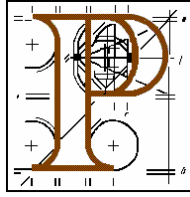


# An Bord Pleanála



## Inspector's Report

**PL 04.235253**

**DEVELOPMENT:** Change of use of former Bus Depot to mixed use development comprising 23 no. residential units, retail unit, car parking and all associated works.

**LOCATION:** Old Bus Depot, Glenbrook, Maulbaun, Passage West, Co. Cork.

### PLANNING APPLICATION

**Planning Authority:** Cork County Council.

**Planning Authority Reg. No:** 08/9457

**Applicant:** Haswell Properties

**Application Type:** Permission

**Planning Authority Decision:** Grant

### APPEAL

**Appellant:** Sinead & Barry Kiely  
Mr & Mrs Crotty  
Joseph & Angela O'Connor & Others  
Damian O'Neill

Haswell Properties

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

**Observers:** S.P. Steele  
P. Creighton

B & D Terry  
S. O'Shaughnessy  
D. McCarthy  
Passage West Town Council  
Damian O'Neill (1<sup>st</sup> Party Appeal)

**DATE OF SITE INSPECTION:** 03/03/2010

**INSPECTOR:** Anne Marie O'Connor

## **1.0 SITE AND DEVELOPMENT DETAILS**

### **Site Location and Description**

- 1.1 The site is located in Glenbrook, at the western end of Passage West, some 17 km from Cork City. The site comprises the former Glenbrook railway station which was part of an extension to the Cork-Blackrock-Passage West rail line to Crosshaven. It has more recently been used as a private bus depot and is currently vacant and over grown. There are two accesses to the site at the southern and northern ends of the site.
- 1.2 The site has a stated area of 0.34ha and is located at the foot of an 8m high steep rock escarpment with a soil overburden. The site itself is relatively flat. It comprises a long (170m) and narrow (15-27m) strip of land, which lies between the R610 (Rochestown Road) to the east and the escarpment to the west. An old stone wall runs along the boundary with the R610 with a very narrow footpath on the other side. A narrow public road runs parallel to the west of the site above the escarpment together with residential terraces at Riverview Terrace, Riverview Place, Belgrave Place and Simla Place. Two-storey Victorian terraced dwelling at Bath Terrace and Charlotte Place, together with a more modern terrace at Granary Wharf front onto the R610 directly opposite the site. There is on-street car parking along the eastern side of the R610 outside of these properties. A further modern 3-storey residential development is located to the south at Glenbrook Wharf and is set back from the road frontage behind a high wall and gates. All of the aforementioned properties back onto the estuary. The local Garda Station is located between Bath Terrace and Charlotte Terrace. Parking for the station comprises a dedicated on-street area to the front of the building. Immediately to the north of the site is an access lane to the rear of the adjacent Chinese restaurant/ pub which provides access to the 450m long former railway tunnel between Passage West and Glenbrook. To the south is a detached residential building which is occupied as a number of apartments. The bus stop lies outside of this property.

### **Description of Proposed Development**

- 1.3 Planning permission is sought for the change of use of the former Bus Depot to a mixed use development comprising:
- 23 no. residential units (3 no. 1-bed apartments, 17 no. 2-bed apartments and 3 no. 3-bed townhouses)
  - single retail unit at ground floor level (121 sq.m.)
  - 19 no. car parking spaces and loading bay fronting the public road
  - 42 car parking space a basement level
  - ramped access to the basement at the southern end of the site.
- 1.4 The development is laid out in 2 no. blocks. The northern block accommodates the retail unit and 17 no. residential units. The southern block accommodates 6 no. residential units.

- 1.5 It is proposed to cut into the escarpment on the western side of the site to increase the developable area. This will create a split level development. Two areas of open space are provided between the northern and southern blocks, and at the southern end of the site.
- 1.6 The ground level is elevated to 3.8mOD as a flood protection measure. The high point of the basement ramp is at 3.8mOD.
- 1.7 A temporary treatment unit is proposed at basement level to cater for the proposed development until the lower harbour sewerage treatment system is in place.

### **Further Information**

- 1.8 Further information and clarification of further information submitted by the applicant largely relates to engineering issues in respect of the stability of the escarpment and drainage. Photomontages, contextual elevations and a Shadow Study are also submitted.

