



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306789-20

#### Development

Planning permission sought to increase the numbers of children attending the previously approved playschool under P.A. Reg. Ref. No. FW16A/0051 from 16 to 18 per each 2 daily sessions.

#### Location

No. 21 Riverwood Chase, Castleknock, Dublin 15, County Dublin.

#### Planning Authority

Fingal County Council.

#### Planning Authority Reg. Ref.

FW19A/0200.

#### Applicant

Judith Rogers.

#### Type of Application

Planning Permission.

#### Planning Authority Decision

Grant with Conditions.

#### Type of Appeal

Third Party.

#### Appellants

Gabriel & Roisin Shanley.

#### Observer(s)

None.

#### Date of Site Inspection

27<sup>th</sup> day of May, 2020.

#### Inspector

Patricia-Marie Young

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## 1.0 Site Location and Description

- 1.1. Having inspected the site and its setting I consider the site location and description provided by the Boards Inspector for appeal case ABP Ref. No. PL06F.246801 (Note: P.A. Reg. Ref. No. FW16A/0051) is still applicable. It reads:

*“The site is located within an established residential estate in Castleknock, Dublin. It comprises of a semi-detached two storey dwelling with private off street parking and front and rear gardens. The site fronts onto the amenity space for the overall residential estate comprising tennis courts and children’s play area/space. A preschool facility currently operates from part of the dwelling. The private amenity space to the rear comprises of a small grassed area, patio and garden shed. The rear site is enclosed by a 2m high timber fence. There are a series of parking bays along the edges of the internal estate road”.*

To this I note that the appeal site has a stated 0.025ha area and the semi-detached dwelling thereon has a stated 203.25m<sup>2</sup> gross floor space.

## 2.0 Proposed Development

- 2.1. Planning permission is sought to increase the numbers of children attending the previously approved playschool under P.A. Reg. Ref. No. FW16A/0051 which is located at the side and rear of No. 21 Riverwood Chase, Castleknock, Dublin 15.
- 2.2. According to the documentation submitted with this application it is proposed to increase the numbers of children from 16 to 18 per each twice daily sessions (Note: sessions operating from 08:45 to 12:15 and 13:00 to 16:30, respectively, Monday to Friday). It is also indicated that the 2 additional children per session would be aged between 2 years 8 months to 5 years 6 months and would be accommodated within the existing playschool area.
- 2.3. This application is accompanied by:
- A covering letter from the applicant’s architect.
  - A letter from the applicant which includes the following comments:

- The preschool is privately owned and is a community not-for-profit childcare service that operates 38 weeks per year and is closed during bank holidays, mid-terms, Easter and during summer months.
- It has a stated ration of 16 children to 3-adults.
- The floor area net toilets, lobbies and the like is stated to be 46.73m<sup>2</sup>.
- Car Parking Policy for the Preschool.
- A letter from Fingal County Childcare Committee.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. Planning permission was **granted** subject to 5 no. conditions including:

Condition No. 2: Restricts the childcare operation.

Condition No. 3: Restricts the opening hours.

Condition No. 4: Restricts the number of children to 18 per session.

Condition No. 5: Restricts the set-down and visitor parking.

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

The Planning Authority's Planning Officer's report is the basis of their decision and this report includes the following comments:

- An overview of the sites planning history is provided.
- The proposed development is in keeping with Objective DMS94 of the Development Plan.
- It is considered that no undue adverse visual and residential impact would arise.
- There is adequate on street parking to accommodate the proposed development and there is a turning head at the end of this cul-de-sac which removes the need for reversing in the vicinity of the playschool.

### 3.2.2. Other Technical Reports

**Environmental Health Officer:** No objection.

**Transportation:** No objection subject to safeguards.

**Water:** No objection.

**Community, Culture & Sports:** No objection.

### 3.3. Prescribed Bodies

3.3.1. **Irish Water:** No objection subject to safeguards.

### 3.4. Third Party Observations

3.4.1. The Planning Authority received a 3<sup>rd</sup> Party submission from occupants of an adjoining property. It includes the following comments which are in addition to those raised in their grounds of appeal submission:

- Intensification of use of this childcare facility is not supported.
- This childcare facility has diminished their residential amenity over the years.
- The operators have placed an unfair cost burden implication due to the number of applications made in relation to this childcare facility.
- This preschool is now operated as a limited business and there is no assurance or evidence given that the applicant is fully involved in the day to day running of it.
- Traffic and road safety issues are raised.
- Compliance with building codes has not been demonstrated.
- The increased number of children will give rise to additional noise nuisance.

