



An
Bord
Pleanála

Inspector's Report ABP.313466-22

Development

Retention of changes to and completion a childcare facility (previously approved 2 no. childcare facilities under planning Ref. No. 14/6533 and extended under planning Ref. No. 20/5483) and all associated site works

Location

Kinsale Manor, Rathmore, Kinsale

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

22/4279

Applicant(s)

Kinsale Kids Academy Ltd.

Type of Application

Planning permission

Planning Authority Decision

Grant s.t. conditions

Type of Appeal

Third party

Appellant(s)

Patrick Byrne

Observer(s)

Mary Egan

Date of Site Inspection

25th January 2023

Inspector

Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in the northern suburbs of Kinsale Town. Kinsale Manor is a recently developed housing estate of c. 136 houses, which is accessed from the R605 and Ocean Drive, (which forms part of the estate road network). The estate is accessed by means of a single entrance which is approx. 100m to the east of the junction of the R605 and the R607. Ocean Drive runs parallel to the R605 with an intervening buffer strip. Kinsale Recycling Centre/ Cork County Council offices and Kinsale Community Hospital are located to the north and west of Ocean Drive but are accessed by means of a separate slip road off the R605.
- 1.2.** The appeal site comprises a detached 2-storey building which has been constructed, but not completed, on the northern side of Ocean Drive. The site lies between Ocean Drive and the slip road serving the hospital and council offices. There is a row of 2-storey houses directly opposite, on the southern side of Ocean Drive, which have been recently constructed and occupied.
- 1.3.** The site area is given as 0.189ha. The 2-storey building on the site is a proposed creche which is currently under construction. However, construction works had been halted and the site was secured by hoardings at the time of my site inspection. The ground levels on the site fall away towards the north and northwest, with a difference in levels at the western-most end of c. 2 metres between Ocean Drive and the slip road to the hospital. It is an irregular shaped site with frontage to Ocean Drive. There are two vehicular access points onto the estate road. The ground levels on Ocean Drive also fall with a similar gradient in an easterly direction.

2.0 Proposed Development

- 2.1.** Permission is sought to retain the partially completed building on the site and to complete and finish the proposed creche and associated site works. The need for the proposed development arose from a departure from the permitted childcare facilities intended to serve the housing estate. The governing permission had proposed two separate creches and the current proposal seeks to amalgamate the previously permitted childcare facilities into one single creche. The proposal also seeks to make minor elevational changes and site layout changes, including the provision of additional car parking facilities.

2.2. The proposed gross floor area is stated as 456.75sq.m. It includes 4 no. classrooms catering for children up to 5 years of age. The capacity of the facility is stated to be 65 children at any one time, with 11 staff employed. However, this was later clarified in Unsolicited Further Information (received by P.A on 30/03/22) as a capacity of 69 children and 11 staff. The number of parking spaces is proposed to be increased from 10 to 14 spaces, and three set down spaces will be provided. It is proposed to operate a one-way system with an entrance at the western end and an exit at the eastern end. a 5-bay bicycle stand is also proposed. A Traffic Management Plan was submitted with the application, which indicates that drop-off and collection times will be staggered, and a traffic warden will be employed to manage traffic at peak times.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 8 no. conditions, which were mainly of a standard type. The following conditions are of note:

1. Use restricted to childcare facility – max. 69 children and no intensification or change of use without further planning permission.
2. Traffic management plan – shall be carried out prior to commencement of the use.
3. All parking to take place on site and not on road.
4. Financial contribution €7454.16 in accordance with GDCS.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It was noted that the proposed creche was intended to replace the previously permitted two adjoining creche facilities on the same site, which were approved as part of the governing permission for the estate under P.A. Ref. no. 14/6533. It was noted that the houses opposite are now occupied but that the residents would have known that the overall planning permission had included a childcare facility on this site. It was further noted that the applicants had previously lodged a planning

application for an enlarged childcare facility, (21/6072), which had been declared invalid. This application had proposed increasing the capacity of the creche to 90 children. However, the current application was noted as being within the same footprint as the previously approved adjoining creches, (which had capacity for 40 childcare places, i.e., 20 per creche).

The Area Planner acknowledged the need for a creche at this location, which firstly, was a requirement of the original planning permission for the estate and which, secondly, is substantiated by the policy framework for the area (2014 CDP which was in place at time), and by the high demand as evidenced by the number of registered childcare places in Kinsale. It was considered that the operation of a single larger creche would be more efficient and more sustainable than the permitted arrangement, and that the traffic management impacts are likely to be more easily managed.

