



An
Bord
Pleanála

Inspector's Report ABP-309763-21

Development	Change of use of vacant crèche unit to community rooms serving the residents of the overall Elmfield development.
Location	Block E, 'The Ashes', Elmfield, Ballyogan Road, Dublin 18.
Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D20A/0973
Applicant(s)	Herbert Park ICAV Irish Residential PRS Fund
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party v. Decision
Appellant(s)	Herbert Park ICAV Irish Residential PRS Fund
Observer(s)	None.

Date of Site Inspection

11th June, 2021

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site comprises a vacant ground floor unit (previously approved as a crèche facility) within Block 'E' ('The Ashes') of the residential development of 'Elmfield' which occupies a position along Ballyogan Road, Dublin 18, opposite 'The Gallops' Luas stop, approximately 800m southwest of the M50 Motorway and 900m northeast of the village of Stepside.
- 1.2. The wider scheme of 'Elmfield' consists of 5 No. apartment blocks and has been completed to a high standard with well-maintained and mature / maturing landscaping. The majority of car parking is gated and situated underground, although there are two small areas of unrestricted surface car parking located to the rear of Block 'E' and alongside the development boundary with the neighbouring scheme of Kilgobbin Wood to the northwest. Access to the wider development is obtained via a main service roadway which is marked with double-yellow lines on both sides.

2.0 Proposed Development

- 2.1. The proposed development consists of the change of use of the vacant crèche unit (floor area: 185.25m²) within Block 'E' of the development previously approved under PA Ref. No. D03A/0411 to use as community rooms (e.g. lounge areas, private rooms, and working from home pods) serving the residents of the wider 'Elmfield' apartment scheme.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 22nd February, 2021 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following reason:
 - Permission was previously granted on the site for 207 no. residential units and a crèche facility. The crèche facility was to be provided as part of the social infrastructure on the basis of the residential scheme including more than the 75 dwelling threshold as set out under the provisions of the 'Childcare Facilities Guidelines for Planning Authorities'. Having regard to the Objective

'A' zoning of the site, Policy SC11 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 with respect to childcare provision, the mix of two and three bedroom apartments in the Elmfield development, the unavailability of childcare places in existing childcare facilities in the study area pre Covid, the demographic profile of the area and Section 4.7 of the Design Standards for New Apartments, it is considered that the proposed change of use from a crèche to community rooms, would result in the absence of a planned crèche facility to serve the residential development. This would result in a poorly integrated residential community, which would not be supported by local or national policy and would, therefore, be contrary to proper planning and sustainable development of the area.

(The decision to refuse permission also states that the application does not comply with Article 26(3)(b) of the Planning and Development Regulations, 2001, as amended, which requires where, following consideration of an application under sub-article (1)(b), a planning authority considers that the notice in the newspaper or the site notice, because of its content or for any other reason, is misleading or inadequate for the information of the public, the planning application shall be invalid. Note: Address incorrect on newspaper advert - Ballyogan Road is Dublin 18, not Dublin 8).

3.2. Planning Authority Reports

3.2.1. Planning Reports:

States that while community facilities are open for consideration on lands zoned as 'A: To protect and / or improve residential amenity' and that the subject proposal is intended to serve the 'Elmfield' development only, there are concerns as to whether the findings of the 'Resident Survey Report' submitted in support of the application are representative of the broader views of 'Elmfield' given the limited circulation and response rate to the survey. It is further noted that the provision of a childcare facility was an integral consideration in the approval of the original apartment development permitted under PA Ref. No. D03A/0411. Reference is subsequently made to the provisions of the Development Plan (Policy SIC11) and the '*Childcare Facilities, Guidelines for Planning Authorities, 2001*' which aim to encourage the provision of childcare facilities in residential developments of 75+ No. units (noted to be

significantly less than the 207 No. units within 'Elmfield'), although it is acknowledged that the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*' state that the threshold for childcare facilities should be established having regard to the scale and unit mix of the development and the existing geographical distribution of childcare facilities and the emerging demographic profile of the area.

With respect to the Childcare Demand Assessment provided with the application, it is noted that childcare capacity was assessed for two scenarios and that while 77 No. childcare spaces were identified as being available within the study area during December, 2020, the 'pre-COVID' scenario (which indicated no spare childcare provision in the study area) is considered to be more representative for the purposes of assessing the subject application. The report proceeds to analyse the findings of the Childcare Demand Assessment, however, it concludes that as there was no spare capacity in the immediate area pre-COVID, and as other crèches under construction in the locality will be required to serve a combined development of 1,268 No. residential units, there remains a requirement for a crèche on site and thus permission should be refused.

(It is also stated that the application does not comply with Article 26(3)(b) of the Planning and Development Regulations, 2001, as amended, by reference to an incorrect site address in the newspaper notice).

3.2.2. *Other Technical Reports:*

Drainage Planning, Municipal Services Dept.: No objection.

Transportation Planning: No objection, subject to conditions.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

3.4.1. A single submission was received from an interested third party and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The failure of the childcare demand assessment to consider the demands arising from the ongoing development of the wider area, with specific

reference to the residential developments currently underway at 'Clay Farm' and 'Glencairn Gate'.

- The potential for increased noise nuisance consequent on the development and the associated loss of residential amenity likely to be experienced within the neighbouring 'Kilgobbin Wood' housing scheme.

