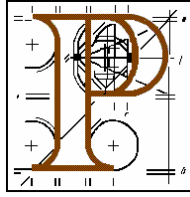


# An Bord Pleanála



## Inspector's Report

**PL 04.233744**

**DEVELOPMENT:** Mixed use neighbourhood centre development including café, office/ medical floor space, 18 no. apartments and all associated works, Pembroke Woods, Pembroke, Passage West, Co. Cork.

### PLANNING APPLICATION

**Planning Authority:** Cork County Council.  
**Planning Authority Reg. No:** 08/9094  
**Applicant:** Paul Hanlon  
**Application Type:** Permission  
**Planning Authority Decision:** Grant

### APPEAL

**Appellant:** Paul Hanlon (1<sup>st</sup> Party)  
The Residents of Pembroke Wood & Avenue  
Pembroke Woods Residents' Association  
Gráinne Farren

**Type of Appeal:** First Party  
Third Party

**Observers:** D & M McMahon  
Passage West Town Council

**DATE OF SITE INSPECTION:** 03/08/2009

**INSPECTOR:** Anne Marie O'Connor

## **1.0 SITE AND DEVELOPMENT DETAILS**

### **Site Location and Description**

- 1.1 The site is located in the centre of a housing estate of 415 dwellings entered from a roundabout on the Rochestown Road (R610) on the eastern approach to Passage West. The town centre of Passage West is approximately 1.75 kilometres from this roundabout to the south east. The South Ring lies some 5 km to the west of the site. The area is generally characterised as a low/medium density suburban environment.
- 1.2 Estate roads bound the site to the north and west with an area of public open space and a row of 2-storey semi-detached dwellings (Pembroke Park Drive) beyond respectively. To the east lies 2 no. blocks of 3-storey duplex units (The Grove and Avenue). Car parking for the duplexes is located in a parking court to the rear of the blocks. 'Doodlebugs' crèche, part 2-storey, part single-storey building lies to the south. A footpath runs the site boundary to the north, east and west.
- 1.3 The site is relatively flat and has a stated area of 0.36 ha. It is partly grassed with some construction equipment in the centre of the site surrounded by barriers in a somewhat haphazard manner, and also includes the crèche car parking area.

### **Description of Proposed Development**

- 1.4 Planning permission is sought for the erection of a four storey building comprising:

#### Ground floor

- Ground floor café (18 sq.m.) with external seating area
- 214 sq.m. office/ medical floorspace with option for internal subdivision of up to 4 no. units
- 195 sq.m. retail floorspace with option for internal subdivision of up to 4 no. units

#### First, Second and Third floor

- 22 no. 2-bed apartments

61 no. surface level car parking spaces are provided, mainly to the south and east of the proposed building. 19 of these spaces are for the use of the existing crèche. An area of open space is provided to the west of the building.

### **Further Information**

- 1.5 The scheme was significantly revised following the submission of further information and clarification of further information. The principle amendments are as follows:
- Increase gross floor area by some 200 sq.m. to 2,770 sq.m.

- No. of apartments reduced from 22 no. to 18 no 2-bed units
- No. of retail units reduced to 2 no. (192 sq.m)
- No. of office/ medical rooms reduced to 3 no. (206 sq.m.)
- 1 local play area and 1 playground proposed within the public open space
- landscaping proposals submitted.

1.6 A legal agreement between the applicant and the developer of the estate (Histron Ltd) is submitted which allows the applicant to connect to private services for surface and foul water disposal, and water supply.

## **2.0 PLANNING AUTHORITY DECISION**

2.1 The planning authority issued a notification of decision to **grant** planning permission on 7 May 2009. The following conditions are of note:

- Condition no.2: permission granted for 18 no. apartments, 2 no. retail units, a café and 3 no. office/medical unit. Each of the 3 no. medical units shall have a maximum of 1 no. consulting rooms.
- Condition 3: subdivision of retail or office/ medical units requires prior permission of planning authority.
- Condition 6: Part V social and affordable housing.
- Condition 21: Provision of local play area and playground area in the area of public open space.
- Condition 40: Development contribution in respect of specific exceptional costs which will benefit the development (3 no. raised speed tables).
- Condition 41: S.48 development contribution.
- Condition 42: 19 no. car parking spaces to be provided for the use of the adjoining crèche.