The Area Planner confirmed that the proposal would represent an intensification in terms of childcare places (from 40 to 69). It was noted, however, that the proposal complied with the parking standards in the CDP (2014) and that the information provided in the Traffic Management Plan would ensure a balance between residential amenity, traffic safety and providing for community facilities. It was pointed out that the previously permitted arrangement had not included such a traffic management plan and that other creches in the district did not have such transport plans. It was proposed that the number of childcare spaces be capped at 69 and that the transport plan be required to be implemented, for these reasons. The Area Planner was satisfied that the proposed development complied with the standards for such development in terms of daylight, outdoor external playspace etc.

Permission was recommended subject to conditions.

3.2.2. Other Technical Reports

Area Engineer Report (05/04/22) – it was noted that the Traffic Management Plan refers to 14 staff and 69 children. A condition was therefore recommended that all parking should be catered for on-site and that no parking should take place on the public road or footpaths.

Environment Report (21/03/22) – No objection subject to conditions re C & D waste.

Estates Report (14/03/22) – No objection s.t. implementation of traffic management plan (submitted on 11/02/22).

Public Lighting (03/03/22) – No objection subject to conditions – external lighting not to be directed towards public road and to provide a separate power source.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Observations received from five neighbouring residents including the appellant and the observer. One of the submissions was in support and the remainder were opposed to the proposed development.

The Objections raised may be summarised as follows:

- Significant intensification of use - original permission for 20 childcare places.
- Inadequate parking spaces
- Traffic safety – traffic management inadequate will give rise to pedestrian and traffic hazards. Sightlines at entrance/exit inadequate.
- Road infrastructure/access does not have capacity – only one road in and out of estate with one access which contains a blind bend.
- Residential amenity – overlooking and overshadowing as well as traffic congestion and nuisance associated with traffic and parking.
- Non-compliance with creche standards - Inadequate external play space for children in creche. Need for fire safety plan. Overprovision of childcare spaces to serve the residential development.

The letter in support may be summarised as follows:

- Many parents in the estate are relying on the childcare provisions to be delivered without further delay.
- The objections based on traffic safety/congestion seem exaggerated.

4.0 Planning History

14/6533 – planning permission granted for the construction of 136 dwelling houses including 2 no. adjoining childcare facilities on site of current application/appeal. This involved a reduction in density and change in house type for previous permission for 201 houses granted under 06/4775 and 06/53002.

15/4279 – Extension of duration of 06/4775

19/4199 – Permission refused for construction of a 3-storey building on site including one no. childcare facility (in place of two such facilities granted under 14/6533) and 3 no duplex apartments at FF and SF levels with balconies and roof garden.

21/5790 – Application to amalgamate two creches invalid

21/6072 – application to amalgamate two creches invalid.

5.0 Policy Context

5.1. Development Plan

Cork County Development Plan 2022

Introduction:- The application was considered and determined by the planning authority under the previous development plan for the area, namely the Cork County Development Plan 2014. However, a new Development Plan was adopted on the 25th of April 2022 and came into effect on the 6th June 2022. Since the last plan period, Kinsale Town Council has been dissolved and the CDP sets out a single planning strategy for the town and its environs.

Chapter 6 of Volume 1 of the CDP relates to **Social and Community** facilities. The aim of the chapter includes seeking the provision of high quality social and community facilities that meet both current and future needs and creating vibrant and sustainable communities. The relevant policy is:

Policy SC6-4: Childcare Facilities

Support and facilitate the sustainable provision of childcare facilities in appropriate locations and seek their provision concurrent with development, having regard to population targets for the area and in accordance with the

Childcare Facilities Guidelines for local authorities 2001 and regard to the Universal Design Guidelines for Early Learning and Care Centres 2019.

Kinsale is a main settlement in the West Cork Volume 5 of the Cork County Development Plan. It is located within the Bandon-Kinsale Municipal District (Chapter 1). One of the main strategic aims for Kinsale is to provide for additional residential and employment development which reinforces the town's compact form.

The site is located in an area zoned as **Existing Residential** (Section 1.5). The objective for this zone (18.3.3) is to conserve and enhance the quality and character of established residential communities and protect their amenities. The strengthening of community facilities and local services will be facilitated subject to the design, scale and use of the building or development being appropriate for its location. Childcare facilities are included as appropriate uses in this zone.

5.2. Natural Heritage Designations

There are no European Sites in close proximity to the development site. The closest European sites are:

- Sovereign Islands SPA (004124) which is approx. 7km to the southeast
- Old Head of Kinsale SPA (004021) which is approx. 10km to the southwest

6.0 The Appeal

6.1. Grounds of Appeal

The third-party appeal was submitted by Patrick Byrne, Bandon House, Ballywilliam, Kinsale. The main points raised may be summarised as follows:

1. Over-intensification of use

- The proposal represents a significant intensification of the use as it facilitates the accommodation of 69 children as compared with 43 spaces in the governing permission (14/6533). The number of children to be accommodated should accord with the Childcare Facilities Planning Guidelines (2001) which requires 20 childcare spaces per 75 dwellings. As the permission is for 136 houses, the number of places should not exceed 43.