4.0 Planning History

4.1. On Site:

- 4.1.1. PA Ref. No. D19A/0556. Application by Celtic Investment Opportunities Fund II for permission to change the use of a vacant crèche unit to community rooms serving the residents of the Elmfield development (accommodation to include reception room, manned security area, residents hot desk working space, residents community room, w/c, multi-purpose activity space and parcel room). This application was withdrawn.
- 4.1.2. PA Ref. No. D15A/0618 / ABP Ref. No. PL06D.246225. Was granted on appeal on 27th June, 2016 permitting Dwyer Nolan Developments Ltd. permission for the completion of Block E within an overall permitted development to consist of (i) the completion of Block E, including fenestration and internal works to ground, first and second floors, (ii) completion of the third floor and roof to accommodate 14 No. previously approved apartments, (iii) an increase in balcony sizes, (iv) provision of external storage to the apartments, and (v) all site development works and open space in accordance with original permission.
- 4.1.3. PA Ref. No. D03A/0411. Was granted on 3rd June, 2004 permitting Kelland Homes permission for a residential development consisting of 228 No. 2 and 3 bed apartments in 5 no. 4 and 5 storey blocks, and including for all site development works.

5.0 Policy and Context

5.1. National and Regional Policy

- 5.1.1. The '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2020*' provide detailed guidance and policy requirements in respect of the design of new apartment developments. Section 4.0 of the guidance refers to communal facilities in apartments and states that these may include community or meeting rooms or a management / maintenance office on-site and could also extend to childcare or gym uses that may be open to non-residents. Section 4.7 further states that notwithstanding the '*Planning Guidelines for Childcare Facilities (2001)*' which recommend the provision of one childcare facility (equivalent to a minimum of 20 child places) for every 75 dwelling units, the threshold for the provision of any such facilities in apartment schemes should be established having regard to the scale and unit mix of the proposed development and the existing geographical distribution of childcare facilities and the emerging demographic profile of the area. One-bedroom or studio type units are not generally considered to contribute to a requirement for any childcare provision and, subject to location, this may also be applied in part or whole, to units with two or more bedrooms.
- 5.1.2. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' state that sustainable neighbourhoods will require a range of community facilities and that each district/neighbourhood will need to be considered within its own wider locality, as some facilities may be available in the wider area while others will need to be provided locally. In this context, planning authorities are to seek to ensure that facilities for social and cultural use, such as community centres, and personal and community development, such as resource centres, are available within the wider community. In relation to childcare services, Paragraph 4.5 of the guidance notes that the '*Childcare Facilities, Guidelines for Planning Authorities, 2001*' emphasise the importance of local assessment of the need to provide such facilities at the development plan or local area plan stage, having regard to the provision of existing facilities in the area. When considering planning applications, in the case of larger housing schemes, the guidelines recommend the provision of one childcare facility (equivalent to a minimum of 20 child places) for every 75 dwelling units. However, the threshold for such provision should be

established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas, in consultation with city / county childcare committees. The location of childcare facilities should be easily accessible by parents, and the facility may be combined with other appropriate uses, such as places of employment.

5.1.3. The '*Childcare Facilities, Guidelines for Planning Authorities, 2001*' provide a framework to guide both local authorities in preparing development plans and assessing applications for planning permission, and developers and childcare providers in formulating development proposals. They state that Planning Authorities should encourage the development of a broad range of childcare facilities, i.e. part-time, full day-care, after-school care, etc., including those based in residential areas, in employment areas and in areas close to where users of such facilities live. The Guidelines provide detailed guidance with regard to appropriate locations for the siting of childcare facilities such as in the vicinity of schools in addition to detailing the development control considerations of proposals for same.

5.1.4. *Circular PL3/2016* issued by the Department of the Environment, Community and Local Government on 31st March, 2016 refers to an expected increase in demand for childcare spaces in the coming years attributable to increases in the State subsidisation of childcare coupled with forecast economic and population growth (noting the extension of the Early Childhood Care and Education scheme to a wider cohort of children with effect from September, 2016). In line with the Government's policy of increasing access to childcare, planning authorities are requested to:

- Expedite all pre-planning consultations from childcare facility providers in relation to proposals to extend opening hours, to increase capacity, or to provide new facilities.
- Expedite, insofar as is possible, the consideration of all planning applications or Section 5 declaration submissions in respect of childcare facilities in order to facilitate the expansion of required capacity as appropriate.

5.2. Development Plan

5.2.1. *Dún Laoghaire Rathdown County Development Plan, 2016-2022:*

Land Use Zoning:

The proposed development site is located in an area zoned as 'A' with the stated land use zoning objective '*to protect and / or improve residential amenity*'.

Other Relevant Sections / Policies:

Chapter 2: Sustainable Communities Strategy:

Section 2.1.3 (iii): Planning for Sustainable Communities:

Policy RES14: Planning for Communities:

It is Council policy to plan for communities in accordance with the aims, objectives and principles of 'Sustainable Residential Development in Urban Areas' and the accompanying 'Urban Design Manual – A Best Practice Guide'. In all new development growth areas, and in existing residential communities it is policy to ensure that proper community and neighbourhood facilities are provided in conjunction with, and as an integral component of, major new residential developments and proposed renewal/redevelopment areas, in accordance with the concept of sustainable urban villages outlined under Policy RES15.

Chapter 7: Community Strategy

Section 7.1: Social Infrastructure and Community Development:

Section 7.1.3: Community Facilities:

Policy SIC6: Community Facilities:

It is Council policy to support the development, improvement and provision of a wide range of community facilities distributed in an equitable manner throughout the County.