## **3.0 PLANNING APPLICATION**

3.1 The application was submitted to the planning authority on 30 September 2008, with further information submitted 14 April 2009.

### **3.2 Planner's Report**

Recommends **grant** of permission. Following issues considered:

- Site located within development boundary of Passage West and zoned Established Primarily Residential.
- Planning history for commercial/ shop uses on site.

- Overshadowing not likely to occur having regard to orientation and separation distances.
- Design, form and public open space acceptable.
- Comments of area engineer regarding parking and traffic noted.

### 3.3 Technical Reports

*Area Engineer:* Traffic calming in vicinity of crèche set down area should be provided. Special Contribution recommended. Parking provision will not support the parking demand required for more than 3 consulting rooms (i.e. 1 per unit. Initial concerns raised regarding through road.

*Estates Engineer:* No. of spaces to be allocated to crèche unclear.

Waste Management: No comment

HSE: No objection in principle.

### 3.4 Prescribed Bodies

*South Western Regional Fisheries Board:* No objection to disposal of effluent to public sewer provided it does not overload existing facilities.

### 3.5 Third Party Submissions

Twenty nine third party submissions were received, including an objection from Passage West Town Council. Issues raised are generally covered by the grounds of appeal and observations to the appeal. Additional issues can be summarised as follows:

- Impact on vibrancy and vitality of existing town centre.
- Not consistent with Retail Planning Guidelines.

An objection was also received from Cllr Seamus McGrath.

## 4.0 PLANNING HISTORY

### **S97/4695**

445 no. dwelling units (reduced to 417 by condition). **Granted.**

### **PL 04.126423 – (S/01/3327)**

Amendment to S/97/4695 - Change of three number duplex blocks consisting of 18 duplex units and 18 duplex apartments (blocks 4, 6 and 8) to three number apartment blocks consisting of 54 number apartments. **Refused** for one reason: proposed development deficient in quality having regard to the design of the apartments, provision of parking, and amendments to the overall layout.

**PL 04.130785 - (S/01/6933)**

Creche, 3 no. commercial/retail units including foodstore and medical/beauty therapy centre, offices, public house & restaurant. **Granted** (significant revisions required by condition). Only creche building constructed. File attached.

**S05/2237**

Change of use first floor of building from medical/beauty therapy unit to crèche (above existing crèche). **Granted**.

**5.0 PLANNING POLICY**

5.1 The *Cork County Development Plan 2009* and *Carrigaline Electoral Area Local Area Plan 2005* are relevant in this instance. The appeal site is located within the development boundary for Passage West and is zoned “Established Areas Primarily Residential” by the LAP. The strategic aim of the LAP for Passage West is consolidation as a key inner satellite town with main focus on residential uses and town centre renewal. Passage West is designated as a ‘Neighbourhood Centre’ in the retail hierarchy for the County. There is a specific objective ‘T-01’ for the redevelopment of the town centre.

Passage West is designated as a “Metropolitan Town” by the County Development Plan (CDP) and the Local Area Plan (LAP). Object SER 2-12 seeks to “support the function of Passage West primarily as a residential settlement due mainly to its close proximity to both Cork City and the employment centres of Ringaskiddy and Carrigaline”. Objective ECON 4-8 acknowledges the importance of local or ‘corner’ shops in suburban locations in meeting local shopping needs.

**6.0 GROUNDS OF APPEAL - Third Party Appeal**

6.1 Three third party appeals are submitted from Pembroke Woods Residents’ Association, Gráinne Farren and Declan Mullins (Doodlebugs crèche) , and Residents of Pembroke Wood and Avenue.

**Pembroke Woods Residents’ Association**

6.2 The grounds of appeal can be summarised as follows:

- Contrary to zoning objectives and policies outlined in the County Development Plan 2009, Retail Strategy 2004, and the Carrigaline Electoral Area LAP 2005 which require that uses should be located within nearby town/neighbourhood centres.
- Significant increase in volume of traffic (including delivery trucks) on the single entrance to the estate which is already a very wide and busy road with no traffic calming measures in place.