## 4.0 Planning History

### 4.1. Site

**ABP Ref. No. PL06F.246801 (P.A. Ref. No. F06A/0992):** On appeal to the Board planning permission was **granted** subject to conditions for the construction of a two

storey side and rear extension with part of the ground floor for use as a playschool and with the rear garden area for use as a play area serving the playschool.

**ABP Ref. No. PL06F.225115 (P.A. Ref. No. F07A/0744):** On appeal to the Board planning permission was **granted** subject to conditions for a development described as the erection of a two storey extension at the side and rear, single storey extension at the rear with two number Velux rooflights at rear and one at side of new roof with part of the ground floor extension at the side and rear with a stated 27.42m<sup>2</sup> consisting of a playschool for up to 10 children between the ages of three to five years with two sessional periods per day between the hours of 08:45 to 12:15 and between 13:00 and 16:30, Monday to Friday, with a play area of a stated 28.33m<sup>2</sup> provided in the rear garden area.

**P.A. Reg. Ref. No. FW10A/0190:** Planning permission was **granted** subject to conditions for a development which sought the continuation of use or preschool and to amended condition 3 to allow 12 children, restriction on the hrs of use and a maximum of 10 children per session as the site could not accommodate additional children on the floor space requirement.

**ABP Ref. No. PL06F.246801 (P.A. Ref. No. FW16A/0054):** On appeal to the Board planning permission was **granted** subject to conditions the change of use of part of existing rear ground floor living area to provide additional floor space (20.23m<sup>2</sup>) to an existing previously approved playschool (Note: P.A. Reg. Ref No. F07A/0744) at side of the house. The expanded playschool will provide for 6 extra children between the ages 3 - 5 years giving a total of 16 children per each of the 2 daily sessions: 08:45 to 12.15 and 13:00 to 16:30, Monday to Friday.

## 5.0 Policy & Context

### 5.1. Development Plan

- 5.1.1. The policies and provisions of the Fingal Development Plan, 2017-2023, apply. The site lies within an area zoned 'RS' which has an aim to: "*provide for residential development and protect and improve residential amenity*".
- 5.1.2. Chapter 3 of the Development Plan sets out the provisions for community infrastructure including '*Childcare Facilities*'.

5.1.3. Objective PM74 of the Development Plan seeks to: *“encourage the provision of childcare facilities in appropriate locations, including residential areas”*.

5.1.4. Chapter 12 of the Plan refers to Development Management Standards and Section 12.8 specifically addresses Childcare Facilities. There are a number of objectives including Objective DMS94 which indicates that: any application for childcare facilities shall have regard to the following:

- Suitability of the site for the type and size of facility proposed.
- Adequate sleeping/rest facilities.
- Adequate availability of indoor and outdoor play space.
- Convenience to public transport nodes.
- Safe access and convenient off-street car parking and/or suitable drop-off and collection points for customers and staff.
- Local traffic conditions.
- Intended hours of operation.

In addition, it is states:

*“applications for childcare facilities in existing residential areas will be treated on their own merits, having regard to the likely effect on the amenities of adjoining properties, and compliance with the above criteria. Detached houses or substantial semi-detached properties are most suitable for the provision of full day care facilities. For new residential developments, the most suitable facility for the provision of full day care should be a purpose built, ground floor, stand-alone property”*.

5.1.5. Objective DMS95 which states that: *“residential properties with childcare shall retain a substantial residential component within the dwelling and shall be occupied by the operator of the childcare facility”*.

5.1.6. Chapter 6 of the Development Plan states that: *“small scale home based economic activity can be appropriate for self-employed persons or a business with a small number of employees. Once these enterprises do not have a negative impact on the amenities of an area”*.

5.1.7. Objective ED108 is therefore relevant. It states that the Planning Authority shall seek to: *“support the provision of home-based economic activity that is subordinate to the*

*main residential use of a dwelling and that does not cause injury to the amenities of the area”.*

## **5.2. Childcare Facilities Guidelines for Planning Authorities, 2001.**

- 5.2.1. Section 1.2 of the guideline indicates that the Government Policy on childcare is to increase the number of childcare places and facilities available as well as to improve the quality of childcare services for the community.
- 5.2.2. Section 2.4 of the said guidelines sets out what it considers to be appropriate locations for childcare facilities. This includes but is not limited to larger new housing developments. In such locations it indicates that Planning Authorities should require the provision of at least one childcare facility unless there are significant reasons to the contrary. It includes that the development consists of single bed apartments or where there are adequate childcare facilities in adjoining developments. It also states: *“for new housing areas, an average of one childcare facility for each 75 dwellings would be appropriate”*; and, that *“the threshold for provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of the areas”*.
- 5.2.3. Section 3.3.1 of the guidelines state: *“in relation to new housing areas, a standard of one childcare facility providing for a minimum of 20 childcare places per approximately 75 dwellings may be appropriate”*; and, that this: *“is a guideline standard and will depend on the particular circumstances of each individual site”*.
- 5.2.4. Appendix 1 sets out the general standards for childcare facilities.