## **2.0 PLANNING AUTHORITY DECISION**

- 2.1 The planning authority issued a notification of decision to **grant** planning permission on 12 October 2009. The following conditions are of note:
  - Condition 2: Hours of construction for rock braking/soil nailing & piling.
  - Condition 3: Vibration limits for rock braking/soil nailing and piling.
  - Condition 4: Notification of neighbouring occupiers of rock braking/soil nailing and piling.
  - Condition 5: Monitoring of surface water and ground water.
  - Condition 6: Description and method statement for construction.
  - Condition 7: Social and Affordable Housing.
  - Condition 8: Management company.
  - Condition 11: Retail unit to be used solely as a shop.
  - Condition 16: Provision of children's play area in public open space.
  - Condition 18: Provision min 1.2m high reinforced concrete retaining wall along western boundary with the public road
  - Condition 19: Provision of min 1.2m wide concrete footpath along the entire length of the western boundary.
  - Condition 21: No restriction to use of roadside parking spaces, and designation of 2 no. spaces for use by the Gardaí.
  - Condition 24: Provision of a temporary wastewater treatment plant until the Cork Harbour Main Drainage Scheme is completed at a future date.

- Condition 25 Occupancy of any of the proposed apartments within 30m of the wastewater treatment unit shall be deferred until the unit and the associated odour and noise control systems are commissioned and are operating to the Council's satisfaction.
- Condition 31 Details of the proposed temporary wastewater treatment plant shall be submitted to and agreed in writing with the Council. No part of the treatment plant shall be within 20m of habitable buildings outside the curtilage of the site.
- Condition 34 Noise and odour emission limits from temporary wastewater treatment plant.
- Condition 37 & 84 Chemical and biological standards for final effluent from the wastewater treatment plant.
- Condition 38 Maintenance and operational contract for wastewater treatment plant.
- Condition 48 Developer to ensure that stormwater sewer can discharge against high tide or shall provide suitable storage facilities on site. Basement pump sump(s) and rising main(s) shall be designed in accordance with Council's requirements.
- Condition 79 Proposed sewage treatment plant shall comply with the EPA wastewater treatment manual guidelines and the building regulations.
- Condition 83 The developer shall apply for a Water Pollution Licence for the discharge of treated effluent to the harbour.
- Condition 101 Indemnification of Council against all claims resulting from defective foul and storm sewers, manholes and road gullies.
- Condition 109 Payment of €50,000 security to ensure satisfactory operation and maintenance of the pump sump.
- Condition 111 S.48 Development Contribution.
- Condition 112 Special Contribution: €42,000 in respect of traffic calming measures and pelican crossing and €37,600 recreation and amenity facilities.

### **3.0 PLANNING APPLICATION**

- 3.1 The application was submitted to the planning authority on 24 October 2008 with further information submitted 5 June 2009, and clarification of further information submitted 14 September 2009.

### **3.2 Planning Reports**

The **Area Planner's** report recommends **grant** of permission. Following issues considered:

- Site is vacant and would benefit from redevelopment.

- Pre-planning discussions with Planning Authority following previous refusal. Redesign goes some way to addressing the previous reasons for refusal.
- May be possible to accommodate a high density given location of the site.
- Overshadowing not excessive and similar to elsewhere in area. The preliminary details submitted in respect of excavation and stabilisation of overburden and rock slopes are satisfactory and the detailed proposals can be dealt with by way of condition.
- Separation distances also similar to that provided elsewhere in Passage West in areas along the R610 where development is located on both sides of the roadway.
- No objection to the principle of a single retail unit, which would not be incompatible with the established residential nature of the site and vicinity.
- Area of open space more usable and better located than under previous application.
- The applicant will be required to provide facilities equating to 3 no. points under the Council's Recreation and Amenity Policy. A play area will be provided on site and the applicant has indicated their willingness to make a financial contribution to satisfy the remaining 2 no. points.
- Revised details for reinforced concrete wall between the western boundary and the public roadway are satisfactory. Full design can be agreed prior to construction.
- The SEE Water Services has no objection to the proposed WWTP. All issues can be dealt with by condition.
- Preliminary construction traffic management plan considered acceptable.
- Issues of site ownership and right of way resolved to satisfaction of the planning authority.

The **Senior Executive Planner's** report is generally in agreement with the assessment and recommendation of the area planner.

### **3.3 Technical Reports**

*Senior Executive Engineer:* No objection subject to conditions.

*Area Engineer:* No objection subject to conditions.

*Environmental Officer:* No objection subject to conditions.

*Water Services Engineer:* No objection subject to conditions.

*Lighting Engineer:* No objection subject to conditions.