Policy SIC11: Childcare Facilities:

It is Council policy to encourage the provision of affordable and appropriate childcare facilities as an integral part of proposals

for new residential developments and to improve/expand existing childcare facilities across the County. In general at least one childcare facility should be provided for all new residential developments subject to demographic and geographic needs. The Council will encourage the provision of childcare facilities in a sustainable manner to encourage local economic development and to assist in addressing disadvantage.

Chapter 8: Principles of Development:

Section 8.2.12: Community Support Facilities:

Section 8.2.12.1: Childcare (incl.):

With the growing demand for childcare, there is equal recognition that childcare must be of suitably high quality. Childcare provision has also been recognised as one measure to address poverty and social exclusion. The Planning Authority will seek to facilitate the provision of childcare facilities in appropriate locations throughout the County and may require their provision in large residential, public community, commercial and retail developments in accordance with the provisions of the DoEHLG 'Childcare Facilities Guidelines for Planning Authorities' (2001) and the Child Care (Pre-School Services) (No. 2) Regulations (2006) and Child Care (Pre-School Services) (No 2) (Amendment) Regulations (2006) (Department of Health and Children).

In assessing applications for new childcare facilities, the Planning Authority will consult with the Dún Laoghaire-Rathdown County Childcare Committee to assess the need for the type of facility proposed at the intended location.

Section 8.2.12.3: Community Facilities:

As a general principle the location and provision of community facilities is a pre-requisite to the creation and enhancement of viable, enjoyable, sustainable and attractive local communities.

In assessing planning applications for leisure facilities, sports grounds, playing fields, play areas, community halls, organisational meeting facilities, medical facilities, childcare facilities, new school provision and other community orientated developments, regard will be had to the following:

- Overall need in terms of necessity, deficiency, and opportunity to enhance or develop local or County facilities.
- Practicalities of site in terms of site location relating to uses, impact on local amenities, desirability, and accessibility.
- Conformity with the requirements of appropriate legislative guidelines.
- Conformity with land use zoning objectives.

5.2.2. Ballyogan and Environs Local Area Plan, 2019-2025:

The proposed development site is located within the ‘*Kilgobban Quarter*’:
Neighbourhood No. 8: ‘*Kilgobban North*’.

Chapter 8: Community Facilities:

Section 8.3.1: Community Facilities Policy:

Policy BELAP COM3: Integration:

- To require the provision of community facilities such as multi-purpose community rooms as part of any residential development applications of greater than 50 units unless it can be shown that there is sufficient provision of such facilities in close proximity.

Section 8.3.3: Childcare Facilities Policy:

Policy BELAP COM7: Childcare Facilities:

- That all planning applications for larger residential developments to be required to provide one childcare facility (equivalent to a minimum of 20 child places) for every 75 dwelling units unless it can be satisfactorily demonstrated that there is already adequate childcare provision in the area. The provision of childcare facilities within the Plan area shall be carried out in accordance with the provisions set out in Section 8.2.4.11 ‘Childcare Facilities – Parking/Access’ and Section 8.2.12.1 ‘Childcare’ of the County Development Plan 2016-2022 and the provisions of the DoEHLG ‘Childcare Facilities Guidelines for Planning Authorities’ (2001).

Policy BELAP COM8: The Park Carrickmines:

- To encourage the provision of childcare facilities within The Park, Carrickmines, a major employment area within the BELAP area. (See Figure 11.1)

Policy BELAP COM9: *Co-location of Childcare Facilities:*

- To continue to support and facilitate the co-location of childcare provision with schools and other community facilities in the BELAP area.

5.3. Natural Heritage Designations

5.3.1. The following natural heritage designations are in the general vicinity of the proposed development site:

- The Fitzsimon's Wood Proposed Natural Heritage Area (Site Code: 001753), approximately 1.8km northwest of the site.
- The Dingle Glen Proposed Natural Heritage Area (Site Code: 001207), approximately 2.7km southeast of the site.

5.4. EIA Screening

5.4.1. Having regard to the minor nature and scale of the development under consideration, the site location in a built-up urban area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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

- The proposal represents a progressive effort to bring a vacant component of the wider Elmfield development into active and beneficial use.

- The permitted crèche space has remained unfinished and vacant since the completion of the residential component of the Elmfield development in October, 2017 with the two previous owners having been unable to secure an operator. This is clear evidence that there is:
 - A lack of sufficient demand for childcare amongst residents of the development.
 - A lack of sufficient demand for childcare amongst residents in the local area.
 - A preference amongst residents of Elmfield for alternative and additional forms of communal and community amenities.
 - No community, social, commercial, practical or security benefit for residents to have the crèche space remaining vacant when the applicant has sought to provide an active alternative use.
- Notwithstanding that not every resident of Elmfield responded to the Resident Survey Report provided with the application, the response rate was high and it is the proportionality of the responses that is of most importance. Moreover, given the high response rate, it is likely that any residents who did not respond to the survey would have answered similarly to those who did not reply and, therefore, there is little basis to the supposition by the Planning Authority that those residents would prefer a crèche.

