Amenity Impact

7.6.1 I note the applicants comment that in their opposition to the proposed development, the Planning Authority and the 3<sup>rd</sup> party Observers / Objectors

cited the negative impact on 'residential amenity'. The applicant in response asserts that "However, there is no accepted definition of what constitutes 'residential amenity'", and that therefore, "any analysis has to be somewhat subjective".

7.6.2 Whilst the 'Glossary' to the Dublin City Development Plan 2016-2022 contains no 'definition' of residential amenity, I understand residential amenity values as referring to those natural or physical qualities and architectural characteristics of the Shelmartin Avenue 'Z2' 'Residential Conservation Area', that contribute to residents' appreciation of its pleasantness, liveability and its aesthetic coherence. The 'Z2' zoning objective, whilst enabling 'child-care facility' use as 'permissible', seeks to ensure the protection and improvement of the residential amenity prevailing in this contextual, established residential conservation area. In fact the 'Z2' zoning objective enables focus in the assessment of development proposals such as the 'childcare facility' proposed at No.43 such that "the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area", and that development proposals should not "alter the physical character and fabric of the streetscape".

7.6.3 In this regard, whereas in my view no serious negative impact would result consequent of 'visual obtrusion' (ie. consequent of no changes to the 2-storey external built form of No.43), 'side space and separation standards', 'loss of natural light or overshadowing', 'overlooking or freedom from observation', and interference with 'insitu views and outlooks', I believe that the same cannot be said with regard to the following threats to and consequent serious negative impacts on the prevailing 'Z2' residential amenity :

7.6.4 Residential Use – Liveability of Internal Layout and Space Provision

- The relevant City Development Plan 2016-2022 provisions require that the proposed 'childcare facility' use be subordinate to the 'residential' use of No.43 as the primary use. Having regard to all of the information available, and to my own observations at the time of physical inspection, I express reservation as to whether over the recent past, sustained

primary residential occupancy and use of the 2-storey end of terrace dwellinghouse has occurred. In fact, with the unauthorised accommodation of c.35no. children within the 'First Steps' childcare facility, and the spatial implications within the existing dwellinghouse thereof, such primary residential occupancy would have been challenging, at best.

- With the current proposed reduction to a maximum of 22no. 'childcare' places, I am not convinced that real and substantive improvement to the reasonable domestic residential liveability at No.43 will result. The relevant Ministerial Guidelines for 'urban residential development' and City Development plan 2016-2022 provisions require that account be taken of the need for proper internal space planning, which ensures adequate standards in relation to the overall dwelling and the individual room sizes.

Notwithstanding the reduction to a maximum of 22no. childcare places (down from c.35no. – unauthorised), this remains as a significant increase (ie. c.84%) in my view, from the 12no. child places authorised by the planning permission granted under ref.**3627/09** (ie. Condition No.3), and which in my understanding of the relevant planning history was so Conditioned so as to ensure that the 'childcare facility' use was sustained as subordinate to the principal and primary residential use at No.43.

- With the majority portion of the internal space and rear outdoor space being set out for 'childcare', I share the Planning Authority consideration of the modest 2-storey end of terrace at No.43, as no longer a functional domestic dwelling unit in any real sense. Further, notwithstanding the applicant's revision to and allocation of domestic living space at 1<sup>st</sup> floor level, the resultant enabling residential amenity for occupants is poor. The applicant references the availability and accessibility of the ground floor space to residential occupants, outside of the 'childcare facility' operational hours. However, this is not in my view a desirable scenario and would sustain an undesirable level of residential amenity for occupants. Therefore, I am of the view that consequent of the 22no.

childcare places proposed, a satisfactory standard of domestic residential accommodation cannot be provided, with deficiency in space for the domestic living requirements of modern households in this sector.