*County Architect:* Proposal is acceptable. Windows could be improved. K-render as a finish is not appropriate. No objection.

### **3.4 Prescribed Bodies**

*South Western Regional Fisheries Board:* Outfall for treated sewage effluent should be below the low water mark. License required for discharge.

*An Taisce:* Scale of proposal in ACA raises concerns. Appraisal required on the impact on the quality and character of the townscape.

### **3.5 Third Party Submissions**

Fourteen 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. The matters raised in respect of the interference with a public right of way were addressed by further information.

## **4.0 PLANNING HISTORY**

07/12444 Haswell Properties. Change of use from bus depot to mixed use commercial/retail/residential development. **Refused.**

## **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.

5.2 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.

5.3 In relation to the County Development Plan, Objective SET 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”.

5.4 The site lies within the Passage West Architectural Conservation Area. Objective ENV 4-6 seeks the conservation and enhancement of the special character of ACAs. Objective ENV 4-10 requires infill development within ACAs to be a positive contribution to the existing built environment in terms of design, scale, setting and material specifications.

- 5.5 Objective ENV 1-5 provides protection to all natural heritage sites designated under National and European legislation.
- 5.6 The site also adjoins a designated scenic route S 54 which runs along the coast between Passage West and Ringaskiddy. Objective ENV 2-11 seeks to preserve the character of those views and prospects obtainable from scenic routes.
- 5.7 Objectives INF 5-13 Drainage and Flooding and INF 5-6 Water Supplies and Wastewater Disposal is also relevant (copy appended).

### **National Policy**

- 5.8 The Planning System and Flood Risk Management Guidelines for Planning Authorities (OPW 2009) states that highly vulnerable development such as dwelling houses are generally considered inappropriate in areas of high flood risk, and are also considered inappropriate in areas of moderate flood risk unless the requirements of the Justification Test can be met.
- 5.9 The Architectural Heritage Protection: Guidelines for Planning Authorities (DEHLG 2004) provide guidance on new development in Architectural Conservation Areas.
- 5.10 The Sustainable Urban Housing: Design Standards for New Apartments (DEHLG 2007) set out standards for apartment developments.

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

- 6.1 Four (4) third party appeals are submitted by:
1. Sinead & Barry Kiely (residents Simla Villas)
  2. Mr & Mrs Crotty (residents Charlotte Terrace)
  3. Joseph & Angela O'Connor & Others (residents Riverview Place)
  4. Damian O'Neill (resident Belgrave Place)
- 6.2 The **Kiely** grounds of appeal can be summarised as follows:
- Severe further traffic congestion on the main road to the Cross River ferry
  - Risk of structural damage to houses on the upper road all of which are protected structures.
  - Impact on the character of the Victorian terrace across the road, which has already been compromised by modern developments.
- 6.3 The **Crotty** grounds of appeal can be summarised as follows:
- Proposal fails to address reasons set out in refusal of 07/12444.
  - Out of character with development in vicinity



- Design, scale and finish would adversely affect the Architectural Conservation Area.
- Conflicts between drawings and photomontages.
- Numerous occasions of subsidence to embankment to rear. Photos of subsidence on 14 February 2009 following heavy rainfall attached.
- Impact of excavations on stability of embankment. Response to FI inadequate.
- Potential damage to old rail-way wall.
- Impact on residential amenity of dwelling on Charlotte Terrace, particularly overshadowing.
- Need for a shop queried.
- Flooding of site. Photos submitted of flooding on public road due to blocked gully last October.
- Insufficient information submitted in respect of surface water drainage.
- Temporary treatment plants should not be permitted. Planning permission should be refused if adequate services are not available.
- Unsuitability of mini-treatment plant located at downstream end of site.
- Pumping system implied by Condition 48 will require a high level of maintenance.
- Car parking inadequate. Any attempt to relocate existing parking to the opposite side of the road will be strenuously objected to.
- Deed of conveyance submitted by the applicant does not provide sufficient evidence of clear Title for the site.

6.4 The **O'Connor & Others** grounds of appeal can be summarised as follows:

- Scale of development excessive.
- Overbearing, Overshadowing, loss of light, and overlooking of lower level houses to east.
- Integrity of existing ground conditions is questionable. Potential for further slope failure.
- Noise pollution and air pollution caused by rock breaking and drilling during construction.
- No parking for construction vehicles on site.
- Insufficient parking for commercial unit. Exacerbate existing limitations on parking for residents of the area.
- Increased traffic.
- Poor levels of useable public and private open space.
- Design and scale will adversely affect the ACA and would detract from its character.
- 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.