- Height and footprint would have enormous effect on property values and loss of amenity.
- Parking provision inadequate. Does not take account of existing apartments.
- Loss of light and overshadowing of existing apartments.
- Loss of privacy to existing apartments.
- Loss of public open space.
- Location of playground adjacent to main entrance a safety hazard.
- Fear that medical and retail units would remain vacant as happened in the adjoining Ardmore estate. These units should be provided for in Passage West town itself. New supermarket opened only 300 yards from entrance to estate. A major development is also proposed in Passage West (PL 04.130785). There will be no need for the proposed development.

### **Gráinne Farren and Declan Mullins**

- 6.3 The appellants are the proprietors of the adjoining Doodlebugs Crèche and Montessori. The grounds of appeal can be summarised as follows:
- Crèche car parking is the private property of the appellants and no permission has been given for dual use of these spaces by residents or customers of the new development. The proposed development has a shortfall of 4 parking spaces. Concern that the crèche's parking will be illegally used by new residents and customers leaving insufficient parking for drop-off and staff.
  - Danger to children and parents from additional traffic.
  - Loss of light to crèche building. Overshadowing assessment submitted by the applicant does not include the crèche building.

### **Residents of Pembroke Wood and Avenue**

- 6.4 This appeal is signed by the occupants of the 24 units in the 3-storey duplex buildings opposite the site (The Grove and The Avenue). The grounds of appeal can be summarised as follows:
- Development will block out all natural light.
  - View of green fields in the countryside would be completely obstructed.
  - Loss of green open space.
  - Out of character with buildings in the area.
  - Increase traffic and noise pollution.
  - Site being used as construction storage causing major disturbance to residents. Possibility of site being abandoned and residents having an ugly building site in front of their homes indefinitely.
  - Doubt as to ability to sell proposed development in current economic climate.

## **Applicant Response to Grounds of Appeal**

6.5 The applicant's agent, McCutcheon Mulcahy, has responded to the grounds of appeal as follows:

- The scheme provides 19 car parking spaces for the crèche which is above the parking requirements for such a use. The CDP (6.3.19) provides for dual use car parking for mixed-use/ neighbourhood developments. Even disregarding the 19 no. spaces reserved for the crèche, there is still sufficient car parking provided for the proposed development.
- Parking for the apartments is located to the east of the apartment block. There is no need or reason to provide additional parking for these units.
- The number of units in Pembroke Woods itself would sustain a population of over 1,000 persons. The type of uses proposed have been chosen on the basis of serving local need and not on the basis of attracting custom from outside its immediate hinterland. These are services which are required in any community and are not currently provided in this part of Passage West.
- The development will reduce traffic generation by reducing the need for trips outside the area to other centres and by facilitating pedestrian access to services that would otherwise only be accessible by car.
- The provision of the 3 speed tables will greatly improve traffic calming and pedestrian safety.
- A minimum separation distance of 29m is provided between the proposed development and existing dwellings to the east and west. This is on the whole more substantial than the previously permitted scheme.
- Orientation and positioning of windows has been carefully designed to avoid opposing windows which are in close proximity of which could result in any overlooking of private amenity space.
- There are no buildings to the south of the proposed development.
- The substantial separation distances provided to the east and west will ensure that there will not be any negative overshadowing.
- There will be no overshadowing of the crèche, which will actually cast a shadow on the proposed development (mitigated by the separation distance).
- Sufficient measures will be put in place to minimise construction impacts on the adjoining properties. A number of conditions to this effect are attached to the planning authority's decisions to grant permission (Nos. 7, 31 and 41).
- Proposed development complies with zoning objectives and policies of the County Development Plan and the Local Area Plan.
- The appeal site was clearly reserved for "community services, such as a shop, pub, surgeries and crèche" on the site layout for the overall residential development permitted under 97/4695. Permission was subsequently granted by the Board for a neighbourhood centre (PL 04.130785).