#### 7.6.5 Private Amenity / Leisure Space

- Section 16.10.2 – ‘Residential Quality Standards – Houses’ of the City Development Plan 2016-2022, emphasises ‘private open space’ as an important element of residential amenity. Private amenity space for houses is to be provided by way of private gardens to the rear or side of a house. A minimum standard of 10m<sup>2</sup> of private open space, per bedspace, will normally be applied, with up to 60-70m<sup>2</sup> of rear garden area considered as sufficient for houses in the city. Having regard to the proposed 1<sup>st</sup> floor internal layout plan, I understand that 3no. bedspaces are facilitated (ie. 1no. double bedroom and 1no. single bedroom), which translates to a requirement for c.30m<sup>2</sup> of private amenity space. I note that such a space is available to the rear of No.43 and is understood to have facilitated the private amenity needs of the occupants of No.43.
- Whereas Section 13.1 of Appendix 13 of the City Development Plan 2016-2022 prescribes for the provision of ‘space for an outdoor play area’, no qualification is provided with respect to area, type, composition and proximity to neighbours. Simply, the existing ‘First Steps’ childcare facility is served with a small hard surface enclosed area to the rear of the application site. From inspection, this appears to be the entire area of the rear yard / domestic garden once serving the private amenity space needs of the occupants of the No.43.
- Whilst not directly addressed by either of the applicant or the Planning Authority, I anticipate that similarly to the accessibility of ground floor internal spaces to the occupants of No.43, so would the availability and

accessibility of the small hard surface enclosed area to the rear of No.43 be to the residential occupants, outside of the 'childcare facility' operational hours. In itself, I am not convinced that such a space to the rear, reasonably enables satisfactory private residential amenity space for the occupants of No.43. Unless the residential occupants are the owner / operators of the 'First Steps' childcare facility, accessibility to the rear private amenity space would be completely restricted, and thereby seriously compromising to their residential amenity. Such circumstance would raise the question as to whether the rear space is 'space for an outdoor play area' for the childcare facility, or is it 'private amenity space' for the residential occupants. Clearly, the potential to serve both needs is particularly challenged. This argument would similarly apply with respect to accessibility to the domestic ground floor spaces, as discussed above. This would be particularly restrictive with respect to access to the kitchen area downstairs, during the day.

- Noting the difficulties apparent with respect to both the suitability and quality of the existing hard surfaced enclosed space for private amenity use and enjoyment, as well as the practical considerations of accessibility to this rear private amenity space by residential occupants of No.43, I believe that no obvious qualities to this space are clearly apparent, which would enable flexibility in consideration of the adequacy of the c.30m<sup>2</sup> rear space on its own.
- On its own, I have regard to the deficiencies in private amenity space provision to serve the needs of the residential occupants of No.43 as serious, and indicative of overdevelopment of the site. In combination with the other negative impacts on residential amenity discussed, I believe this deficiency to be sufficient to be considered as a 'refusal reason' for the proposed development.



- There is understandably an existing ambient noise level prevalent, which derives from the close spatial relationship of the nearby residential properties, to the urban land uses and activities normally associated with an historical, established primarily residential neighbourhood such as at Marino, North Dublin City.
- A relevant consideration in my view, is the finely grained residential layout with consequence that the rear domestic amenity spaces / gardens are in close proximity to one another. These separation distances result in a configuration which is more closely proximate than is normally expected within suburban rear gardens.
- Any use of this rear space for non-residential activity such as an 'outdoor play area' for a 'childcare facility', must by its nature negatively impact on adjacent residential amenity. Notwithstanding the applicant's clarification of the use of this outdoor play area to specific times, and that such play would be supervised, I am not convinced that this would achieve satisfactory mitigation of noise externality. In my view the noise reasonably expected to be generated by c.22no. children at play within the rear enclosed yard, is not comparable with that normally generated by domestic use by children of families resident at such a property.
- Accordingly believe that the levels of noise externality which will result from use by the 22no. children accommodated at the proposed 'First Steps' childcare facility, will be substantially greater than the ambient noise levels normally expected within a 'residential conservation, neighbourhood such as along Shelmartin Avenue. Such negative impact consequent of noise externality will be contrary to the 'Z2' zoning objective, Section 13.1 of Appendix 13 and to the proper planning and sustainable development of the area.

#### 7.6.7 Visual Impact / Streetscape

- I re-emphasise the guiding principle set out in the 'Z2' Zoning Objective that in the consideration of proposed uses such as 'childcare facility', as 'permissible', the objective is to enhance the architectural quality of the Shelmartin Avenue streetscape and of the local area, and to protect the unique local residential character of the area. Further emphasis is given

within 'residential conservation areas' such that development proposed should not "alter the physical character and fabric of the streetscape".