6.5 The **O’Neill** grounds of appeal can be summarised as follows:

- Embankment is being cut into to a depth of almost 10 metres. Together with excavation of basement this will have a detrimental effect on the stability of the embankment to the front of the appellant’s dwelling.
- Road on top of embankment has already subsided and has been repaired by local residents.
- Applicant has failed to address this issue and allay fears of residents.
- Provision of a 1.2m high mass concrete wall on top of the embankment with a footpath on side will create substantial loading on the embankment.
- Photomontages do not assist residents in assessing the impact of proposal on their properties.
- Not in keeping with ACA.
- Potential impact on old railway wall which is part of the industrial heritage of the country.
- Insertion of a treatment plant in an area prone to flooding is ridiculous.

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

6.6 The applicant’s agent, Cunnane Stratton Reynolds, has responded to the grounds of appeal as follows:

- Proposal represents a significant reduction in scale and height from that previously refused planning permission. Proposed apartments are dual aspect with dedicated private open space. The level of public open space has also increased to 11% of site area.
- Materials, roof pitch and vertical emphasised windows also complement the established pattern of development in the area.
- The planning authority supports the architectural design of the proposed development in the context of the adjacent ACA.
- The proposed soil and rock stabilisation would improve the stability of the site and mitigate any risk of soil slippages.
- The techniques proposed are considered industry standard and can be installed with the minimum of vibrations.
- The vibrations would not be of a magnitude to cause structural damage or impact on the integrity of adjoining properties.
- The photos of soil slippage submitted by the appellants are not representative of the site but of an adjoining site and is the result of disposal of garden waste on the embankment.

- The proposed FFL are sufficiently high to mitigate against flooding.
- Proposed drainage outfall to the river is sufficient to cater for drainage from the site.
- Additional vehicular movements created by the proposed development would be insignificant in the context of existing traffic.
- No significant noise or vibration during operational stage. During construction noise and drilling vibrations should not be noticed and rock breaking would have expected peak particle velocities of 2mm per second to 7mm per second at the roadway. These vibration levels would not be a significant issue.
- The photomontages are an exact representation (in terms of scale and massing) when compared to adjacent buildings. The variation to the drawings submitted is a consequence of the angle of the photomontage and the set back of the proposed development from the building line of the public house/ restaurant.
- The proposed development does not hinder access to the railway tunnel but enhances it by providing a plaza fronting the tunnel outside the retail unit.
- The wastewater treatment unit is a temporary plant that will be decommissioned once connection can be made to the upgraded public sewer.

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

- 6.7 The planning authority has responded to the grounds of appeal as follows:
- Acknowledge that the appeal site is a difficult site to develop, particularly in the context of the steep embankment to the rear.
  - Support for the principle of the redevelopment of the site having regard to its prominent location within Passage West, in close proximity to the town centre.
  - No objection from internal reports subject to conditions.
  - Both the Area Engineer and the SEE Water Services were satisfied that any outstanding matters relating to the stability of the cliff face could be dealt with by way of condition.
  - No objection in principle to proposed development on grounds of scale, design and streetscape within the ACA.
  - Proposed development will not seriously impact on amenities of neighbouring residents.
  - Both the Area Engineer and the SEE Water Services are satisfied with the proposals in relation to the provision of a temporary wastewater treatment plant. This follows an established precedent taken on other sites in Passage West.
  - Car parking arrangements acceptable.

## Observers

- 6.8 Six (6) observations were received, including Passage West Town Council. The issues raised are largely covered by the grounds of appeal. Additional issues can be summarised as follows:
- Density of development too great.
  - Site is too long and narrow for residential development and should never have been zoned.
  - Development too close to public road.
- 6.9 **Passage West Town Council** specifically objects to the proposed development on the following grounds:
- Impact on ACA
  - Failure to address the historical significance of the site as the former Glenbrook railway station as part of the Cork to Crosshaven rail line.
  - The Passage West and Monkstown Railway Trail was erected in 2007. The site of the railway station is Stop 8 on the Railway Trail.
  - Drawing A10 appears to illustrate a new stone wall and gate to the north of the proposed development which would impact on the southern end of the tunnel. The Town Council is anxious to establish a tourist-related long-term use for the tunnel.
  - In relation to PL04.129730 and PL04.229086 ABP made it clear that it was necessary to establish the structural stability and long-term use of the railway tunnel before development should be permitted close to its route. This issue has not been addressed.
  - Insufficient separation distance between wastewater treatment plant as per the EPA recommended standards.