## **5.3. Circular Letter PL 3/2016**

- 5.3.1. This circular note that with the government’s policy for increasing access to childcare requires the Childcare Facilities Guidelines for Planning Authorities, 2001, to be revised. It also acknowledges the increased demands on childcare facilities on foot of the extension of the ECCE scheme.

## **5.4. National Planning Framework – Ireland 2040 – Our Plan, 2018.**

- 5.4.1. Section 6.4 of the Framework states that: *“the number of people aged 15 or under will continue to increase until the early 2020’s and decline only slowly thereafter. This means that the continued provision and enhancement of facilities and amenities for children and young people, such as childcare, schools, playgrounds, parks and*



*sportsgrounds, remains necessary and will need to be maintained at similar levels for the foreseeable future thereafter. It also means that, if a significant proportion of future population growth occurs within or close to the current built-up footprint of settlements as targeted, it will be possible to maximise the use of existing facilities near where children and young people live”.*

5.4.2. Section 6.5 of the Framework states that: “*access to affordable and high quality childcare is an essential requirement for an equitable society, a thriving economy and sustainable communities and is a critical part of our nation’s infrastructure. Childcare provision in Ireland is reaching capacity and new planning approaches and sustained investment will be required”.*

5.4.3. National Policy Objective 31 seeks to prioritise the alignment of targeted and planned population and employment growth within investment in: “*the provision of childcare facilities”.*

## **5.5. Natural Heritage Designations**

5.5.1. The nearest Natura 2000 site to the subject appeal site is the Special Area of Conservation Rye Water/Carton SAC (Site Code: 001398). This is located c6km to the west of it.

## **5.6. EIA Screening**

5.6.1. Having regard to the nature and scale of the proposed development, which includes no ground waters, within the built-up residential setting of the Dublin city suburb of Castleknock, the nature of the receiving environment, the serviced nature of the site and its surroundings, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for Environmental Impact Assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

6.1.1. The grounds of appeal can be summarised as follows:

- The Planning Authority in their determination of the proposed development have not taken their concerns fully on board.
- Numbers have gone from 20 (10 per session) to the now proposed 36. This is not in keeping with residential amenity of this locality. Further concerns are expressed as to what numbers will this facility actually cease at.
- It is requested that the Board have regard to their submission made for previous appeal case relating to this facility and it is considered that these concerns are more relevant based on increased numbers proposed.
- It is requested that the proposed development be refused.
- A number of documents are attached with this submission the content of which I have noted and they are attached to file.

## 6.2. Applicant Response

6.2.1. The applicant's response can be summarised as follows:

- Reference is made to a response previously submitted to appeal case ABP Ref. No. PL06F.246801 (P.A. Reg. Ref. No. FW16A/0051), a copy of which is provided.
- Parents using this facility do not use the front garden for parking or set down purposes and that they must comply with the applicants 'Parent Book' which sets out the parking and set down rules applicable.
- Children attending do not use the kitchen and no food is served on the premises.
- It is not correct to say that the ground floor is commercial.
- In relation to the Tusla Regulatory Inspection Report submitted by the appellants it is indicated that the registered provider is now compliant.
- The applicant has complied with the conditions attached to the grant of permission by the Board, in 2016, by installing sound proofing on external wall which adjoins No. 22 Riverwood Chase.
- There is a shortage of pre-school places in this area.

### 6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised as follows:

- In considering this application the Planning Authority had regard to relevant planning provisions with particular reference made to Circular Letter PL3/2016.
- The appellants refer to the number of children on the premises previously exceeding that permitted. This is an enforcement matter.
- The Board is requested to uphold their decision.

## 7.0 Assessment

### 7.1. Overview

7.1.1. Having regard to the nature of this appeal, undertaken a site visit, as well as having considered the information submitted with this application alongside all the submissions received by the Board, I consider that the key issues that arise in this appeal case are:

- Principle of the Proposed Development;
- Planning History, Site Suitability and Potential Impact on its Surroundings;
- Appropriate Assessment; &
- Other Matters Arising.

7.1.2. I propose to deal with each of the above in turn in my assessment below.

### 7.2. Principal of the Proposed Development

7.2.1. The appeal site forms part of the Dublin suburb of Castleknock which lies on the western fringes of Dublin City and forms part of a larger parcel of suburban land that is zoned under the current Fingal Development Plan 'RS'. The zoning objective for such land under the said plan is: "*to provide for residential development and protect and improve residential amenity*".