In support of the proposed change of use, 87.9% of respondents agreed with or supported the statement that *'Living at Elmfield would be improved by on site facilities for residents such as Lounge Areas, Private Room Booking or Working from Home Pods'*. In addition, 80.6% of replies responded positively to the statement *'How likely would you be to use a residents only facility at Elmfield such as Lounge Area, Private Room Booking or Working from Home Pods?'*

The above findings are important when set against the responses to the question *'Would you use a public commercial facility on site at Elmfield such as a creche?'* Only 25.2% of respondents replied that they would be 'Likely' or 'Very Likely' to use such facilities, however, it is evident that several of those

who answered positively do not have children and, therefore, their positive responses are for a hypothetical possibility of using a crèche rather than an existing need or want for such a facility. Excluding those responses reduces the positive response rate to just 17%.

While there may be some cross-over between respondents, the preference for, and indication of an interest in using, enhanced resident facilities is 4.7 times greater than that for a crèche were it to be provided.

- The findings of the Resident Survey Report show strong support for the proposed change of use and limited demand for childcare facilities, which reflects the general result of the demographic analysis conducted in the Childcare Demand Assessment. This is demonstrative of the demographic composition of Elmfield's resident population and also reflects the changing nature and patterns of work in response to the COVID-19 pandemic and contemporary employment.
- The subject proposal is a retrospective action by the applicant to meet the emerging demands and needs of the residents of Elmfield since its completion and occupation. This should be considered as a positive, progressive and proactive effort by the applicant to enhance and improve the amenities available to residents (in contrast to the design and delivery of developments which have sought to 'guess' the demands / needs of future residents in terms of communal amenities and spaces). It also closely reflects more recent residential developments (build-to-rent in particular) which include a broad range of communal facilities to meet the needs of residents (e.g. workspaces, private rooms, concierge etc.) that may not have been considered when permission for Elmfield was originally sought. Therefore, the scheme is positively responding to more recent trends and the preference of residents.
- The Board is requested to note the following important clarifications and observations in relation to the data and analysis contained in the Childcare Demand Assessment and the Planning Authority's review of same:
 - The composition of the development generates a very low real demand for childcare provision (as informed by the demographics of the local

area and the CSO's Quarterly National Household Survey findings). The fact that this low demand would not result in a viable crèche at Elmfield and that any existing demand from within the scheme is already being catered for by other facilities would seem to have been overlooked in the assessment of the proposal. Furthermore, even if the crèche was delivered, there is no evidence to suggest that residents of Elmfield would relocate their children to it from other facilities.

- Although population projections for the area have not been prepared, if the age of properties in the area and the population structure are considered, it is likely that real demand for childcare will diminish in the future as the population generally ages.
- The weighting placed in the report of the case planner on the pre-COVID-19 enrolment / capacity figures of local childcare providers fails to incorporate the fact that the children of Elmfield are already being accommodated in those facilities. In addition, no consideration has been given to the expectation that childcare demand will likely fall in response to the changing working patterns and preferences likely to result from greater levels of working from home in the future. It is likely that future demand for childcare services will be less than pre-COVID levels.
- The Planning Authority has misread / misunderstood the estimation of childcare places that will be available in the local area upon completion of two other residential and crèche developments. In this respect, the Board is referred to Section 5.3 of the Childcare Demand Assessment and to Table 5.5 in particular. The analysis undertaken by KPMG FA of the developments referenced by the case planner concludes that, in combination, their crèches will have the capacity to accommodate 204 - 291 No. children and that the residences will generate a demand for c. 93 No. spaces (using the methodology applied to Elmfield). Therefore, there will be an approximate surplus capacity in those crèches of 111 – 198 No. spaces. To be clear, and notwithstanding that demand for childcare places generated by residents of Elmfield is already being met by existing facilities, the completion of the

aforementioned developments will result in a surplus capacity to meet additional demand, including that from Elmfield.

- The proposed change of use will not fundamentally undermine the applicable land use zoning objective given the insufficient real demand for childcare services and there being no interest in the space's occupation for such a purpose. Rather, the proposal will enhance residential amenity by (1) bringing a vacant space into active use; and (2) providing residents with new community rooms.
- The relevant provisions of Policy SIC11 of the County Development Plan can be summarised as follows:

'It is Council policy to encourage the provision of affordable and appropriate childcare facilities . . . In general at least one childcare facility should be provided for all new residential developments subject to demographic and geographic needs. The Council will encourage the provision of childcare facilities in a sustainable manner . . .

The primary policy basis for the provision of childcare facilities is the 'Childcare Facilities Guidelines for Planning Authorities' (DoEHLG, 2001).

. . . one childcare facility shall be provided on site in accordance with Sections 2.4, 3.3.1 and Appendix 2 of the 'Childcare Facilities Guidelines for Planning Authorities'. The provision of childcare facilities within new, and indeed existing, residential areas shall have regard to the geographical distribution and capacity of established childcare facilities in the locale and the emerging demographic profile of the area'.

The policy wording is such that it does not bind the Planning Authority or an applicant to the provision of childcare facilities as part of a residential development. It acknowledges that it will not always be necessary to provide childcare facilities, noting the influence of demographic and locational factors, and reflects the pragmatic language used in the 'Childcare Facilities, Guidelines for Planning Authorities'.

- Policy SIC11 of the Development Plan refers to the sustainable provision of childcare facilities. Obliging the applicant to provide the crèche is an

unsustainable requirement given the clear evidence of insufficient demand for both the provision and use of such services.