- The application was for 65 childcare spaces and 11 staff, yet the permission is for 69 childcare spaces and 11 staff. It is submitted that the drawings indicate up to 80 childcare spaces with 13 staff, based on the floor areas and the number of children per room.

2. **Residential estate is not suitable for commercial creche**

- The scale of the creche is excessive for the no. of dwellings within the estate. A creche of the scale proposed will attract children from a wider catchment and the estate is not suitable for a large creche of this size or for a commercial operation of the scale envisaged. This will result in a considerable number of external traffic movements in the estate.
- This is contrary to Cork Co. Co. policy for childcare facilities which must be developed in a sustainable manner and at an appropriate scale.

3. **Traffic and safety**

- **Inadequate Traffic Management Plan** – The TMP is based on assumptions instead of facts. A Traffic survey of the existing traffic flow on Ocean Drive and at the junction with the R605 should be carried out to inform the TMP.
- **Road safety** - Ocean Drive is the only access point into/out of the estate (136 dwellings) which could result in up to 300 vehicular movements at peak times. There is an acute bend and a long road leading to the site with inadequate sightlines at the entrance. Cars tend to speed on Ocean Drive and there has been some incidents relating to speeding in and out of the estate. Traffic associated with the creche would interfere with the free flow of traffic on the road and endanger public safety by reason of obstruction of road users.
- **Lack of mitigation** - Neither the TMP nor drawings provide adequate details of any mitigation. The prioritisation of safety for pedestrians and residents of the estate should be at the forefront and mitigation in the form of pedestrian crossings, line marking, signage, speed ramps etc. should be provided for as part of any permission.
- **Inadequate Parking provision** – no spaces provided for administration staff. The design and layout will require traffic management to assist parents reversing out of the site. Permission should be restricted to 43 childcare

spaces and the parking arrangements for the previous permission (14/6533) should be adhered to instead of the proposed layout.

4. Non-compliance with requirements of Early Learning Standards and Inadequate outdoor space provision

- It is claimed that the proposed development fails to comply with the Universal Design Guidelines for Early Learning and Care Settings and TUSLA's Guidelines 'Quality and Regulatory Framework Full Day Care Service and Part-Time Care Service' (2018), as well as the associated Childcare Regulations. It is acknowledged that PL3/2016 (DoE Circular, dated 31/03/16) states that planning authorities should no longer include minimum spatial standard requirements for childcare facilities, but it is considered that this advice has been superseded by S.I. No. 211 (2016) 'Childcare Act 1991 (Early Years Services) Regulations 2016 (dated 30/06/16). An extract from these regulations (Schedule 7) is inserted into the grounds of appeal.
- The design and layout are considered to be of a very poor standard. Criticism is made of 'an attempt to squeeze too many children into the space', of the lack of a fire safety plan, of the inadequate labelling of rooms and the overall design of the accommodation. It is submitted that there is inadequate circulation space and parent waiting areas provided within the proposed creche. The appellant believes that 10m² per child would be an appropriate space standard.
- Inadequate provision has been made for outdoor space as the Guidelines require 9m² outdoor space per child, which equates to 414m² (minimum).

6.2. Observations on the grounds of appeal

An observation was submitted by Mary Egan of 2 Bowling Green, Kinsale on 23rd May 2022. The main points raised may be summarised as follows:

- **Significant increase on permitted creche** – proposal to increase no. places from 40 to 90 is excessive and would result in over-intensification of the use of the site. Object to the fact that the builders continued to construct building while this application was in process. The reduction to 69 spaces still

represents over-intensification of the use with a 70% increase over that permitted originally.

- **Excessive provision of childcare places** – only 20 children under the age of 5 in the housing estate, thus providing for children outside of the estate.

6.3. Planning Authority Response to grounds of appeal (30/05/22)

The P.A. responded to the grounds of appeal on the 30th of May 2022. It has confirmed its decision and has made no new comments.

6.4. First party response to grounds of appeal (31/05/22)

- 6.4.1.** The applicant's response has been submitted by HWP in respect of procedural matters and by another planning consultant, DMCA, in respect of the response to the grounds.

Procedural matters

- 6.4.2.** Validity of appeal - The procedural matters relate principally to the validity of the appeal. It is submitted that the appellant does not reside at the address given. It is further stated that the appellant does not have the permission of the owner of the address given to use that address for such correspondence. It is submitted that the appellant is not a local resident, and it is suggested that the appeal may be commercially driven. Reference is made to Section 127(1)(b) of the P&D Act 2000 (as amended) and to a precedent, which it is claimed has been established by a previous Board decision in similar circumstances, (PL04.242309). Evidence to support this submission is provided in the form of the following: -

- Land Registry extracts (appendix 2) showing the owners of the property stated to be the address of the appellant as parties other than the appellant.
- Letter from owner of said address confirming that Mr. Healy is the owner of the property in question and that the appellant, Patrick Byrne, does not reside there and does not have permission to use the address of the property.