- Total site coverage is just 16.8% and the plot ratio is just 0.7 – this is entirely appropriate for any neighbourhood centre development. 26.5% of the site will be open space/ amenity use.
- The proposed development is consistent with the adjoining apartment block in terms of massing and height.
- The proposed scheme will have a very positive affect on this part of the overall estate and drastically improve the appearance and visual amenities of this part of Pembroke Woods.
- Proximity to the neighbourhood centre and open space/ amenities could result in stronger property values for adjoining property owners. There is no evidence to show that properties could or would be devalued.
- The applicants are experienced developers and have undertaken this scheme on the basis of solid commercial advice, which is based (amongst other things) on the substantial population within the immediate catchment of the neighbourhood centre and on the lack of similar facilities in the area.

### **Planning Authority Response to Grounds of Appeal**

- 6.6 The planning authority has responded to the grounds of appeal as follows:
- Comments as per original report.
  - Site intended for commercial use under governing permission for Pembroke Woods estate under 97/4695, and under 01/6399 permission was granted on the site for a commercial development.
  - Issues regarding impact on light assessed through overshadowing study and results, in consultation with Architects Department, considered acceptable.

### **Observers**

- 6.7 Passage West Town Council objects to the proposed development on the following grounds:
- Unhappy with the assessment carried out by Cork County Council.
  - Issues with completion of the estate. Play areas, sports fields and landscaping have not been carried out. Although construction first began over 10 years ago the estate had never been finished and has not as yet been taken in charge by Cork County Council.
  - 4-storey proposed development represents an overdevelopment of the site affecting road safety, parking, and loss of amenity, light and privacy.
  - Details of vacant retail and medical units in the area are provided. It is reasonable to assume that there is little demand for either medical or retail units at the eastern end of Passage West.
  - The original planning permission which reserved the appeal site for commercial use did not intend additional apartments as proposed. Permission for 249 apartments has been granted in the adjoining



Harbour Heights development (Ref. 03/4501) and a further 350 in the Royal Victoria Docklands (the subject of an appeal). It is reasonable to assume there is little demand for apartment at the moment in Passage West.

- Concern that construction could commence but not be completed.
- Much of the green space in Pembroke Wood is badly drained and is too wet to be usable except in all but the driest summers. The appeal site is well drained and flat and is of tremendous value to residential amenity.
- There were no commercial services available at the eastern end of Passage West when the original planning permission was granted. This need has been served in the 11 years since. It is suggested that if a neighbourhood centre is so badly needed at this location, neither the Town Council nor residents of Pembroke Wood would be asking the Board to refuse the proposed development.

6.8 Darran & Martina McMahon, residents of Pembroke Park Drive, object to the proposed development on the following grounds:

- Does not comply with objectives of CDP or LAP
- Large volumes of traffic
- Detrimental impact on residential amenity of surrounding dwellings.
- Parking inadequate
- Road network not suitable for delivery vehicles
- Refuse plan inappropriately located and not large enough
- 4-storey height inappropriate
- No need for retail/ commercial development in the area. Large number of vacant units in the vicinity of the site.
- Hours of construction as per condition excessive

## **7.0 GROUNDS OF APPEAL - First Party Appeal**

7.1 This appeal relates to **Condition 40**, which requires the payment of a **special contribution** of €10,615 to Cork County Council in respect of “works proposed to be carried out for the provision of 3 no. raised speed tables at both entrance locations and the existing cross road”.

7.2 The grounds of appeal submitted by McCutcheon Mulcahy, on behalf of the appellant, can be summarised as follows:

- The Council is not in a position to provide these raised speed tables as the adjoining residential area has not been taken in charge by the Council. The applicant is willing to assist in the provision of these raised tables, but it is considered that the charge is excessive. It is the applicant’s preference to provide these speed tables in conjunction with the adjoining developer.
- The Council has double charged for roads facilities by levying for these facilities on both the general and special contributions. The

appeal site is zoned residential and has been identified for development since the 1996 CDP and would, therefore, have been included in the Council's assessment of the "amount of development that is projected to happen" during the life of the contribution scheme.