7.2.2. In addition, the vision for such land is to: "*ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity*".

- 7.2.3. From a land use zoning perspective, I consider that the proposed development, a development which essentially relates to a childcare land use is a type of development that is deemed to be generally acceptable, in principle, on 'RS' zoned land, having regard to the fact that 'childcare facilities' are listed as a land use that is 'permitted in principal' on such zoned lands under Chapter 11 of the said plan is acceptable. Notwithstanding, like any development proposal this is subject to safeguards. Which includes an assessment of the proposed development in terms of its contribution towards the achievement of the zoning objective and vision alongside their compliance with as well as consistency with the provisions of the Development Plan. This requirement is clearly provided for under Chapter 11 of the Development Plan in relation to each of the different land use zones provided for.
- 7.2.4. I note that the proposed development relates to expansion of numbers to be catered for in each of the day sessions offered at the subject premises that whilst not being constructed specifically for and as a childcare facility it does have the benefit of permission which is subject to conditions as well as limitations for this use. In addition, this facility appears to be in operation from circa 2008. With the permitted childcare facility operating as an ancillary use with the principal use of No. 21 Riverwood Chase being a single residential unit.
- 7.2.5. In general, I consider that the expansion to an existing permitted use, subject to safeguards, is acceptable.
- 7.2.6. Moreover, the Development Plan and other relevant national planning provisions indicate that such applications should be treated on their merits having regard parking, collection/drop off areas, layout, design, impact on adjoining residential amenities and so forth.
- 7.2.7. They also recognise the synergy between residential and such land uses being located in proximity to one another as one of the components in creating vibrant and sustainable places particularly within suburban and urban settlements.
- 7.2.8. Based on these considerations I do not raise any substantive issue with regards to the principle of the proposed development sought under this application.

### 7.3. **Planning History, Suitability of the Site and Potential Impact on Surroundings**

- 7.3.1. The appellants in this 3<sup>rd</sup> Party appeal case raise concerns that their residential amenities have been significantly diminished by the childcare facility operating at No.

21 Riverwood Chase. With this diminishment, in their view, being added to by the applicant's intensification of these operations from when it was first permitted and commenced in 2008 at a much smaller nature and scale to what it is now.

- 7.3.2. Having regard to the planning history of No. 21 Riverwood Chase I note that it has an extensive planning history since the first application was made to provide a childcare facility under ABP Ref. No. PL06F.219883 (P.A. Reg. Ref. No. F06A/0992). Under which permission was granted for a two-storey side and rear extension with part of the ground floor to the side and rear (Note: 28.33m<sup>2</sup>) to be used as a playschool for up to 10 children between the ages of 3 to 5 years of age with the rear garden area which I note in this application had a given stated 27.93m<sup>2</sup> area to be used as a play area associated with the said playschool.
- 7.3.3. A number of conditions were imposed by the Board to this grant of permission including but not limited to Condition No. 1. This condition restricted the duration of permission for a period of 5 years. In addition to this Condition No. 2 restricted the number of children to be accommodated at any one time at this facility to a maximum number of 10. This condition also restricted the hours of operation to between 9:15 to 12:00 and 13:00 to 16:00 Mondays to Thursdays only. The stated reason given was in the interest of residential amenity. Further, Condition No. 3 also limited the operation of the childcare facility proposed to the person in residence of the subject dwelling only and Condition No. 4 omitted the provision of a separate front door serving the play school again with the stated reasons given being in the interests of residential amenity.
- 7.3.4. In the following year a subsequent application for permission was made by the applicant for a similar development. The development sought included a number of variations from the parent permission for the childcare facility including but not limited to an extension to the hours and days in which the playschool would operate. This application was subject to an appeal under ABP Ref. No. PL06F.225115 (P.A. Reg. Ref. No. F07A/0774). Permission for this varied scheme was permitted by the Board subject to conditions. Including but not limited to: Condition No. 1 which restricted the permission for a period of three years only; Condition No. 2 restricting the sessions hours per day from 08:45 to 12:15 and between 13:00 and 16:30, Monday to Friday, for the stated reason of limiting the scale of the development in the interests of

residential amenity; and, Condition No. 3 limiting the number of children to be accommodated to 10 per session for the same stated reason.