- 6.4.3.** Support for the application – It is noted that the appellant has purported to represent local residents, although said residents were not identified. This is refuted and a series of letters of support from local residents, including a list of local residents

supporting the proposed development, has been submitted with the response to the grounds of appeal (Appendix 1).

FP Response to Grounds of Appeal

6.4.4. The grounds of appeal are strongly refuted. However, the response is mainly in the form of a rebuttal of the grounds. A number of points of relevance have been made as follows:

- **Planning history clarification** – it is confirmed that the building is being constructed on foot of planning permission (14/6533, as extended through an Extension of Duration 20/5483. That permission was for 136 houses with two adjoining creche facilities. The building is substantially compliant with that permission apart from some minor elevational changes which were required to meet fire regulations. Permission for these changes and for the amalgamation of the creches was previously sought under 21/6072, but the application was deemed invalid as the description of development was incorrect and should have sought retention and completion of the building. The only material difference between the proposal and the previous permission is the amalgamation of the two creche facilities.
- **Intensification of the use** - The previous permission did not specify the precise number of children and there were no conditions attached restricting the number of childcare places. Notwithstanding the application for amalgamation to a single operation, the operators would have been free to make any internal alterations to accommodate as many children as they wanted, provided that they had complied with the TUSLA requirements. The suggestion that there should be 10m² per child is strongly refuted as the childcare regulations require a floor area of between 2.3m² and 3.5m² per child depending on age.
- **Outdoor space** – there is no requirement to provide 9m² of outdoor space per child. However, it is accepted that this is a recommendation of the Childcare Guidelines. In any case, the provision of outdoor space far exceeds these recommendations.
- **Compliance with Early Learning Standards and Requirements** – it is confirmed that the facility will cater for a maximum of 69 children with 11 staff.

The capacity of the facility is limited by the floor space requirements of the Childcare Regulations. These requirements are enforced by TUSLA. The capacity was confirmed in Unsolicited Further Information submitted to the P.A. on 28/03/22.

- **Traffic and safety** – it is submitted that the entrance and estate roads were designed to accommodate the two previously approved creche facilities. The current proposal will improve traffic safety due to the improved traffic layout, increased parking provision, inclusion of bicycle parking, the staggered pick-up and drop off times and the implementation of the Traffic Management Plan. The proposed development will provide 14 spaces which exceeds the parking requirements of the 2014 and the Draft 2022 CDP.
- **Compliance with policy and local support** – The proposal complies with the policy to co-locate childcare facilities with large residential developments. There is no requirement to restrict places to residents of the estate. There is no basis to suggest that there would be an overprovision of childcare spaces. The enclosed letters of support confirm the considerable local need and demand for such a facility in the area. It would not be economically feasible to restrict the number of childcare places to 43. The estate remains non-compliant with its planning permission until the childcare facilities are constructed and made available.

6.5. Further circulation of First Party Response of 31/05/22

The FP response was re-circulated on the 2nd June 2022 to all of the parties. Further responses were submitted by the P.A., Mary Egan (Observer) and from the third-party appellant, Patrick Byrne.

6.5.1. Planning Authority (20/06/22)

- National Circular PL3/2016 directs planning authorities to exclude matters relating to standards in Appendix 1 of the Childcare Facilities Planning Guidelines (2001), including the minimum floor area per child.
- The proposed development and the P.A. decision are entirely in accordance with the development plan, national guidelines and government policy which

seeks to increase provision and access to childcare facilities on well located sites within towns like Kinsale, as set out in the NPF, Childcare Guidelines (2001) and the National Circular.

- The P.A. confirms its decision to grant permission subject to conditions which are considered appropriate.

6.5.2. Mary Egan (20/06/22)

It is stated that Mary Egan is a director of Egan's Hearwell Ltd, which owns Nos. 18 and 19 Ocean Drive, which are opposite the appeal site. It is further stated that the third-party appellant (Mr. Patrick Byrne) had submitted the appeal on behalf of her and the other directors of Egan's Hearwell Ltd. (Richard Egan & Ann Marie Egan of Winterfield House, Knockrobin, Kinsale and Thomas Laurence Egan of 2 Bowling Green, Kinsale). The remainder of the points made re-iterated the points made in the observation of 23/05/22.

6.5.3. Patrick Byrne (27/06/22)

The response refutes the allegations that the appeal is vexatious and provides information, inter alia, regarding his past relationship with Bandon House, Ballywilliam, Kinsale. In brief, he states that he sold the property to the current owners but has a re-direction order on the property to redirect post to his current address. He collaborated the information provided by Mary Egan regarding his representations of directors of Egan Hearwell Ltd., who own Nos. 18 and 19 Ocean Drive and confirms that he also represented another resident of the estate.