- Policy SCI11 notes that childcare provision should be informed by demographics, location / spatial distribution of childcare facilities, and the demand for and capacity of facilities. It has been demonstrated that the combination of (1) resident and local demographics, (2) the location, distribution and capacity of existing and forthcoming facilities, and (3) the expected post-COVID childcare preferences, means there is and will be sufficient capacity amongst existing and future childcare providers in the area to meet the demand for such services.
- Section 4.7 of the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'* states the following:
'Notwithstanding the Planning Guidelines for Childcare Facilities (2001), in respect of which a review is to be progressed, and which recommend the provision of one child-care facility (equivalent to a minimum of 20 child places) for every 75 dwelling units, the threshold for provision of any such facilities in apartment schemes should be established having regard to the scale and unit mix of the proposed development and the existing geographical distribution of childcare facilities and the emerging demographic profile of the area. One-bedroom or studio type units should not generally be considered to contribute to a requirement for any childcare provision and subject to location, this may also apply in part or whole, to units with two or more bedrooms'.

Similar to Policy SCI11, this is a recommendation, not a requirement, to provide childcare facilities. The guidance advocates for the provision of childcare facilities to be informed by demographics, location / spatial distribution of facilities, and the demand for and capacity of facilities, rather than through the arbitrary application of a policy stance.

- The *'Childcare Facilities, Guidelines for Planning Authorities'* note that childcare *'should'* - not must – be required and states that the standard of *'one childcare facility per 75 dwellings'* is indicative, not definitive. Furthermore, there is an acknowledgement that the threshold for childcare provision is to be informed by the distribution of existing facilities and the area's demographic

profile. The guidance then explicitly states that deviation from the '*indicated standard*' can be facilitated with regard to the unit mix of a development and the findings of a 'childcare needs analysis'. It is not believed that the latter has been completed by the Local Authority and the submitted Childcare Demand Assessment is a more detailed document which takes account of the development mix of unit types.

- The Childcare Demand Assessment has illustrated that the demand for childcare generated by Elmfield would be insufficient to warrant its use or to sustain a viable operation. Any demand for childcare from Elmfield is being met by existing childcare facilities in the area and the surplus capacity of forthcoming services will augment the options available to residents.

6.2. **Planning Authority Response**

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

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development
- Procedural issues
- Appropriate assessment

These are assessed as follows:

7.2. The Principle of the Proposed Development:

- 7.2.1. By way of background, the proposed development site forms part of the wider residential development known as 'Elmfield' which is understood to comprise a total of 207 No. apartment units spread across 5 No. four- and five-storey blocks (with a final mix of 36 No. one-bedroom, 127 No. two-bedroom & 44 No. three-bedroom units). It is situated within Block 'E' / 'The Ashes' (which was completed pursuant to the grant of permission issued in respect of PA Ref. No. D15A/0618 / ABP Ref. No. PL06D.246225) and comprises a vacant ground floor space intended for use as a crèche facility although it has never operated as such. Notably, the inclusion of the childcare facility as part of the original 'Elmfield' development was expressly sought by the Planning Authority in its determination of PA Ref. No. D03A/0411 (given the provisions of the 'Childcare Facilities, Guidelines for Planning Authorities, 2001' and the anticipated demand on existing services consequent on the development of the surrounding area envisaged in the (then) Stepside Action Plan) with the provision of the existing (unused) crèche facility arising from requests for further information and subsequent clarification. To date the unit in question has remained unfinished and unoccupied since its completion in October, 2017 (with both the applicant and previous owners having been unable to secure a crèche operator) and, therefore, the applicant has put forward the case that the permitted crèche is not viable given the lack of demand for such services both in 'Elmfield' and the surrounding area in addition to the capacity available within existing childcare provision in the locality.
- 7.2.2. Accordingly, from a review of the available information, it is clear that the key issue in the assessment of this application is not whether the use of the subject unit as community rooms (e.g. lounge areas, private rooms, and working from home pods) serving the residents of the wider 'Elmfield' development is appropriate (although I am satisfied that any such use would be permissible in light of the applicable land use zoning and the siting of the property within an established and privately managed residential scheme), but rather whether there is sufficient cause to retain its permitted use as a crèche facility as previously approved under PA Ref. No. D03A/0411.
- 7.2.3. At this point, while I would acknowledge that the subject proposal involves a change of use from a crèche to an alternative use (as opposed to the provision of a new childcare facility), I would draw the Board's attention to the policy context as regards

the assessment of proposals for childcare facilities as this provides a basis upon which to assess the merits of the proposed development in light of relevant considerations, including the demand for childcare services in the area in line with current planning policy.

- 7.2.4. At the outset, Policy SIC11: '*Childcare Facilities*' of the County Development Plan aims '*to encourage the provision of affordable and appropriate childcare facilities as an integral part of proposals for new residential developments and to improve/expand existing childcare facilities across the County*' with a general provision that at least one childcare facility be provided for all new residential developments, subject to demographic and geographic needs. Section 8.2.12.1: '*Childcare*' of the Plan subsequently states that the Planning Authority will seek to facilitate the provision of childcare facilities in appropriate locations and may require their provision in large residential developments in accordance with the provisions of the '*Childcare Facilities, Guidelines for Planning Authorities, 2001*'.
- 7.2.5. In reference to the foregoing, Paragraph 2.4 of the '*Childcare Facilities, Guidelines for Planning Authorities*' states that within new communities / larger new housing developments, planning authorities should require the provision of at least one childcare facility unless there are significant reasons to the contrary e.g. the development consists of single bed apartments or where there are adequate childcare facilities in adjoining developments. Within new housing areas, the Guidelines further recommend a benchmark of one childcare facility per 75 dwellings (see also paragraph 3.3.1 and Appendix 2) although the threshold for provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas.
- 7.2.6. More recent national planning guidance has elaborated further on the issue of providing childcare services in tandem with emerging development. In this regard, the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' also acknowledge the recommendation to provide one childcare facility for every 75 dwelling units in the case of larger housing schemes, however, they reiterate that the threshold for any such provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas (with the additional requirement that any such analysis be undertaken in consultation with city / county childcare committees).