- As discussed at 7.4 above, change to the physical character and fabric of the Shelmartin Avenue streetscape and associated visual amenity is inevitable consequent of firstly the car parking space requirements of both the 'residential ' and 'childcare facility' land uses elements, of necessity, being accommodated on the street, with knock-on consequences for what appears as an already oversubscribed on-street parking scenario, along both frontages of the narrow Shelmartin Avenue.
- Secondly, if planning permission were to be granted and having regard to the recommendation of the City 'Transport Planning Provision', a 'drop-off / collection' space is required to the front of the application site (No.43), comprising the widening of the Shelmartin Avenue carriageway, to provide an indented bay which would enable the required 'drop-off' and 'collection' traffic movements. In my view, the introduction of such a new, ad hoc, engineered feature into the Shelmartin Avenue streetscape would be the sought of negative visual externality which the '**Z2**' Zoning Objective seeks to prevent. Further, I affirm that the fact that construction of such a bay, with the widening of the Shelmartin Avenue carriageway, requires the removal of one of the established mature trees within the 'public realm, further emphasises the negative visual externality.
- In my view, this new engineered physical feature within the Shelmartin Avenue streetscape, with consequent loss of an established mature tree within the public space, and where Shelmartin Avenue enjoys the visual benefit of treelines along both frontages, would be the unacceptable and disproportionate impact on both the visual and residential amenities enjoyed by the surrounding residents of the 'residential conservation area', which the '**Z2**' Zoning Objective expressly seeks to prevent. In my view, this disproportionate public cost within the 'residential conservation area', by way of what must be regarded as 'special treatment' for what is required to be primarily a domestic residential dwellinghouse, with subordinate 'childcare' use / function, rather than a purpose built facility,

would be contrary to the 'Z2' Zoning Objective, Section 13.1 of Appendix 13 of the City Development Plan 2016-2022, and to the proper planning and sustainable development of the area.

#### 7.6.8 Road Access, Car Parking & Traffic Safety

- Contrary to the 'Z2' Zoning Objective, change to the physical character and fabric of the Shelmartin Avenue streetscape and associated amenity is inevitable, consequent of the car parking space requirements being accommodated on-street, with knock-on consequences for an already oversubscribed on-street car parking scenario locally. Similarly, the introduction of a new, engineered 'drop-off' and 'collection' bay feature into the Shelmartin Avenue streetscape, with consequent loss of an established mature tree within the public realm, would be the sort of local contextual negative visual externality which the 'Z2' zoning objective expressly seeks to prevent.

7.6.9 Accordingly, having regard to the above assessment, and specifically my references regarding –

- disproportionate negative 'visual impact' on the Shelmartin Avenue 'streetscape' consequent of off-site works necessary to enable operational sustainability of the proposed development ('childcare facility') and ensure compliance with the statutory provisions of the Dublin City Development plan 2016-2022,
- substandard liveability of internal layout and space provision,
- deficiencies in private amenity space provision to serve the needs of the residential occupants particularly, and
- disproportionate negative impact on amenity consequent of noise externality (not normally characteristic of a 'residential conservation area'),

I believe the proposed development is not satisfactorily compliant with the 'Z2 – Residential Conservation Area' zoning objective, and accordingly for these 'refusal reasons' would be contrary to the proper planning and sustainable development of the area.

## **7.7 Road Access and Traffic Safety**

7.7.1 The suitability of the application site for development and use as a 'childcare facility' will be determined amongst others, with reference to potential for traffic hazards caused by the proposed development, and consequent additional access onto and loading of Shelmartin Avenue. The safety and convenience of all road users is emphasised by the Dublin City Development Plan 2016-2022. Having thoroughly inspected the location of the application site in the context of Shelmartin Avenue (see photographs attached taken at the time of physical inspection), I have had regard to the following and comment accordingly –

7.7.2 Having regard to Section 16.10.18 – “Parking ... in Conservation Areas”, onsite car parking spaces provision would not be possible, due to the existing inappropriate site conditions, in this instance the small, shallow depthed front garden with modest frontage onto Shelmartin Avenue. The consequence of this circumstance is that car parking space requirements generated by both of the 'residential' and 'childcare facility' uses at No.43, will be required to be accommodated on-street, with knock-on consequences for what appears as an already over-subscribed on-street car parking scenario, along both frontages of the narrow Shelmartin Avenue, resulting in localised traffic congestion, and obstruction of free traffic flow along Shelmartin Avenue.