The remainder of the response reiterates the points made in the grounds of appeal. It is suggested that several conditions be attached to any planning permission including restricting the number of childcare places to 43, requiring all parking spaces to be designed as 'parent and child' spaces and requiring certain physical works to be carried out on the estate road such as provision of bollards, double yellow lines and a yellow outside the creche. It was further suggested that the applicant be required to provide a Road Safety audit and to prepare a Mobility Management Plan and Traffic Management Plan, to be submitted prior to opening of the creche.

6.6. Further circulation of responses received in June 2022

6.6.1. All parties were further circulated on the 5th July 2022.

6.6.2. Mary Egan (14/07/22) reiterated her support for the grounds of appeal submitted by Mr Byrne.

6.6.3. Planning Authority (18/07/22) no further comments.

6.6.4. HWP (21/07/22) reiterated the contention that the appeal is invalid. It was pointed out that the appellant had emailed An Bord Pleanála (09/06/22) stating that he had not received the letter from the Board (02/06/22) due to a 'failure in service of the re-direction order' and had asked the Board to re-send it to his address at Turner's Cross, Cork. It is submitted that the Board is precluded from dealing with it for the following reasons:

- The appellant is not a resident at the address given, which is a requirement of Section 127(1)(b) of the P & D Act 2000 (as amended);
- The appellant is now claiming that he is acting as an agent for others, but does not provide the names and addresses of these appellants;
- The address given (Bandon House, Ballywilliam) is stated to be a 'business address' used by the appellant, which does not comply with the requirement of S127(1)(b) to provide your own name and address.

It is requested that the appeal be declared invalid as established in a previous precedent, Ref. PL04.242309, wherein the Board determined that the case was invalid in similar circumstances.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows: -

- Principle of development
- Impact on residential amenity
- Road safety
- Layout and design
- Procedural issues

7.2. Principle of Development

- 7.2.1.** The policy framework for the area has changed since the planning application was determined by the P.A., as a new County Development Plan has come into effect, (6th June 2022). However, the policy regarding the provision of childcare facilities has not changed in any material way. The current policy SC6-4 seeks to support and facilitate the sustainable provision of childcare facilities in appropriate locations and that they are provided concurrently with development, having regard to the population targets for the area and in accordance with the Childcare Facilities Guidelines for Local Authorities (2001) and having regard to the Universal Design Guidelines for Early Learning and Care Centres 2019. This is similar to the previous policy (SC 3-1) under the 2014 CDP.
- 7.2.2.** Childcare Facilities are included as appropriate uses in the Existing Residential zone, within which the site is located. Thus, in policy terms, the proposed development is generally in compliance with the Development Plan for the area, which requires that childcare facilities are provided in conjunction with, or as part of, large residential developments. The P.A. has had regard to the population targets and the demand for childcare facilities in the area and was satisfied that there is a need for a facility such as that proposed.
- 7.2.3.** The Childcare Facility Guidelines for Local Authorities (2001) have been updated by the publication of a Government Circular in 2016, (PL03/2016) which directed planning authorities to exclude matters relating to childcare facility standards, outlined in Appendix 1 of those guidelines, including the minimum floor area requirements per child. This Appendix had recommended a floor area per child of between 2.32m² and 3.70m² depending on the age of the child (exclusive of kitchens, bathrooms etc.). The Circular was introduced to coincide with the ECCE Scheme, which was expected to result in a significant increase in the demand for childcare facilities.
- 7.2.4.** The site is located in a housing estate which has been recently constructed and where construction works are still evident. The estate is being developed on foot of a previous planning permission (14/6533, which had been extended), for 136 dwelling houses which had included provision for two adjoining creche facilities. These childcare facilities were proposed to be provided on the site of the current

application/appeal. The site of the proposed development is located on the main estate road leading from the entrance to the estate and is on the northern side of this road, opposite a row of two-storey houses, most of which appear to be occupied.

7.2.5. The building that would have accommodated the two creches is partly constructed. The proposed development seeks the retention and completion of this building, with minor elevational changes and some internal modifications to the layout. The floor area and footprint of the proposed building (456.75m²) does not differ materially from the previously permitted building (454m²). Thus, the main significant differences between the current proposal and the permitted childcare facilities relate to the amalgamation of the two operations into a single facility, the increase in the number of anticipated childcare spaces from c.40 to 69, and changes to the carparking /set down layout and parking provision, together with the provision of a Traffic Management Plan.