- 7.2.7. The *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2020'* similarly reference the recommended provision of one childcare facility for every 75 dwelling units, but assert that the threshold for providing any such facilities in apartment schemes should be established having regard to the scale and unit mix of the proposed development and the existing geographical distribution of childcare facilities and the emerging demographic profile of the area. In addition, it is stated that one-bedroom or studio type units are not generally considered to contribute to a requirement for any childcare provision and, subject to location, this may also be applied in part or whole, to units with two or more bedrooms.
- 7.2.8. In support of the proposed change of use, the application has been accompanied by a 'Resident Survey Report' (which purports to reflect the feelings of those residents surveyed in Elmfield as regards existing amenities in the development, the future use of the vacant crèche unit, and how the living experience within Elmfield could be enhanced) and a 'Childcare Demand Assessment' (which asserts that following an examination of the available data, including the composition of the Elmfield development, the demographics of the surrounding area, and existing childcare provision / capacity in the area, the existing childcare demands of Elmfield are already suitably met by existing childcare facilities and that the proposed change of use will not detract from the ability of existing and forthcoming childcare facilities in the study area to meet demand). The grounds of appeal subsequently expand on the analysis contained in these documents.
- 7.2.9. With respect to the Resident Survey Report, it has been submitted that the residents of Elmfield are strongly of the opinion that its existing facilities / amenities could be improved with the respondents being most receptive to the prospect of facilities such as private resident lounges or working from home areas which would allow them to relax, socialise, or work outside the confines of their own apartment. Furthermore, only c. 25% of survey respondents indicated that they would use a crèche facility were it to be provided on site (if those responses made by residents who do not already have children are excluded, the positive response rate drops to 17%). Moreover, 84.8% of respondents did not have a child under of the age of 7 years living in their household while only 6% had a child of crèche going age that was not already enrolled in childcare.

7.2.10. While I would accept the merits of undertaking resident surveys with a view to gauging broader opinion, I would urge caution in drawing definitive conclusions from the data presented. In this respect, I would have some concerns as regards the nature and / or understanding of the questions presented in the survey. For example, although a majority of respondents have indicated that they would be likely to use residents-only facilities such as lounge areas, private room booking, or working from home pods, it is unclear how many of these residents would be willing to incur the additional costs of same should it result in increased management fees (particularly when compared to a privately-operated and customer focused childcare facility). It is also of relevance to note the wider limitations of the survey in that it was only circulated to the portfolio of 188 No. apartments managed by the applicant as opposed to the 207 No. units which make up the totality of Elmfield with the result that the residents of the remaining 19 No. apartments of unknown size (1, 2 or 3 bedrooms) have been excluded from participation. A further concern arises in that while it has been stated that the 165 No. responses received equates to a response rate of 54%, it is clear that this is not reflective of the number of apartments / households surveyed but instead relates to the 306 No. individual residents (e.g. 165 No. 'household' responses would equate to a response rate of c. 87.7%). Without further interpretation of the raw data, I would have concerns that the views of individual households could potentially be overrepresented (possibly to the particular detriment of households that chose not to complete the survey).

7.2.11. Broadly speaking, the results of the Resident Survey Report would lend some weight to a desire by residents for additional facilities / amenities within Elmfield other than a crèche, however, I would restate my earlier concerns as regards placing an over-reliance on any such conclusions.

7.2.12. The Childcare Demand Assessment (CDA) provides an analysis of existing childcare provision in the surrounding area and the relative demand for the permitted crèche facility. By way of summation, it has considered a study area with a 1.5km radius from the development site as comprising a reasonable walking distance within this high-density built-up urban area which, when combined with the availability of public transport by way of the Luas, is considered to be an acceptable travel distance to childcare facilities in the local area. Existing baseline childcare provision was then ascertained from desk-top research (including information sourced from Tusla) and a

total of 19 No. registered childcare facilities were identified within and bordering the study area. Each of these facilities was then contacted with a view to obtaining information on available capacity although only 14 No. provided details of their existing capacity. Furthermore, in order to account for the impact of the COVID-19 pandemic on childcare demand, it was considered appropriate to distinguish between current capacity and typical capacity pre-COVID. This baseline survey has established that none of the respondents had any available (typical) capacity pre-COVID, although 7 No. facilities (not 10 No. as incorrectly stated in Section 3.3 of the CDA) presently had some spare capacity amounting to 77 No. childcare places.

7.2.13. Section 4 of the CDA proceeds to consider the demographic profile of the study area as derived from Census data and applies this to the existing Elmfield development. It details the recorded population categorised by age and concludes that the population of the study area has a predominantly working age structure which is considered to be further represented by changing trends in the 0-4 years age cohort which declined from 10.7% to 9.3% of the overall population between 2011 and 2016. It proceeds to state that the 0-6 age cohort is the standard range for children to be enrolled in childcare facilities and amounts to 13% of the 2016 population for the study area.