- 7.3.5. Under P.A. Reg. Ref. No. FW10A/0190 planning permission was granted subject to conditions for a further development to the childcare facility at No. 21 Riverwood Chase. It sought permission to increase the number of children to be accommodated at each of the two daily sessions to 12, it sought an increase in the floor area of the facility at ground floor level (Note: stated 27.42m<sup>2</sup>) and other modifications. The grant of permission included a number of conditions limiting the operation of the childcare facility, including Condition No. 2. This condition in parallel with previous grants of permission restricted the operational hours of the two sessions to 08:45 to 12:15 and 13:00 to 16:30, Monday to Friday, respectively and indicated that the maximum number of children per session is 10. The stated reason for this condition was in the interest of residential amenity.
- 7.3.6. In addition, Condition No. 3 also primarily restricted the use of the pre-school to being operated by the resident of the dwelling also for the stated reason in the interest of proper planning and development of the area.
- 7.3.7. I also note that the Planning Authority's Planning Officer in their assessment of this particular planning application considered given the moderate size and scale, i.e. 27.42m<sup>2</sup>, of the facility that the maximum number of children to be catered for shall remain at 10 and they did not consider an additional number of 2 children per session was appropriate given the minimum clear floor space recommended under the Childcare Facility Guidelines which could not be achieved. They further considered that the scale and intensity of the development is otherwise acceptable.
- 7.3.8. More recently on the 17<sup>th</sup> day of October, 2016, on appeal to the Board, planning permission was granted subject to condition for a development consisting of the change of use of part of existing rear ground floor living area to provide additional floor space (20.23m<sup>2</sup>) to an existing previously approved playschool (Ref F07A/0744) at side of the house with the expanded playschool providing for 6 extra children places between the ages 3 - 5 years giving a total of 16 children per each of the 2 daily sessions: 08:45 to 12:15) and 13:00 to 16:30, Monday to Friday (Note: ABP Ref. No. PL06F.246801, P.A. Reg. Ref. No. 246801).

- 7.3.9. I note that the Board in its 2:1 split decision considered: *“having regard to the planning history, the existing playschool use on the site and the existing pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed change of use for a playschool would not constitute overdevelopment of the site and would not seriously injure the residential amenities of the area”*.
- 7.3.10. The conditions attached included but were not limited to Condition No. 3 which limited the hours of operation to 08:45 to 12:15 and 13:00 to 16:30, Monday to Friday, inclusive except for public holidays; and, Condition No. 4 which restricted the number of children per session to 16 alongside requiring a register of attendance of the childcare facility to be maintained for inspection, both conditions had stated reasons to limit the development in the interest of residential amenity.
- 7.3.11. In addition, Condition No. 5 of this grant of permission, restricted the set down parking or visitor parking within the curtilage of the site with this area restricted to staff parking and parking of existing residents only for the stated reason in the interest of traffic safety and Condition No. 6 gave the developer 2-months from the date of this Order for them to confirm details and a timeframe for the installation of a 12mm full sound proof board to the wall of the adjoining semi-detached dwelling with the reason stated in the interests of the residential amenity of the surrounding area.
- 7.3.12. In relation to compliance with Condition No. 6 I am unsure based on the lack of substantive evidence if it been complied to in a robust manner that insures no sound transference from the subject premises and based on agreement with the Planning Authority. With properties being of concern not just the appellants but also the semi-detached property to the south, No. 20 Riverwood Chase.
- 7.3.13. However, it would appear based on the various submissions made by the appellant on appeal and to the Planning Authority that one of their substantive issues with the operations of the childcare facility is the resulting noise nuisance.
- 7.3.14. I accept that this nuisance could also arise during the collection and drop of children for the two separate sessions that are offered at this childcare facility alongside the use of the rear garden area during these sessions when weather permits as an area for children’s play. The latter as I have set out above has been previously permitted.

- 7.3.15. Further, whilst it may be possible that a large number of those using this facility may be local and may access as well as egress the facility on foot rather than using other means of transport, i.e. vehicle. It is nonetheless quite likely that a number of the applicants clients access this facility via a vehicle with the additional traffic together with the potential for queueing outside of the facility for collection and dropping off, relative to the sessional times offered by this childcare facility, as there is no provision of an internal waiting area. .
- 7.3.16. Moreover, in inclement weather it is likely that access and egress to the premises may more likely be via a vehicle than on foot or otherwise and for many persons who may be in active employment considering the limited employment opportunities in the immediate area by foot it is also likely that for some the drop offs may coincide with their journey to work by car.
- 7.3.17. I did observed that on the opposite side of this cul-de-sac road that there are a number of inset car parking bays and that outside of where these are provided the cul-de-sac road width appears to average between 5 to 6m. These were all in use at the time of inspection and I note that due to the time the inspection was carried out the childcare facility was closed due to lockdown measures being in place.
- 7.3.18. On the opposite side of this estate cul-de-sac road there is a communal passive and recreational amenity spaces with many persons using this provision during the time of my site inspection including its tennis courts, children's play area and basketball area.
- 7.3.19. I further observed that the cul-de-sac where it terminates was also in use as an ad hoc parking area and this limited the available area for turning.
- 7.3.20. It would appear that the design of this cul-de-sac road had regard to the presence of the open space provision for residents, to the limited car parking potential within the curtilage of each of its residential units with the original design of these semi-detached dwellings having one driveway capable of accommodating the parking of one vehicle. I do not consider that it was designed for a childcare facility of the size operating from the subject premises and the expansion of children numbers sought. In addition, consideration should also be had for the parking needs of No. 21 Riverwood Chase and to the number of persons employed in the operations of this childcare facility. All of the associated parking and vehicles associated with this childcare facility are solely reliant upon public infrastructure provisions in its immediate vicinity.