7.7.3 No capacity exists at all, for the on-site facilitation of suitable 'drop-off' and 'collection' spaces, as required by Section 13.1 of Appendix 13 of the City Development Plan 2016-2022. This need is emphasised further by the 'City Transportation Planning Division', who in their own right recommended that a 3-year temporary permission be granted for the proposed development, subject to several recommended Conditions. One of these Conditions requires for provision of a 'drop-off / collection' space to the front of the application site, and which as proposed by the applicant, would comprise the widening of the Shelmartin Avenue carriageway, to provide an indented bay to accommodate the collection and drop-off of children. Whilst assuring that a satisfactory carriageway width (c.3.4m) and footpath (c.1.8m) would be maintained, no drawings in this regard are apparent amongst the drawings submitted by the

applicant. Notably in this regard, is that this space is not included within the 'red-lined' boundary of the application site, and if the application were to be successful would require resolution between the applicant and the City Council to ensure implementation, which does not fit cleanly within the scope of the current application.

7.7.4 Rather, in my view, were planning permission to be granted, subject to provision of such an off-site indented bay on Shelmartin Avenue for the 'collection' and 'drop-off' of children, the introduction of such a new, adhoc, engineered feature into the Shelmartin Avenue streetscape would indeed be the sought of negative visual externality which the '**Z2**' Zoning Objective seeks to prevent. The fact that construction of such a bay, with the widening of Shelmartin Avenue carriageway, requires the removal of one of the established mature trees within the 'public realm', further emphasises the negative visual externality.

7.7.5 Similarly, and in the absence of drawings clearly illustrating the spatial layout of the proposed 'indent', threat to the safe, free movements of pedestrians passed the application site, must also be reasonably anticipated. This would include those children and parents / carers who walk to and from 'First Steps' childcare facility.

7.7.6 In my view, this disproportionate public cost within the 'residential conservation area', by way of what must be regarded as 'special treatment' for what is required to be primarily a domestic residential dwellinghouse at No.43, with subordinate 'childcare' use / function, rather than a purpose built 'childcare facility', would be contrary to the '**Z2**' Zoning Objective , Section 13.1 of Appendix 13 of the City Development Plan 2016-2022, and to the proper planning and sustainable development of the area.

7.7.7 I am mindful towards the applicant's expressed commitment to comply with the City 'Transport Planning Divisions' Conditions attached to their recommendation in favour of a grant of 'temporary' planning permission (for 3no.years). The applicant may be quite correct that there are engineering

solutions available towards resolution of the accessibility constraints particularly, facing development and use of the application site, as proposed. However, the need to engineer modification of the public space, outside of the 'red-lined' application site, in order to enable reasonable accessibility of the 'First Steps' childcare facility in compliance of Section 13.1 of Appendix 13, I believe, is indicative of the unsuitable capacity of the application site for the proposed development, and in itself argues the point that it is not sustainable.

7.7.8 Further, having regard to the applicant's arguments submitted on appeal, I have had regard to the weighted reference made to the City 'Transport Planning Division' recommendation that a 3-year 'temporary permission' be granted, subject to specifically recommended Conditions. The applicant highlights that the Planning Authority did not accept the City 'Transport Planning Divisions' recommendation and proceeded to their decision to 'refuse' planning permission.

7.7.9 In response, I note that in deriving their opinion towards recommending a grant of 'temporary' permission, the City 'Transport Planning Division' referenced the 12no. childplaces accommodated on-site under ref.**3627/09**, and under which 'First Steps' formally operates. Further the maximum of 22no. childcare places now proposed, was referenced as a reduction down from the 35no. previously refused permission under ref.**3517/18**. Having regard to the wording of the City 'Transport Planning Divisions' report (07/12/2018), it would appear that their conclusion that a 'temporary permission' may be appropriate, was made "so that the potential traffic impact, if any, can be assessed over time", of the now maximum of 22no. childcare places proposed. Clearly, weighted reference has been given to the applicant's proposed reduction down from the current unauthorised 35no. child places.

7.7.10 However, I believe the maximum of 22no. childcare places now proposed remains a significant increase (c.84%) from the 12no. child places authorised under ref.**3627/09** (ie. Condition No.3). Further, notwithstanding both the favourable recommendations of the City 'Transport Planning Division' and the applicants detailed motivations that the current unauthorised 35no. child

places, in itself, represents a response to the acute shortage of, and demand for childcare places in the area, and is indicative of the popularity of the 'First Steps' facility with parents, demonstrated compliance with the relevant statutory planning references (ie. 'Z2' Zoning Objective, Appendix 13 – Section 13.1) is necessary from the applicant.