7.2.14. Having established the composition of the population in the study area, the CDA has used these figures to estimate the number of children up to 6 years of age resident within the entirety (207 No. units) of the Elmfield development. In this regard, the 36 No. one-bedroom apartments have been excluded from the calculation on the basis that they are not generally considered to contribute to any requirement for childcare provision as per the recommendations of the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2020*'. In addition, 30% of the two-bedroom units have also been excluded due to the likelihood that many of these units are occupied by single people or pre-parenting couples thereby generating no demand for childcare services. Therefore, a total of 133 No. units within the scheme have been used in estimating the number of 0-6 year old children resident in Elmfield. By utilising the average household size within the study area of 2.98 persons per unit (as derived from the Census 2016 data) to calculate the overall resident population of Elmfield and then applying the proportion of that population likely to be within the 0-6 years age cohort (13%), it has been

estimated that 52 No. children aged 0-6 years may reside in Elmfield (the equivalent figure inclusive of all the two-bedroom units would be 66 No. children).

- 7.2.15. Section 5 of the CDA proceeds to consider how the estimated number of children resident in Elmfield may translate to a demand for childcare places from within the development. It refers to the current capacity available in existing childcare facilities in the area (noting that they were previously at full capacity pre-COVID) and suggests that as the subject crèche unit has remained vacant since its construction, it is highly likely that childcare demand arising from Elmfield is already being met by existing providers in the area without the need for additional capacity. It is further suggested that the change in working patterns attributable to the COVID-19 pandemic (with a greater proportion of the workforce opting to work from home in the future thereby reducing the demand for childcare) could possibly mean that childcare demand in the study area will not return to its pre-COVID level and thus the additional capacity now evident will be available in the coming years. Reference is also made to the possible under-estimation of childcare capacity in the area given that responses were not received from all of the childcare facilities registered in the study area while further capacity may also be available within 'unregistered' / informal childcare services which mind three or less pre-schoolchildren and thus are not included in the Tusla dataset.
- 7.2.16. Further analysis of the likely demand for childcare emanating from Elmfield has utilised data available from the Central Statistics Office Quarterly National Household Survey which includes a module specifically on childcare take-up for Q3 2016. In this regard, it has been ascertained that in Dublin 25% of parents with children avail of childcare facilities and, therefore, when this figure is applied to the estimation of 52 No. children aged 0-6 years resident in Elmfield, a demand for only 13 No. childcare places may exist.
- 7.2.17. The CDA also examines the emerging pattern of development in the area (up to December, 2020) and the potential for additional demand to be placed on childcare services. It notes that permission has been granted for a total of 1,957 No. units (excluding any approvals for schemes of less than 10 No. units) with construction having commenced on 1,819 No. of these units. Two further crèche facilities (not previously included in the analysis of existing childcare provision) are also planned as part of these developments (i.e. ABP Ref. Nos. ABP-301522-18 & ABP-302580-

18) and their completion will contribute to the capacity of childcare facilities in the area. The overall and available capacity of these crèches, allowing for the demand generated by the residents of the respective residential developments, has been estimated (having regard to the methodology applied in calculating the likely demand for childcare emanating from Elmfield, including the exclusion of all one-bedroom units and 30% of the two-bedroom units) and is set out in Table 5.5 of the CDA. It has been calculated that the two crèches approved as part of ABP Ref. Nos. ABP-301522-18 & ABP-302580-18 will have a surplus / available capacity of 111-198 No. childcare places upon completion of those housing developments. However, it should be noted that this figure would not appear to take account of the potential demand arising from the other housing developments (totalling 226 No. housing units) identified in Table 5.23 '*Residential Planning Permission Pipeline*' which did not incorporate childcare facilities.

(Although reference has also been made to the additional childcare capacity arising from two further crèche facilities granted permission within 1.75km of the subject site under PA Ref. Nos. D15A/0842 / ABP Ref. No. PL06D.246333, it is unclear if either of these developments has progressed while in both instances alternative redevelopment proposals have either been approved or are proposed on site. Accordingly, I would not consider it appropriate to place any reliance on the availability of either of the aforementioned facilities).

7.2.18. Therefore, the key conclusions drawn by the CDA are that only 52 No. children aged 0-6 years may be resident in Elmfield and that only 13 No. childcare places would be sufficient to meet the estimated demand attributable to same. In addition, there is presently capacity available in existing childcare provision in the area to meet any demand arising from Elmfield (allowing for the impact of the COVID pandemic) with further capacity likely to arise from the forthcoming construction of two more crèches in the study area.

7.2.19. In its assessment of the subject application, the Planning Authority has raised concerns as regards the representativeness of the Resident Survey Report and also questions the exclusion of 30% of the two-bedroom apartments within Elmfield from the calculations contained in the CDA. It also notes that 52% of the population of the study area is aged between 25-54 years which could equate to young families etc. in need of childcare both presently and into the future. It is further stated that the pre-

COVID scenario, which established that there was no spare capacity in existing childcare provision in the study area, would provide for a more accurate representation of demand levels. Additional commentary notes the lack of any documentary evidence identifying the attempts made by applicant etc. to find an operator for the permitted crèche and it is asserted that the childcare facilities approved as part of ABP Ref. Nos. ABP-301522-18 & ABP-302580-18 will be required to meet the demands of those developments.

7.2.20. Having considered the available information, it is my opinion that while the 'Resident Survey Report' and 'Childcare Demand Assessment' lend some credence to the proposed development, concerns arise as regards the representativeness and interpretation of the survey results given certain deficiencies in the available data (as previously outlined). For example, the entirety of the Elmfield development was not included in the Resident Survey while the use of 'resident' responses as opposed to 'households' could potentially serve to distort the figures. Other factors come into play as regards the nature of the questions asked. It would also have been beneficial if the CDA had sought to elaborate on the demand for the different forms of childcare in the area e.g. sessional, part-time, full-daycare etc.