- 7.3.21. As such the additional expansion of numbers proposed, albeit resulting in additional 2 childcare spaces per session, will result in 18 children per session catered for in a facility that has no independent drop off and collection points as well as having regard to the planning history only 1 car parking space for residential use and the ability to cater for 1 parking space for one staff member. This ultimately results in further cumulative reliance and strain on the public infrastructure facilities within the vicinity of it that were not designed for this intensity of use by one of the residential units within it and it further limits parking opportunities for properties in its immediate vicinity and those using the open space provision to avail of the on-street car parking provision on this cul-de-sac road.
- 7.3.22. Based on the information provided the applicant has not provided any evidence to substantiate that the appellants concern and nuisances from this aspect of the day to day running of this childcare facility is not without basis.
- 7.3.23. Having regard to the planning history associated with this childcare facility it is my view that there have been significant concerns raised in terms of adjoining and neighbouring properties having their residential amenities diminished by the operations of this childcare facility over the years. With this including but not being limited to those raised by the appellants in this 3<sup>rd</sup> party appeal. It is also quite evident reading through the planning history cases relating to the subject premises there is a frustration and a fatigue that occupants of properties in the immediate area that their concerns have been not given due regard in the planning process. I accept that there needs to be a balance reached between that of this established ancillary childcare facility operating from a semi-detached dwelling within a residential cul-de-sac where there is a lack of separation between it and its semi-detached pair it forms part of and there is minimal separation distance between it and the adjoining semi-detached pair to the south of it.
- 7.3.24. Assessment of the planning history since 2008 indicates that the childcare facility at No. 21 Riverwood Chase has increased substantially in terms of internal and external floor area, hours of operation, days of operation through to the number of children and age range of children catered for.
- 7.3.25. This is not a purpose built childcare facility and it is one of a pair of semi-detached dwellings in a group of similar semi-detached pairs. None of the submitted plans to

date have indicated any special or particular design resolutions for either the childcare facility itself to ensure it was a qualitative provision for the children and staff it caters for through to ensuring that adequate mitigative measures would be incorporated to limit the potential for adverse amenity impact on its more sensitive to change adjoining and neighbouring residential neighbours.

- 7.3.26. Further, no specific design resolution considerations have been given to ensure that the dwelling house would maintain an independent well ventilated through to access to natural light kitchen space, dedicated private open space amenity for occupants of this dwelling during the operational times of the childcare facility. Nor is there independent access to the rear private garden space during such times.
- 7.3.27. In terms of the latter concerns it is clear in my view from an examination of the drawings submitted that the existing dwelling house lacks many basic amenity provisions one would expect for a dwelling house of this size and I am not satisfied that if proposed in isolation it would be deemed to give occupants an adequate level of qualitative and quantitative residential amenities. Irrespective of it being a home-based commercial activity that is now operating as a limited company. It would be expected in my view that the principal use would have a certain qualitative and quantitative amenity for its occupants when the childcare facility is operational and not just when it is not operational considering the hours and extent of its operation.
- 7.3.28. For example, i.e. Chapter 3 of the Development Plan indicates that all residential units are to be provided with private open space and that this space be both qualitative and quantitative in its standards. It does not provide any exemptions for these standards to be at the expense of other uses or that they could be absent for certain defined periods of time from being available for occupants of the dwelling.
- 7.3.29. In addition, Objective DMS87 of the Development Plan sets out a minimum open space provision for a dwelling with four bedrooms. This is what is indicated as permitted in the planning history documentation relating to No. 21 Riverwood Chase. Dwellings of this size are required under this objective to have a minimum of 75m<sup>2</sup> of private open space located behind the front building line of the house. Yet no private open space provision has been maintained or independent access to any private rear amenity space has been provided in the overall design resolution for this four-bedroom dwelling with ancillary childcare facility.