7.2.6. There is some dispute, however, regarding whether the use is being intensified or whether there is an increase in the number of childcare places. The third parties indicate that the permitted number of places was c.40-43 and the P.A. planner's report acknowledges a similar level of intensification. However, the first party states that the number of childcare places was not specified in the governing permission and that the figure of 43 was merely an anticipated number of places, which would have been determined in any case by reference to the TUSLA guidelines. It is acknowledged that The Childcare Guidelines for Planning Authorities (2001) requires that where 75 dwellings are constructed, a childcare facility providing a minimum of 20 places must be provided, (see 3.3.1 of Guidelines). As the permission granted (14/6533) was for 136 dwelling units, the provision of at least 40 places would have been expected to have been provided.

7.2.7. I would agree that it is not clear from the grant of planning permission what number of childcare places was approved and there are no conditions restricting the number of childcare places. It is noted that the two creche facilities were proposed as part of the Further Information submitted to the P.A. on 27/07/15, following a request to provide same. I would also agree that, in these circumstances, the number of childcare places is ultimately a matter for TUSLA to determine having regard to the adherence to the standards set out in the Universal Design Guidelines for Early Learning and Care Centres 2019 and to the Childcare Regulations (2016). The

applicant has advised that under the Tusla guidelines, a maximum of 69 children can be accommodated.

- 7.2.8.** It is considered, therefore, that any intensification of the use, as permitted under 14/6533, would only be a material planning consideration if there are external environmental effects such as impacts on residential amenity and road safety. These matters will be addressed in the following sections.

7.3. Impact on Residential Amenity

- 7.3.1.** The appellant believes that the proposed development would adversely affect the residential amenity of the estate by reason of additional traffic movements and activity associated with a childcare facility which has a greater number of childcare places than originally anticipated. As discussed in 7.2 above, it is not entirely clear whether there would be any material intensification of the use. However, it is acknowledged that the proposed development includes four additional off-street parking spaces and three set-down spaces, which could potentially lead to additional vehicular movements in and out of the site.
- 7.3.2.** It could also be argued however that, in the absence of these additional spaces and set-down areas, the likelihood of cars parking on the road outside the creche would be greater, leading to potential nuisance to neighbouring residents. The P.A. also considered that the submission of a traffic management plan which proposes to actively manage the parking and drop-off/collection process, would be likely to result in a more controlled operation which would reduce the risk of adverse impacts on the residential amenities of the neighbouring occupiers. I would agree and consider that the development as proposed is unlikely to give rise to any material increase in nuisance associated with the childcare facility and may even result in amelioration of any such impacts arising from the operation of the facility at this location. Notwithstanding this, a condition restricting the number of childcare places to 69 would be appropriate.
- 7.3.3.** It is further noted that the elevational changes are relatively minor and that there would be no increase in overlooking or overshadowing from the proposed development. It should be noted that there is evidence on the file of considerable support from the residents of the estate and locality for the proposed creche facilities and that it is a requirement of the governing permission that childcare facilities be

provided on this site. It is considered that any additional disturbance arising from the additional parking and set-down spaces would be mitigated by the proposed traffic management arrangements.

- 7.3.4.** In conclusion, it is considered that subject to the capacity of the facility being restricted to 69 childcare places, the proposed development would not result in overdevelopment of the site and would not injure the residential amenities of neighbouring properties.

7.4. Traffic and road safety

- 7.4.1.** The appellant believes that the proposed development would give rise to road safety issues by reason of the additional traffic volumes that it would attract and by reason of the turning movements into and out of the estate and the site given the design of the estate road (with bend and tendency to speed), inadequate levels of parking provision and lack of appropriate mitigation measures proposed. The Traffic Management Plan submitted with the application was considered to be inadequate. It was stated that the number of childcare spaces should be capped at 43, and that a Road Safety Audit should be carried out together with the implementation of mitigation measures which would prioritise pedestrian safety and provide for traffic calming within the estate.
- 7.4.2.** As stated previously, it is not clear whether the proposed development would amount to a material intensification of the use. Notwithstanding this, the parking provision has been increased (relative to 14/6533) from 10 to 14 spaces and 3 set-down spaces have been introduced. This meets, and even exceeds, the parking standards in the Development Plan (11 spaces required). The Traffic Management Plan proposes the following additional measures:
- A one-way traffic system is proposed with a separate entrance and exit to the estate road. Adequate sightlines are available at the exit.
 - Staggered drop-off and collection times. There will be an inherent staggering of dropping/collecting times due to type of care and age of children but in addition, the times will be varied by classroom. These times will be monitored and reviewed with adjustments as necessary.

- A traffic warden will be appointed to manage traffic during peak times, if necessary. The Traffic Warden will take measures such as ensuring that the traffic does not back up onto or park on the estate road.
- Management policy will be to encourage staff to carpool, cycle to work or to park on a nearby public car park which is located approx. 650m to the south-east. A secure bicycle rack is also provided.