- The Council has not demonstrated that the costs incurred under the special contribution are either specific or exceptional as required by section 48(2)(c) of the Planning and Development Act 2000. The speed tables have also been sought by the Council from the adjoining development and it is understood that it is still the intention of the adjoining applicant to provide these facilities.

### **Planning Authority Response to Grounds of Appeal**

7.3 The planning authority has responded to the first party appeal as follows:

- This estate is at present a private estate. It is anticipated that the estate will be taken in charge by the Council.
- The development will substantially increase the number of traffic movements within the estate. Construction traffic will utilise the existing estate roadways to access the site.
- As road/ public safety issues were not incorporated into the design, it was considered appropriate to deal with the issue by way of condition.
- It was not considered appropriate to condition the installation of the speed tables as the land was not owned by the applicant. The installation was dealt with by levying a special development contribution.
- Details of facilities concerned: 2 no. speed tables at entrances to proposed development and 1 no speed tables on existing junction adjoining the development.
- A breakdown of the cost per table is provided.
- The speed tables will allow the development to be constructed and accessed in a safe manner while maintaining the safety of existing residents.
- The requirement for speed tables is as a result of the type and scale of traffic generated by this development. Consequently the entire cost of the ramps was levied on this application.

### **Applicant's Response**

7.4 McCutcheon Mulcahy has responded to the planning authority's submission as follows:

- The Council is not in a position to provide the raised speed tables as the estate is not taken in charge. Whilst it is accepted that the estate will eventually be taken in charge, the Council should not impose a special contribution which is contingent on an indefinite timeframe for taking a development charge.

- A letter of consent was submitted to the planning authority from the adjoining landowner (i.e. Histron Ltd) allowing the applicant to undertake the provision of services facilitating the development.

### **Further submissions on First Party Appeal**

- 7.5 The Pembroke Woods Residents' Association has responded to the planning authority's submission as follows:
- Speed ramps also required between the roundabout at the entrance and the junction adjacent to the proposed development.
  - Estate has still not been completed or taken in charge. It is considered entirely appropriate that suitable speed tables are provided by the applicant as a condition.
  - Entrance to proposed development is both sharp and narrow making it difficult for delivery trucks to access the designated parking. Parking on the road side would result in a safety hazard.
  - Size of delivery truck should be specified by condition.
- 7.6 Passage West Town Council has responded to the planning authority's submission. The points raised are covered by the previous submission as summarised at 6.7 above.
- 7.7 A submission from Darran & Martina McMahon, residents of Pembroke Park Drive raises an objection in relation to the inability of the estate road network to cater for the increased traffic and size of vehicles. Concerns in relation to road safety are not addressed by the provision of three speed tables.

## **8.0 ASSESSMENT**

- 8.1 I have examined the file and planning history, considered the prevailing local and national policies, inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. I have also had regard to the nature and extent of development both as originally proposed, and as revised by the revised plans submitted in response to the planning authority's request for further information. Having regard to the concerns of the planning authority, I recommend that The Board consider the application in reference to the revised plans and particulars as submitted to the planning authority on 14 April 2009. The remainder of this assessment has had regard to this revised scheme. I propose to deal with the third and first party appeals separately, and in that order.

### **Third Party Appeal**

- 8.2 I consider that the key issues in this case are as follows:
1. Principle of Development