7.2.21. I am also inclined to concur with the Planning Authority that the pre-COVID figures in the CDA provide for a more reliable indication of the demand placed on existing childcare provision in the area with none of the 14 No. respondent childcare providers having had any surplus capacity pre-pandemic. It is my opinion that assumptions as regards working patterns and the demand for childcare 'post-pandemic' are somewhat premature.

The continued development of the surrounding area will also generate an increased demand for childcare facilities and while the applicant has suggested that the crèches permitted under ABP Ref. Nos. ABP-301522-18 & ABP-302580-18 will have some surplus capacity, Table 5.3 of the CDA has identified a further 226 No. housing units already permitted (with additional demand possibly arising from any smaller housing schemes of less than 10 No. units that were not included in the CDA) which may absorb this spare capacity. In addition, Circular Letter PL3/2016 envisages an increase in demand for childcare spaces as a result of the expansion of the

Early Childhood Care Education (ECCE) Scheme.

- 7.2.22. Regrettably, it would appear that neither the applicant nor the Planning Authority has consulted with the Dún Laoghaire-Rathdown County Childcare Committee in respect of the subject proposal (as is recommended in both the County Development Plan and the 'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009') and I would suggest that its input as regards childcare locally could lend considerable weight to the merits or otherwise of the proposed development. Similarly, as the unit in question has been vacant since its completion in October, 2017, it is regrettable that no supporting documentation has been provided as to the efforts employed by the applicant and previous property owners to find an operator for the permitted childcare facility. I am also cognisant that the unit has been vacant for a comparatively short period of time and that the population structure of the area and any demand for childcare will fluctuate over time.
- 7.2.23. With respect to the actual suitability of the subject unit as a childcare facility, factors such as its siting within an existing apartment complex, the absence of any dedicated pick-up / drop-off facilities, a lack of convenient car parking, and the parking restrictions in place along the service road, all indicate that the premises is not ideally suited to accommodating patrons from outside the Elmfield development. Accordingly, the limited demand for such services identified in the Resident Survey Report would seem to support the proposed change of use. However, it is not beyond the bounds of reason that the permitted childcare facility could be used by persons from the outside the development, particularly given the site's accessibility by public transport i.e. 'The Gallops' Luas stop.
- 7.2.24. On balance, whilst I would acknowledge the merits of the arguments put forth by the applicant, I am cognisant that the permitted crèche facility was approved as part of a larger development and that both the total number of residential units and the proportion of 2 & 3 bedroom dwellings therein is substantially in excess of the 75 No. unit threshold recommended in the '*Childcare Facilities, Guidelines for Planning Authorities, 2001*' (as supplemented by later guidance). Moreover, in light of the unavailability of childcare places in existing childcare facilities in the study area pre-COVID, the emerging pattern of high-density development in the area, the provisions of Circular Letter PL3/2016 (March, 2016) regarding childcare facilities operating under the Early Childhood Care Education (ECCE) Scheme (Planning System

support for childcare post September 2016 – Implementation of the Childcare Facility Guidelines for Planning Authorities 2001) which forecasts an expected increase in demand for childcare spaces in the coming years, and certain deficiencies in the documentation submitted, I am not satisfied that the information provided with the application and appeal offers a sufficiently compelling or authoritative confirmation of available spare capacity in current childcare provision within the wider area, such that a change of use in this instance could be supported.

7.3. Procedural Issues:

- 7.3.1. The decision to refuse permission states that the application does not comply with Article 26(3)(b) of the Planning and Development Regulations, 2001, as amended, as the newspaper notice is considered to be misleading or inadequate by reference to an incorrect site address (Ballyogan Road is in Dublin 18, not Dublin 8). In this regard, it is unclear as to why the Planning Authority did not opt to invalidate the application pursuant to Article 26(3)(b) of the Regulations.
- 7.3.2. The Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of a planning application while procedural matters, such as a determination as to the adequacy (or otherwise) of public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority. However, such the Board be minded to grant permission for the subject proposal it may wish to consider seeking the submission of a revised newspaper notice.

7.4. Appropriate Assessment:

- 7.4.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. Permission was previously granted on lands containing the appeal site for 207 no. residential units and a crèche facility. The crèche facility was to be provided as part of the social infrastructure on the basis of the residential scheme including more than the 75 dwelling threshold as set out under the provisions of the 'Childcare Facilities, Guidelines for Planning Authorities' issued by the Department of the Environment and Local Government in June 2001. Having regard to the relevant provisions of the Dún Laoghaire Rathdown County Development Plan, 2016-2022 with respect to childcare provision, the scale and unit mix of the existing residential development, the existing geographical distribution and capacity of childcare facilities, the emerging demographic profile of the area, and to Circular Letter PL3/2016 (March 2016) regarding Childcare Facilities operating under the Early Childhood Care Education (ECCE) Scheme (Planning System support for childcare post September 2016 – Implementation of the Childcare Facility Guidelines for Planning Authorities 2001), it is considered that the proposed change of use from a crèche to community rooms, would result in the absence of a planned crèche facility to serve the residential development. This would result in a poorly integrated residential community, which would not be supported by local or national policy and would, therefore, be contrary to proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

16th June, 2021