7.4.3. The enhanced parking provision, with set-down and a one-way system, together with the additional measures in the TMP would be likely to compensate for any additional traffic that would arise from the proposed development. These additional measures and enhancements were not part of the governing permission for a building of a similar size and would, therefore, be a welcome addition to the traffic management of the area. Should the Board be minded to grant permission, a condition requiring these measures to be implemented should be attached to any such permission. However, it is noted that there is no boundary wall proposed along the front boundary (with Ocean Drive), which could result in haphazard parking encroaching onto the footpath. This matter should also be addressed by condition, should permission be granted.

7.4.4. I note from the P.A. website, (regarding permission granted under Ref. 14/6533), that the permitted road layout includes traffic calming measures such as flat table-top ramps to be provided on Ocean Drive on either side of the site, and that a Road Safety Audit was carried out as part of the compliance with this permission (submitted to P.A. on 23/12/15). In addition, there is no footpath at present on the northern side of Ocean Drive, but one is proposed as part of the permitted development. As the governing permission (14/5633, as extended) has not yet been fully completed or taken in charge, and it will be necessary for the estate to be completed to the satisfaction of the planning authority prior to taking in charge, it is considered that these matters will be addressed in due course.

7.4.5. In conclusion, having regard to the permitted road layout for the estate, which is currently being advanced, and subject to appropriate conditions including the adoption of the measures included in the Traffic Management Plan, it is considered that the proposed development would not give rise to a traffic hazard, would not obstruct road users and would not endanger the safety of other road users.

7.5. Layout and Design

7.5.1. The grounds of appeal and objections from third party observers focussed to a considerable extent on whether the proposed development complied with the internal layout and spatial standards for childcare facilities and the external play areas for such facilities. The concerns raised referred to specific internal standards in great detail, as required by the childcare regulations and guidelines. The first party, in response, has pointed out that the capacity of the facility is limited by the floorspace requirements and that the maximum number of children to be accommodated is 69, with 11 staff. It is further pointed out that this will be enforced by TUSLA.

7.5.2. According to the Government website <https://www.gov.ie/en/policy-information/3511da-childcare/?fn=/documents/childcare/regulations.htm> (last updated 2/12/22), it is stated that

“Tusla Early Years Inspectorate is the independent statutory regulator of ELC and SAC services in Ireland. It is responsible for the registration and inspection of all ELC and SAC services including playgroups, day nurseries, creches, day care, school-age childcare and similar services catering for children aged 1-14 years.....[which] is achieved through the registration, inspection and enforcement processes prescribed by law and implemented by the Tusla Early Years Inspectorate”.

7.5.3. As stated previously, planning authorities (including An Bord Pleanála) have been directed by Circular PL03/2016 to disregard the minimal spatial standards for children as set out in Appendix 1 of the Childcare Guidelines (2001). Thus, the assessment of the internal spatial standards and the external play facilities for a creche are no longer to be assessed under the planning code. This matter will be assessed and subject to ongoing monitoring and review by Tusla, and I do not intend to refer to it any further. Notwithstanding this, it is considered that should the board be minded to grant planning permission, conditions restricting the number of childcare places to 69 and requiring the provision of a secure outdoor play area should be attached to any such permission.

7.6. Procedural issues

7.6.1. The first party has submitted that the third-party appellant failed to comply with the requirements of Section 127(1)(b) of the Planning and Development Act, 2000 (as

amended), as he does not reside at the address given in the appeal as submitted.

S127(1)(b) states as follows :-

“ (1) An appeal or referral shall

(b) state the name and address of the appellant or person making the referral and of the person, if any, acting on his or her behalf”.

Section 127 (2) (a) states :-

“An appeal or referral which does not comply with the requirements of subsection (1) shall be invalid”.

- 7.6.2.** The first party has substantiated these claims with evidence from the Land Registry showing the owners of the property to be Daniel Healy and Catherine O’Connell, who appear to have owned the property since June 2017. A letter from the current owner of Bandon House was also submitted which confirms that Mr Healy is the registered owner, and that Mr. Byrne does not have permission to use his address, nor does he reside at the property.
- 7.6.3.** The third-party appellant acknowledges that the address used by him, in submitting his appeal, was Bandon House, Ballywilliam, Kinsale and that he doesn’t reside there. He stated that he had previously owned the house, but that he had sold it to the current owner. He further submitted that he had put a postal re-direction order on the property and appears to be using it as his ‘business address’. When a response was sought by the Board from the parties, Mr. Byrne had emailed An Bord Pleanala requesting that the correspondence be re-sent to his current address at Turner’s Cross, Cork City. It was further revealed in this response (27/6/22) that he was representing directors of Egan Hearwell Ltd., who it is claimed own two of the houses on Ocean Drive opposite the site. Whilst this was confirmed by Mary Egan (observer), their names and addresses were not given.
- 7.6.4.** I would concur with the first party that the appellant does not seem to comply with the requirements of section 127(1)(b). The use of a former address, which had been sold to an unrelated party approx. 5 years prior to the submission of the appeal, at which the appellant does not reside, seems at least disingenuous. Furthermore, the failure to clarify that Mr. Byrne was acting as an agent for property owners of two houses within the estate, albeit with no evidence submitted to substantiate this, was

also misleading. However, when these facts are taken together with the opening statement of the grounds of appeal:-