2. Density, Design and Height
3. Residential Amenity
4. Traffic and Parking
5. Other Matters

### **Principle of Development**

- 8.3 The appeal site is zoned “Established Areas Primarily Residential” in the *Carrigaline Electoral Area Local Area Plan 2005*. Whilst there is no zoning matrix setting out permitted uses for this objective, it is reasonable to interpret the zoning objective as providing for a certain level of non-residential uses. The original permitted layout for the housing estate (Reg. Ref. S/97/4695) shows the footprint of a commercial centre (a single building) approximately in the centre of the appeal site. Response to Further Information on that application (dated 12/03/1998) states that the commercial centre envisaged for the site is considered necessary for the long term in view of the fact that the population of the estate alone could possibly reach 1500. It is argued that some local services with adequate car parking should be provided to serve the immediate locality and to avoid unnecessary travelling distances to the village. The proposals are limited to a shop, a restaurant, a crèche, a video store, a pharmacy and some social facility such as a medical centre.
- 8.4 The Board subsequently granted planning permission for a 2-storey retail and office building and separate crèche building on 14 April 2003 (PL.04.130785). Only the crèche building has been constructed and this permission has now expired. In deciding not to accept the Inspector’s recommendation to refuse permission, the Board stated that it had regard to the planning history of the site and considered that the scale of development as modified by conditions was an appropriate form of development for the site. Condition 2 of the Board’s decision reduced the ground floor retail/ commercial floorspace by 35% and the first floor offices by a further 50%. I estimate that this would have resulted in a floor area of c.340 sq.m. retail/commercial at ground floor level, and either c.250 sq.m. or 160 sq m of offices at first floor level depending on the interpretation of the condition. The condition also required that an open space area, with an average of not less than 25 metres depth, be provided to the side (north) of the building. The reason for this condition was to ensure an appropriate balance between the development of the site for appropriate uses within the housing development and the provision of adequate and usable public open space.
- 8.5 Given the planning history as set out above, I am satisfied that the entire appeal site was never intended to be reserved for open space, and I do not accept the appellant’s argument that planning permission should be refused on the basis of the loss of public open space..
- 8.6 The proposed development comprises 214 sq.m. office/ medical and 195 sq.m retail plus 18 sq.m. café. This represents a total of 427 sq.m., which is below the previously permitted floor area. However, the observation by Passage West Town Council draws attention to retail and medical developments in the vicinity of the appeal site including the Eurospar supermarket, off-licence and

café and 4 no. adjacent retail units some 250 m from the entrance to Pembroke Wood on the Rochestown Road, and 4 no. medical units at the entrance to the Ardmore Estate some 150m east of the Pembroke Wood entrance. (Photographs of these developments are attached to the observation submitted by Passage West Town Council.). The appellants and observers have pointed out that 3 of the retail units at Eurospar are currently vacant, as are the 4 no. medical units at Ardmore.

- 8.7 I note that both the Eurospar and Ardmore developments were granted planning permission and constructed subsequent to the Board's previous grant of permission, and are within easy walking distance of the Pembroke Woods estate. In light of the proximity of these developments, the high level of vacancy indicating a lack of demand/ need for such facilities, and the fact that the commercial centre was only ever intended to meet the needs of local residents, I am inclined to agree with the objectors that the scale of the floorspace proposed is in excess of the needs of the residents of Pembroke Woods and the immediate environs at this point in time.
- 8.8 In relation to the possible use of the medical units as offices, I agree with the objectors that this use is more appropriately located in the town centre rather than at the centre of an established housing estate. Whilst a bus service does run between Passage West and Cork City, the location of the appeal site is such that I consider it highly unlikely that any employees of an office use would use anything other than the private car to travel to work. I also consider that the floor area of proposed office/ medical unit 1 (128 sq.m.) is in excess of that required as a single consulting room (as required by Condition 2 of the planning authority's decision). This increases the likelihood that the unit would be used for offices.
- 8.9 Should the Board be otherwise minded to grant permission, I consider that medical floor area should be reduced, at least by the equivalent of unit 1, and a condition attached preventing the use of any of the units as offices.
- 8.10 In light of the zoning objective for the area and the location of the site in an established housing development, I have no objection to the principle of the proposed apartments subject to the consideration of the relevant planning criteria as set out below.

### **Density, Design and Height**

- 8.11 In relation to the density of the proposed development, I note that the proposal to provide 18 no. 2-bed apartments on a site of 0.36ha which represents a density of 50 dwellings per hectare. The appeal site lies in a central area within a traditional low density housing estate, although the 3-storey blocks of apartment/ duplexes do represent an increase in the density and height adjacent to the appeal site. I am, however, concerned that the proposed density, which represents just the upper floor residential use, is excessive at this location, particularly given the large area of surface parking on the site.