## Public Representatives

- 6.10 A letter of support of the residents' appeal was received from Cllrs Seamus McGrath and Dornic Ryan.

## Applicant Response to Observation of Passage West Town Council

- 6.11 The applicant's response to the observation of the Town Council reiterates the points summarised above in respect of the response to the grounds of appeal.

## 7.0 GROUNDS OF APPEAL - First Party Appeal

- 7.1 This appeal relates to **Condition Nos. 18, 19 and 101**. The grounds of appeal can be summarised as follows:

- **Conditions 18 & 19:** The requirement to provide a retaining wall and footpath along the western sit boundary with the public road is excessive. A crash barrier is considered to provide sufficient protection to the proposed development. The footpath would not benefit the proposed development as it does not provide access to the development. The conditions area considered unreasonable and unjustified.
- **Condition 101:** This condition should relate to the site only until it is taken in charge.

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

- 7.2 The planning authority has responded to the first party appeal as follows:
- Conditions 18 and 19 were included at the request of the Area Engineer in the interests of traffic and pedestrian safety along the western boundary.
  - Condition 101 is a standards condition attached to residential developments. It is particularly relevant where the development would be private in nature and not likely to be taken in charge by Cork County Council.

### **Observers**

- 7.3 An observation is submitted by Damian O'Neill, one of the third party appellants, in respect of the 1<sup>st</sup> party appeal as follows:
- The retaining wall is in itself only a half solution to the problems of subsidence. To suggest that it is not even needed is unbelievable. Photographs showing separate landslides in front of the observer's house are submitted.
  - Amazed that the applicant wishes to abdicate responsibility for defective foul and storm sewer, manholes and road gullies in an area prone to flooding. Photos of flooding are submitted.

## **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 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. Previous Reasons for Refusal
3. Structural Impacts
4. Residential Amenity
5. Traffic and Parking
6. 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. I am in agreement with the planning authority that the proposed retail unit is compatible the residential character of the area and have no objection to the principle of the proposed uses.

### **Previous Reasons for Refusal**

- 8.4 Planning permission for a larger mixed use development on the site was previously refused by the planning authority for 3 no. reasons relating to over-development of site; unacceptable design, layout and open space; and impact on the special character of the Architectural Conservation Area (Reg. Ref. 07/12444). The grounds of appeal consider that the proposed development fails to address these reasons for refusal. I note, however, that the current scheme has been reduced by c.2000 sq.m. compared to the previous proposal, representing a substantial reduction in the commercial (office and retail) floor area, and a reduction in the number of residential units from 27 no. apartments to 23 no. apartments and townhouses. The overall height has also been reduced from 4-5 storeys to 2-3 storeys.
- 8.5 I consider that the current proposal represents a significant improvement in terms of scale, form and architectural treatment. The eaves and ridge height of the proposed development reflect the established existing terraces along Charlotte Terrace, Bath Terrace and Granary Wharf, and I agree with the County Architect that the proposal offers a contemporary treatment of a traditional Irish streetscape in terms of its vertical emphasis, height variation, and ‘own door’ entrance from the street. The creation of a central area of open space also sits well in the streetscape. I consider, therefore, that the proposed development is an appropriate design response to a difficult infill site in this historic area, and would not adversely affect the character or appearance of the ACA.

### **Structure Impacts**

- 8.6 The appeal site is located at the foot of an 8m high escarpment above with a single width local public road and historic residential terraces located in close proximity to rock face of the escarpment on the upper level. The escarpment

consists of overburden at the top of the slope overlying an exposed sandstone rock face. The application intends cutting back the existing rock escarpment by some 5.5m in order to increase the developable area of the site. The grounds of appeal express concern that the construction of such a large development including a basement at such close proximity could seriously undermine the existing foundations and structures and have detrimental effects on the buildings, roadways and rock embankment. It is stated that there has been substantial subsidence in the area in the past and photographs are submitted with the Crotty appeal that show soil slippage on 14 February 2009 following heavy rainfall.