7.7.11 It is in this regard that the Planning Authority, in its decision making on the proposed development, is challenged. Whereas the scope and focus of the City 'transport Planning Division' is understandably restricted to roads infrastructure and associated traffic safety, attention to and consideration by the Planning Authority of the broad range of planning issues effecting the proper planning and sustainable development of the Shelmartin Avenue neighbourhood at Marino, North Dublin City, is necessary.

7.7.12 Accordingly, having regard to all of the above, I believe the applicants arguments advocating adequacy and safety for the proposed development cannot be sustained. I share the Planning Authority conviction in this regard.

## **7.8 Appropriate Assessment**

7.8.1 Having regard to the nature and scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **7.8 Conclusion**

7.8.1 I am empathetic to the applicant in providing childcare services to the local community, and for which there is an undisputed overwhelming local need. I have noted and understand the applicants causal link motivated such that the volume of child places proposed within the current application (ie. 22no. reduced down from 35no. previously refused under ref. **3517/18**) is necessary due to the overwhelming demand for childcare places in the local area.

- 7.8.2 However, whilst this acute need is clear, the weighted motivation made on this basis by the applicant, does not exempt or set aside the obligation to ensure both protection of the residential character of the ‘residential conservation area’, and associated residential amenities, and that the proposed development not alter the physical character and fabric of the Shelmartin Avenue streetscape.
- 7.8.3 The applicant currently enjoys the benefit of planning permission for a ‘childcare facility’ at No43 Shelmartin Avenue, granted under ref.**3627/09**. Condition No.3 attached thereto prescribed that “a maximum of 12no. children shall be accommodated ... at any one time”. I understand the permission granted under ref.**3627/09** ensured a balance between the ‘primary’ residential use of No.43 and the ‘childcare facility’ use, whilst ensuring further that there was no disproportionate negative impact on the residential character of the contextual Shelmartin Avenue community and associated residential amenities, and no alteration to the physical character and fabric of the contextual Shelmartin Avenue streetscape.
- 7.8.4 Notwithstanding the current unauthorised accommodation of 35no. child places at ‘First Steps’ for which planning permission was refused under ref.**3517/18**, I affirm the view that the currently proposed 22no. child places remains as a significant increase (c.84%) above the 12no. child places permitted under ref.**3627/09**.
- 7.8.5 Having regard to all of the information available, and to my substantive assessment set out above, I conclude that the proposed development is not sufficiently compliant with the relevant provisions of all of the Dublin City Development Plan 2016-2022, the ‘Childcare facilities – Guidelines for Planning Authorities’, June 2001 and Departmental Circular PL3/2016, and would therefore be contrary to the proper planning and sustainable development of the Shelmartin Avenue ‘residential conservation area’.
- 7.8.6 I recommend to the Board accordingly and affirm the Planning Authority’s single, substantive ‘refusal reason’ comprising Decision Order **No.P4920** made under ref. **4263/18**, as reasonable and appropriate.



## **8.0 Recommendation**

8.1 I recommend that 'retention' permission and 'planning' permission be 'Refused' for the reasons and considerations as set out below.

## **9.0 Reasons and Considerations :**

The application site is located within a '**Z2**' area the zoning objective of which is to protect and / or improve the amenities of 'residential conservation area'. Dublin City Development Plan 2016-2022 policy for 'Childcare Facilities' states in Appendix 13.1 that within existing residential areas, detached houses / sites or substantial semi-detached properties with space for off-street parking and / or suitable drop-off and collection points for customers, and also space for an outdoor play area will generally be permitted, provided the premises remains primarily residential and traffic and access arrangements do not interfere with general residential amenity.

The expansion in floor area of the 'childcare facility' and the increase in numbers of children attending the 'childcare facility' to 22no. total in sessional care, results in the building no longer being a suitable domestic residential unit, as well as generating increased noise, pedestrian and vehicle traffic, and general disamenity over and above that experienced as a result of the previously permitted 12no. childcare places (ref.**3627/09**). The existing 2-storey dwellinghouse, of modest floor area and the northern end unit of a 2-storey terrace, is not suited to the scale of the 22no. child, childcare facility proposed for retention. Therefore, it is considered that the development, as proposed, would result in serious injury to prevailing residential amenities, and would be contrary to the Dublin City Development Plan 2016-2022, in particular the '**Z2**' Zoning Objective and Appendix 13, and accordingly would be contrary to the proper planning and sustainable development of the area.

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**L W Howard**  
**Inspectorate**  
**04<sup>th</sup> July 2019**