- 8.12 The grounds of appeal raise the issue of the 4-storey height of the proposed development, which is considered to be out of keeping with the established character of the estate. The Board will note that the ridge height of the proposed building (12.9m, +27.9), which is essentially a flat roof building, is significantly higher than the maximum ridge height which would have resulted from the previously permitted 2-storey building. I am in agreement with the appellants that the proposed height is not in keeping with the established character of the estate and would appear incongruous at this location. Should the Board be otherwise minded to grant permission, it may be considered that this issue could be addressed by the omission of the second floor (resulting in the loss of 4 no. apartments)
- 8.13 I have no objection to the proposed development on the grounds of the modern nature of the design and architectural treatment.

### **Residential Amenity**

- 8.14 The grounds of appeal raise an objection to the proposed development in relation to the impact on the residential amenity of the existing 3-storey blocks of duplex apartments to the east and in the estate in general.
- 8.15 I note that the ground floor apartments and upper level duplexes at The Grove and Avenue currently overlook a parking court to the rear which is completely hard surfaced. The proposed development includes 42 no. surface car parking spaces to the east of the proposed building and as a consequence the residential units at The Grove and Avenue will overlook car parking to the front and the rear. Whilst I note that there is some car parking serving the crèche to the front of the apartments at the southern end of the site, the nature of the crèche use means that it is not used outside of working hours and is mainly used as drop-off parking during this period. Furthermore, the occupants currently have an open aspect beyond the parking, where-as the proposed development would result in a 4-storey building at this location. The Board will also note that whilst parking for the previously permitted scheme was located in a similar position on the site, the separation distance to the proposed building was significantly larger (between 45 and 55m), and parking did not extend along the full extent of the eastern site boundary. This scheme also provided for views of the public open space from the existing blocks which is not the case in the proposed layout. Given that the ground floor apartments in these blocks appear to have no area of private open space, and the views from the rear balconies of the duplexes is of the parking court, I am of the opinion that, when combined with the height and proximity of the proposed building, the development would seriously injure the visual outlook of the residents of these dwellings.
- 8.16 The issue of overshadowing is also raised in the grounds of appeal. In this respect I note that the proposed building is located to the west of the existing apartment blocks with a separation distance of 27 m. Even taking into consideration the 4-storey height of the building, I am in agreement with the

findings of the overshadowing assessment submitted by the applicant that the proposed development would have no significant impact in this respect.

- 8.17 Whilst I appreciate that the proposed development will result in a change in outlook for the residents of the existing 2-storey semi-detached houses to the west and the crèche to the south, I am generally satisfied that the separation distances from the proposed building and the provision of an area of public open space between the existing and proposed developments mean that the impact in terms of overlooking, overshadowing, or loss of visual outlook would not be sufficient to justify a refusal of planning permission.
- 8.18 In relation to the residential amenity of the future occupants of the proposed development, I note that the revised plans generally accord with the provisions of the DoEHLG guidelines for apartments and I have no objection to the proposed development in this respect.

### **Traffic and Parking**

- 8.19 The grounds of appeal also raise an objection to the proposed development on the grounds of increased traffic and safety for pedestrians and children on the estate. At the time of my site visit (a bank holiday Monday) I observed that the estate road was quite with groups of children cycling and kicking balls on the roadway and footpaths. Notwithstanding the issue of need or demand for the proposed commercial units, I am of the opinion that the scale and nature of the proposed development is in excess of that needed to serve the immediate locality and would need to attract significant trade from outside of the estate itself. Whilst I agree with the appellants and observers that this has the potential to generate a significant level of traffic, I note that the impact in this respect is very similar to that of the previously permitted scheme.
- 8.20 In relation to car parking I am satisfied that the development plan standards have been met in this instance and have no objection in this regard. I am also satisfied that the applicant has shown sufficient legal interest in the appeal site for the purposes of this application and that sufficient provision is being made for car parking in respect of the adjoining crèche.

### **Other Matters**

- 8.21 I am satisfied that the issues raised in relation to adherence to planning conditions attached to the permission for the housing estate, and the unauthorised use of the appeal site for the storage of construction equipment, are enforcement matters for the planning authority to resolve.