- 8.7 The applicant intends to carry out soil nailing at the top of the slope in advance of any rock slope excavation to improve the stability of the road above the site and mitigate any risk of soil slippages on the site. In this respect it is proposed to remove all loose overburden from the embankment and to install a series of soil nails. This process involves laying a geo-mat with steel mesh over the overburden and drilling the soil nails into the existing embankment at an angle to anchor the external open faces of the rock to deeper intact material behind. A sketch of the location of soil nails was submitted as clarification of further information. These nails will probably project under the road above the site in some areas, although the final length of the nails will depend on the height of the slope to be retained. The applicant's geotechnical engineers, Byrne Looby Partners, state that this is a standard method of dealing with over steepened slopes which they have used in the design of a number of permanent soil nailed slopes on the M50 below live carriageways. I accept that this method is extensively used on railway and roadway embankments and I can see no reason why it is not acceptable in this instance.
- 8.8 The rock will then be cut back (excavated) by some 5.5m using a breaker, and stabilised using temporary rock dowels prior to the construction of the proposed 6.7m high concrete retaining wall. These rock dowels may have to be retained where rock slopes are left permanently exposed. The extent of the excavation is necessitated by the proposal to 'reclaim' land from the embankment in order to increase the developable area of the site. Whilst I appreciate the appellants' concerns regarding the stability of their houses which are constructed on the same rock escarpment, and I do question the justification for such substantial structural work to the rock for the purpose proposed, I am mindful of the proposed technique is fairly straightforward (i.e. the use of a retaining wall) and is commonly used particularly in motorway construction. I consider, therefore, that any potential impacts can be mitigated by appropriate engineering and construction methods.
- 8.9 The grounds of appeal also express concern that vibrations from the rock breaking and excavation of the proposed basement has the potential to damage the structural stability of the road and properties at the upper level. The applicant, however, argues that the drilling vibrations should not be noticed. In relation to rock breaking, it is expected that peak particle velocities (PPV) will be between 2mm and 7mm per second at the roadway. I note that condition 3 of the planning authority's decision requires that PPV not exceed

8mm per second at a frequency of 10 hertz, 12.5mm per sec for frequencies of 10-50 hertz, and 20mm per sec for frequencies of 50-100 hertz. I accept that these levels are well above the levels expected during the construction of the proposed development and that such vibrations would not be likely to cause structural damage to the adjoining public road and properties.

### **Residential Amenity**

- 8.10 In relation to overshadowing of properties on the opposite site of the R610, I note that an overshadowing assessment was submitted as further information. I am in agreement with the planning authority that although a certain level of overshadowing is likely, it is not excessive within this urban environment. In relation to overlooking of the same properties, I note that a separation distance of some 16-17m is achieved between the front windows of the proposed development and the front windows of existing dwellings on the eastern side of the road. I accept that this relationship is similar to many road frontage residential properties in older locations with narrow roads, and do not consider that it would result in undue overlooking or loss of visual outlook to the existing or proposed properties.
- 8.11 I note that the ridge height of the proposed development is below the ground floor windows of the high level dwellings to the west (Riverview Place, Belgrave Place and Simla Place). As such the proposed development is unlikely to unduly impact on the residential amenity of these properties.
- 8.12 The proposed units are all dual aspect and offer an acceptable level of residential amenity in accordance with the Sustainable Urban Housing: Design Standards for New Apartments (DEHLG 2007). Public open space is provided in two parcels, the first located between the northern and southern blocks, and the second between the southern block and the basement entrance/ramp. Although the use of the open space to the south is restricted by the proposed wastewater treatment plant beneath ground level, I consider that the proposed development would provide an acceptable level of amenity for future residents.

### **Foul Drainage**

- 8.13 It is clear that the existing foul sewerage cannot accept untreated sewerage flows from the proposed development until the Cork lower harbour sewerage scheme is completed. This scheme involves the upgrading of the existing sewerage networks in the main population centres in the lower harbour area, including Passage West, and their connection to a new waste water treatment plant to be built at Shanbally, near Ringaskiddy at a current estimated cost of almost €92 million. Planning permission for the waste water treatment plant was granted by the Board in 2009 (PL04.YA0005) and was included for funding in the Department of the Environment, Heritage and Local Government's Water Services Investment Programme 2007-2009. I understand, however, that the DEHLG is currently considering projects to



advance in the 2010-12 Water Services Investment Programme and, as such, there is no certainty regarding the delivery of the lower harbour sewerage scheme in the light of current budgetary constraints.