- 7.3.30. In addition, Table 12.1 of the Development Plan sets out that dwellings of the size of the subject dwelling shall have a minimum main living room space of 15m<sup>2</sup> and aggregate living area of 40m<sup>2</sup>.
- 7.3.31. This is not provided and what is provided based on the planning history documentation is significantly less than this minimum requirement.
- 7.3.32. Further, having examined the planning history it would appear that the minimum 6m<sup>2</sup> storage is also not provided and that there is no indication that sufficient waste storage has been provided to meet both the childcare and the residential uses contained within this property in a manner consistent with Development Plan standards.
- 7.3.33. In terms of the kitchen area if one accepts that the applicant's contention that it does not form part of the childcare facility itself is true there is nothing to substantiate this or any design measures included. But this room contains two double doors that open directly onto the childcare space and contains no window openings. As an independent room during the times the childcare facility is operating it has no independent daylighting, natural ventilation through to any measures that would appear to deal with odour extraction and the like. It would appear to have the benefit of a single point of mechanical ventilation but where this is extracted to is unclear.
- 7.3.34. It is therefore questionable in my view whether this could be considered a 'habitable room' serving occupants of this dwelling during the operations of the subject childcare facility.
- 7.3.35. Moreover, this room also links to a utility that connects to a 'WC' and the play school ground floor area to the side. I also note that the door linking the same opens directly into the kitchen. I am not satisfied based on the information provided that the applicant has demonstrated beyond any reasonable doubt that the kitchen area does not and is not used by her, her staff or otherwise during the operation of the childcare facility as the facility itself contains no staff area for food preparation, staff breaks etc through to no sinks outside of the two in the ground floor WC's. As such it has no potable water supply for consumption and/or for use during the playschool operations which is bound to require some level of potable water usage.
- 7.3.36. The subject semi-detached property from which this childcare facility operates from the ground floor area to the side and rear extensions with the private open space to

the rear now in use and indicated as so in planning history documents as the open space area associated with the childcare facility.

- 7.3.37. As a building it is not only one of a pair of semi-detached residential properties within an established residential area that is characterised by the uniformity and coherence in its built form as well as building to space relationships. It is the fourth semi-detached pair from the end of the cul-de-sac access road and forms part of a larger group of semi-detached pairs which align the eastern side of Riverwood Chase looking onto a large area of passive and recreational open space. These have similar modest site areas to that of the subject property (Note: 0.025ha).
- 7.3.38. Since its initial completion it has been subject to a number of additions and alterations with the planning history indicating permission for a 2-storey side and rear extension alongside change of use for expansion of the childcare facility. It would also appear that at roof level rooflights have been added but it is unclear what internal changes, if any, have occurred at attic level.
- 7.3.39. At present the ground floor level of the additions appear to be used by the applicants in their operations of their sessional childcare facility which public information on it indicates that it caters for 0 to 4-year olds age ranges and 16 children in each of the two sessions that it offers. The age range given in this application is different. These sessions are indicated as 8:45am to 12:15pm and 1:00pm to 4:30pm. The applicant indicates that she provides a staggered timing for clients to drop off and collect their children who attend this facility. It is unclear the exact arrangement of the same relative to the sessions being offered themselves. As such I consider there is a lack of clarity on whether there is any fluidity in these stated sessional operation times through to the actual age profile of children being catered for at this childcare facility.
- 7.3.40. I consider that the provision of further childcare places for each of the sessions bringing the total numbers of children for each session to 18 has the potential to add cumulative to the noise, disturbance and other dis-amenities arising to an extent that it would not be compatible with protecting and improving the residential amenities of properties on this 'RS' zoned land. I consider that together with the poor standard of residential amenities resulting in this subject property for this intensity of use that the childcare facility could no longer be considered as being subordinate or ancillary in its nature and scale.

- 7.3.41. Moreover, it would result in an additional demand on publicly maintained infrastructure including car parking spaces and use of the end of the cul-de-sac as a turning area to facilitate it in a manner that would be detrimental to other residents as well as residents who travel further in the surrounding area to use the public recreational amenity space this cul-de-sac road adjoins.
- 7.3.42. Further, at this point the adjoining stretch of the serving cul-de-sac road is of a limited 5m widening to 6m in part width road and any further unnecessary car parking and car movements has the potential to result in conflict and obstruction with other road users of this estate road.
- 7.3.43. I also observed during inspection of the site and its surrounds that these car parking spaces available along the cul-de-sac as well as within the surrounding estate roads are at capacity catering for the needs of occupants as well as the said recreational area. In addition, as previously noted I observed that the cul-de-sac terminating point is also used as an area of on-street car parking.
- 7.3.44. I am therefore not convinced that the public road system in the vicinity of the subject premises can absorb any further demands that this childcare facility would generate
- 7.3.45. Based on the above considerations I consider that the proposed development, if permitted, would be contrary to the residential land use zoning of the site and its setting. It would also be contrary to Objectives DMS94 and ED108 of the Development Plan. For these reasons, the proposed development would be contrary to the proper planning and sustainable development of the area.