### **First Party Appeal – Condition 40**

- 8.22 The submitted plans show a speed ramp at both entrances to the proposed car parking area. The planning authority did not consider these proposals to be

acceptable and sought a special contribution for the provision of a speed ramp at both entrance locations and at the existing cross road junction. It is argued that a condition requiring the direct provision of the ramps by the developer was not attached as the land upon which the planning authority considers that the ramps should be constructed is outside of the control of the applicant. The grounds of appeal state that the applicant is willing to provide the speed ramps in conjunction with the adjoining developer. It is considered that the cost required by the planning authority (€10,615) is excessive.

- 8.23 Whilst I have no objection in principle to the provision of the said ramps by the developer, no evidence of an agreement between the adjoining developer and the applicant allowing the developer to construct the ramps has been provided. The letter of consent from the adjoining landowner (i.e. Histron Ltd) referred to by the applicant's agent relates solely permission to re-direct a public foot path, including services, and to replace the footpath with 6 no. car parking spaces. There is therefore, uncertainty as to the ability of the applicant to provide the speed ramps, and the enforceability of any condition requiring the developer to carry out these works.
- 8.24 All of the parties accept, however, that the Pembroke Woods estate has not been taken in charge and, as such, the planning authority is similarly not in a definitive position to provide the speed tables. The planning authority has, however, expressed its intention to take the estate in charge, although no time frame is provided.
- 8.25 The grounds of appeal further argue that the special contribution required by Condition 40 does comply with section 48(2)(c) of the Planning and Development Act 2000, which states:  
*“A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development”.*
- 8.26 Accordingly, the three criteria necessary to justify attachment of a “special contributions” condition are:
- (a) the contribution must be required in respect of a particular development, in circumstances where
  - (b) specific exceptional costs are incurred by the planning authority as a result of or in order to facilitate the development, and where
  - (c) such costs are not covered by a S48 Development Contribution Scheme.
- 8.27 Given the additional volume of traffic generated by the proposed development, the nature of that traffic which would include delivery trucks etc which would otherwise not enter the residential estate, and the proximity of the existing crèche and drop-off area to the site entrance, I consider that:
- (a) the contribution is required in respect of a proposed development;



- (b) the planning authority has provided a reasonable breakdown of the specific costs which would be incurred in the provision of the tables, and
- (c) such costs are too specific so as to be reasonably covered by the Cork County General Development Contribution Scheme (S.48) which, the scheme states, reflects the objectives as set out in the County Development Plan and were calculated by dividing the planned expenditure on the provision of services over twenty years by the amount of development that is projected to happen during that period.

8.28 I am of the opinion, therefore, that the provision of the speed tables in this instance meets the tests for a special contribution set out in the legislation.

8.29 Should the Board be minded to grant permission, I recommend that a condition be attached requiring that the developer should pay the special contribution as required by condition 40 unless the said ramps have been constructed prior to the commencement of development. In the event that the estate is not taken in charge and the works not completed by the Council, the contribution can be returned to the developer as is usually the case with special contributions. The possibility does, however, remain that the ramps will not be provided in the 'worse-case scenario where the developer fails to undertake the work, and the planning authority fails to take the estate in charge.

## **9.0 RECOMMENDATION**

Having regard to the above, I recommend that permission for the proposed development be refused for the reasons and considerations set down below.

### **REASONS AND CONSIDERATIONS**

1. Having regard to the recent retail and medical developments within walking distance of the proposed development, and the inappropriate location of the site for office use, it is considered that the scale and nature of the proposed development is excessive in terms of meeting local demand and would result in sustainable traffic patterns contrary to the proper planning and sustainable development of the area.
2. Having regard to the height of the building and layout of the proposed car parking and open space in relation to the existing residential development at The Grove and The Avenue, it is considered that the proposed development would seriously injure the residential amenities of the adjoining properties by reason of visual intrusion and a poor relationship with the proposed public open space, and would be out of character with the pattern of development in the vicinity and would seriously injure the visual amenity of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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**Anne Marie O'Connor**  
**Senior Planning Inspector**

17/08/2009