- 8.14 The application proposes the provision of a temporary wastewater treatment plant until the Cork lower harbour sewerage scheme is constructed and commissioned. The treatment plant will be contained in a separate reinforced concrete room/box within the basement area beneath the landscaped area to the south of the residential units. It is argued that a double carbon odour filtration hood connected to the plant will significantly reduce odours, and the location within a reinforced concrete basement will mitigate noise. The applicant states that the manufacturer of the plant has designed and operated similar WWTP, a typical example of which is the WWTP at the Cliffs of Moher Visitor Centre which is enclosed below ground in order not to impact on the visual landscape. The system has been designed so that the wastewater from the development will be able to flow by gravity to the proposed future trunk foul sewer once operational. In the interim, the waste water from the treatment system will be discharged directly to the harbour c. 30m south of the site. The grounds of appeal consider the proposed use of a private treatment system on the appeal site to be inappropriate, and the Town Council argues that there is little certainty as to where the Lower Harbour wastewater treatment will be provided.
- 8.15 I consider that there are two main issues in respect of the proposed sewerage system: first the site suitability; and second, the proposed discharge to the estuary.
- 8.16 In relation to site suitability, the EPA Wastewater Treatment Manuals: Treatment Systems for Small Communities, Business, Leisure Centres and Hotels sets out recommended minimum separation distances between treatment systems and residential development to avoid odour and noise nuisance (Table 4). It is further stated that in no case should residential development be undertaken within this buffer zone. The recommended separation distance required by a development of the scale proposed (i.e. 61-80 p.e.) is 34m. I note, however, that the proposed development provides a separation distance of just 13m between the southern elevation of the proposed development and the first primary settlement tank. Furthermore, a separation distance of just 17m is provided between the residential building to the south of the site and the southernmost settlement tank. Condition 25 of the planning authority's decision defers occupancy of any of the proposed apartments within 30m of the wastewater treatment unit until the unit and the associated odour and noise control systems are commissioned and are operating to the Council's satisfaction. This relates to the 3 no. 3-bed townhouses at the southern end of the building. Condition 31, requires that no part of the treatment plant shall be within 20m of habitable buildings outside the curtilage of the site. This condition would require a movement of the treatment plant 3m closer to the proposed residential units.
- 8.17 The applicant has argued that the reduced separation distances are acceptable in the context of the temporary nature of the treatment plant and the proposed

mitigation measures in the form of carbon filters and location within a reinforced concrete basement. However, given the extent of the shortfall in separation distances, I am not convinced that the proposal will not create an unacceptable level of nuisance and risk to public health which will be more than short term in nature.

- 8.18 In relation to the proposed discharge of the treated effluent to the estuary, I note that the proposed outfall pipe will discharge when the outlet is fully submerged by the tide. A licence is required under the Foreshore Act to discharge treated effluent into the harbour. The applicant has stated that the Department of Agriculture Fisheries and Food has no objection in principle to the application being made for a temporary/ short term licence to place structures and discharge until capacity of the upgraded system becomes available. I note, however, that that the proposed development was not screened for **Appropriate Assessment** which may be considered relevant in the context of the location of the Great Island Channel cSAC (site code 001058) and Shellfish waters in the North Channel some 1.5km upstream of the site, and the Cork Harbour SPA (site code 004030) at Monkstown c.2km to the south. (See Conservation map 16 attached.) Monkstown Creek is also a pNHA (1979). However, this issue was not raised in the grounds of appeal and as such the Board may consider that it constitutes a **new issue**. In the absence of a screening for appropriate assessment, I do not consider that it is possible to be satisfied that there is no reasonable scientific doubt that the proposal will not adversely affect the integrity of the designated sites having regard to their conservation objectives.

### **Surface Water Drainage and Flooding**

- 8.19 The existing surface water drainage in the Passage West area does not have the capacity to accept surface water drainage from the proposed development. As in the case of foul drainage, the application proposes to extend the on-site surface water drainage to the south of the site and discharge directly to Cork harbour. The grounds of appeal express concern regarding discharge at high tide. The applicant however states that the outfall is designed to discharge even at the highest floor tide levels based on a 200 year flood event and an allowance for a 550mm rise in sea level due to climate change. A flap valve is proposed at the point of discharge to prevent any back flow within the drainage system at high tide. This issue is dealt with in Condition 48 of the planning authority's decision. I have no objection to this element of the proposal.
- 8.20 The grounds of appeal also raise an objection in relation to flooding of the site and the surrounding area. Photographs submitted by the appellants and Passage West Town Council show recent flooding in the vicinity of the site. It is stated that flooding in the vicinity is caused by surface water run-off flows from higher ground through the site and also through the adjoining tunnel. Concern is expressed that the loss of storage capacity provided by the appeal site will result in flooding elsewhere. The proposed surface water drainage should, however, have the capacity to deal with run-off from higher ground

and I do not consider that the proposed development would result in displacement of flooding in this respect. Flooding is also caused along the R610 through Glenbrook during times of unusual high tide, storm weather conditions and inability of the surface water system to discharge against the tide. I do not consider that the proposed development will have a significant impact in this respect.