“By Patrick Byrne, Ballywilliam Kinsale, Co. Cork on our own behalf and also on behalf of a number of local property owners of Kinsale Manor....”

together with the following statements -

“.... [the proposed development] represents a substantial intensification which is not acceptable to the residents of Kinsale Manor and compromises their amenities and enjoyment of the estate they bought into along with road and pedestrian safety” and

“The residents of Kinsale Manor will accept a provision of 43 to 46 child spaces, based on the above rule of thumb of 3.75 dwellings per child space.... The residents do not accept the planner’s assertion that 69-creche spaces ‘strikes a balance with preserving amenities of nearby residents’. The residents contend that the intensification will have a major traffic impact...”.

It is considered that there appears to have been an attempt to misrepresent the status of the appellant.

- 7.6.5.** Having regard to the foregoing, the Board may come to the view that the appeal is vexatious and that it does not comply with the requirements of Section 127 (1) (b) of the P&D Act 2000 (as amended). As such, the Board could decide to declare the appeal invalid and dismiss it on these grounds. Notwithstanding this, however, and should the Board disagree, it is considered that the proposed development is acceptable for the reasons outlined above and that it would be in accordance with the planning policies for the area, would not materially contravene the terms of the governing permission, and would be in accordance with the proper planning and sustainable development of the area. The Board could, alternatively, therefore, grant permission for the creche as proposed subject to appropriate conditions.

7.7. Environmental Impact Assessment

- 7.7.1.** Having regard to the nature and scale of the development, 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.

7.8. Appropriate Assessment

- 7.8.1.** The site is located within 15km of two Natura 2000 sites. The Sovereign Islands SPA (Site code 004124) and the Old Head of Kinsale SPA (Site code 004021) are located c.7km to the south-east and c.10km to the south-west, respectively. Given the distances involved, that the residential use of the estate is an established one and as the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

- 8.1.** It is recommended that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Cork County Development Plan 2022-2028, to the planning history of the site and area, to the nature and scale of the development and to the existing pattern of development in the vicinity of the site, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 25th day of March 2022 and the 28th day of March 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The developer shall comply with the following requirements: -
- (a) Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, the use of the building proposed to be retained and completed shall be restricted to a single childcare facility as specified in the lodged documentation, unless otherwise authorised by a prior grant of permission.
 - (b) The number of children to be accommodated within the premises shall not exceed 69 at any time in any session.
 - (c) A secure outdoor play area shall be provided for the use of children attending the childcare facility, details of which shall be submitted to, an agreed in writing with, the planning authority prior to first occupation or use of the development.

Reason: In the interest of the residential amenity.

3. The Traffic Management Plan submitted with the application shall incorporate the following measures
- (a) Drop off and collection times for children shall be staggered by classroom, by a minimum of 10 minutes in order to reduce sudden influxes of traffic. The drop off and collection times shall be reviewed with the planning authority at regular intervals and modified, if required.
 - (b) A traffic warden shall be employed by the operator of the childcare facility to manage peak hour traffic.
 - (c) A mobility management plan to encourage carpooling and alternative sustainable modes of travel to and from the childcare facility shall be submitted and agreed in writing with the planning authority
- Details of these measures shall be submitted to and agreed with the planning authority and shall be implemented in full prior to first occupation or use of the development.

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

4. (a) Car parking, set-down areas and bicycle parking for the development shall be provided in accordance with the Site Layout Plan Drawing No. 32446.003 (Rev. P01) submitted to the planning authority on 11th day of February 2022 prior to the commencement of the use.
(b) No parking shall take place on the public road or footpath outside the site.
(c) A plinth wall shall be erected along the front boundary on either side of the proposed entrance and exit to the site.

Reason: To ensure adequate off-street parking and set-down space is available to serve the development in the interests of pedestrian and traffic safety.

5. Details of the materials, colours and textures of the external finishes to the proposed childcare facility and the boundary walls shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. Water supply and drainage arrangement, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. The developer shall enter into a connection agreement with Irish Water prior to commencement of development.

Reason: In the interest of public health.

7. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities within the site shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

8. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority and shall be implemented prior to commencement of the use.

Reason: In the interests of amenity and public safety.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Mary Kennelly
Senior Planning Inspector

8th March 2023