#### 7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development, the lack of ground works proposed to the existing building in order to meet the proposed intensification of its use as a childcare facility, and the distance to the nearest 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.
- 7.4.2. **EIA Screening:** Having regard to nature of the development, the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The

need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 7.5. Other Matters Arising

- 7.5.1. **Demand for Childcare Places:** I accept that there is a general demand for a wide range of childcare places in the Dublin 15 area; however, Chapter 12 of the Development Plan recognises that these must be of a suitably high quality and that they should be in accordance with the DoEHLG 'Childcare Facilities Guidelines for Planning Authorities', 2001.

In addition, Objective DMS94 requires that such facilities be suitable for the type and size of the facility proposed through to provide safe access and convenient off-street car parking and/or suitable drop off and collection points for customers and staff.

Further Objective ED108 of the Development Plan indicates that home based economic activity that is subordinate to the main residential use of the dwelling and that does not cause injury to the amenities of the area is supported.

I do not consider that the scale of this childcare facility as put forward under this planning application is one that is subordinate to the main residential use having regard to substandard residential amenity space that remains for its occupants when it is in operation or that appropriate mitigative measures to ensure that it does not cause injury to the amenities of the area has been included. As such I consider to permit the proposed development would be contrary to both said Development Plan objectives.

- 7.5.2. **Enforcement:** Concerns are raised that the applicant has operated this facility at numbers exceeding that permitted as well as operating this facility beyond permitted operational hours by the grants of permission. I accept some evidence has been provided that in terms of exceeding permitted numbers that this was found to be the case by TUSLA but the applicant contends that they are compliant with their grants of permission. I recognise that should the appellant breach the conditions relating to such matters that in doing so they potentially add to potential for adverse nuisance for residents. Particularly in the immediate vicinity alongside has the potential to give rise to a bad neighbour development in what is essentially a residential cul-de-sac. Notwithstanding, this particular is a matter to be dealt with the Planning Authority by way of enforcement and should be directed to them to deal with as they see fit.

7.5.3. **Visual Impact:** The proposed development would not result in any significant and undue visual amenity impacts as a result of its nature and scope.

7.5.4. **Compliance with Other Codes:** Concerns are raised whether the applicant is compliant with other codes including those relating to building, fire, and childcare. Compliance with codes relating to these aspects of built construction is outside of the Boards remit.

## 8.0 Recommendation

8.1. I therefore recommend that planning permission be **refused**.

## 9.0 Reasons and Considerations

1. The proposed development, by reason of the size, scale and nature of the proposed development would result in intrusion to the enjoyment of adjoining and neighbouring properties residential amenity, in particular by way of noise nuisance, traffic obstruction and traffic congestion during the staggered drop off and collection times of its two sessional offers.

The subject property is located on land zoned under the Fingal Development Plan, 2017-2023, to protect and improve residential amenity. In addition, Objective ED108 of the said plan also sets out that home-based economic activity that is subordinate to the main residential use of a dwelling and that does not cause injury to the amenities of the area.

Having regard to the nature of this childcare facility it is considered that the proposed development would result in it being a non-subordinate use to the main dwelling and when in operation a dwelling house that fails to provide minimum basic qualitative and quantitative internal as well external residential amenities for a dwelling of this size.

The proposed development would, be contrary to the zoning objective for the lands the site forms part of and would conflict with the said objective for home based economic activity.

For these reasons to permit the proposed development therefore would seriously injure the amenities of property in the vicinity and it would be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users as a direct result of the lack of any dedicated on-site parking to meet the needs of its staff as well as the drop off and collection of children attending it having regards to the design of the Riverwood Chase cul-de-sac road which it is dependent upon, with its limited width and spare capacity to positively absorb further additional demands and overspill this childcare facility would generate.

Moreover, Objective DMS94 of the Fingal Development Plan, 2017-2023, requires childcare facilities to have regard to the suitability of the site for the size of the facility proposed, safe access and convenient off-street car parking and/or suitable drop-off and collection points for customers and staff through to local traffic conditions.

It is considered that this is reasonable particularly having regard to the residential setting of this facility within an estate characterised by modest 2-storey semi-detached dwellings with limited designed in-curtilage car parking provision and limited on-street publicly provided car parking spaces alongside its proximity to an area of passive and recreational open space for community use.

It is therefore considered that the proposed development would be contrary to this said Development Plan objective as well as to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector

16<sup>th</sup> day of June, 2020.