- 8.21 The draft Lee Catchment Flood Risk Assessment and Management Study (Lee CFRAMS) flood maps show that whilst the adjacent public road (the R610) lies within the 10% AEP flood event (equating to Zone A in the OPW Guidelines), a relatively small area within the southern part of the appeal site and lies within the area of 0.5% AEP flood extent (Zone B). A copy of the current and future scenario flood maps are appended to this report. The County Engineer's report states that the 1:200 year flood design level at Passage West recommended in the draft Lee Flood Risk Assessment Management Study is 3.2m OD (Malin). When allowances of 550m (sea level rise due to climate change) and 500mm (freeboard to cater for wave action) are added to this level, a final design level of 4.35m OD is achieved. I note, however, that the proposed development provides a FFL of 3.95m OD which is some 400mm below the recommended design level. Stone walls to the street do, however, extend some 500mm above the FFL. I am also mindful of the limited area of the site within the future flood extent. On balance, therefore, I consider that the proposed development would not be unacceptable in this respect.

### **Traffic and Parking**

- 8.22 The R610 through Passage West does appear to suffer from traffic congestion at peak hours. The applicant has stated that these traffic problems are caused by a poorly aligned road junction to the north of the town which is being reviewed by the County Council in accordance with the ARUP Engineering Traffic Management Plan for Passage West. Notwithstanding this fact, I am of the opinion that the level of vehicular movements generated by the proposed development would not be significant in terms of traffic congestion in the area.
- 8.23 The proposed development provides for 42 no. basement car parking spaces, and an additional 19 surface level parking spaces. The basement car parking alone provides a ratio of 1.8 spaces per residential unit. Together with the on street parking the development exceeds the development plan standards and I am satisfied that the needs of future residents and customers of the proposed retail unit can be easily accommodated. The concerns raised in the grounds of appeal in respect of any further decision by the Council to do away with parking on the eastern side of the road are a separate matter for the Council and are not material to the consideration of the proposed development.

## Other Matters

- 8.24 The former **railway tunnel** from Passage West lies outside of the appeal site, to the rear of the adjacent properties to the north. The tunnel is not a protected structure. The Passage West Town Council has, however, expressed concern that the proposed development would compromise the preservation of the tunnel and any potential future tourist use of the structure. It is further considered that the proposed development does not adequately reflect the historic nature of the site as part of the railway.
- 8.25 The proposed development does not, however, interfere with access to the railway tunnel and I do not consider that it will significantly undermine any future potential for a tourist use of the structure. The reference in the Town Council's submission to a wall and gate on drawing A10 refer to the existing wall on the adjoining site. I note the applicant's willingness to associate the name of the development with the railway and the proposal to reuse the stone from the existing stone wall to the front of the site in the construction of the new wall between the residential development and the new car parking spaces on the road side and consider these proposals to be acceptable.
- 8.26 The issue of insufficient evidence of **legal title** is also raised in the grounds of appeal. I note, however, that a solicitor's letter and Conveyance document in respect of the appeal site confirm that the site is in the ownership of the applicants. I accept, therefore, that the applicants have provided sufficient evidence that they have a legal right over the lands for the purposes of the planning application and decision.

## First Party Appeal

- 8.37 **Condition 18** requires the provision of a 1.2m (min) high reinforced concrete wall along the western boundary wall with the public road for the entire length of the site. The wall is required to be set back from the road by 1.2m to accommodate the footpath required by **condition 19**. The grounds of appeal point out that that details of a 1.2m high reinforced concrete wall between the western boundary of the appeal site and the public roadway were submitted at further information stage. It is argued that the applicant was not made aware throughout the planning process that it would be a requirement to set back the retaining wall and provide a footpath along the boundary. The applicant had previously proposed to protect the proposed development from the dangers of vehicles by means of a crash barrier. It is considered that the retaining wall is excessive and not necessary to protect the proposed development. The only benefit of the wall is for the suitable provision of a public footpath along the western boundary of the site. Given that the public road at this point does not provide access or egress to the site, and is not affected by the proposed development, the applicant considers that conditions 18 and 19 are unreasonable and unjustified. The applicant is, however, willing to enter into a S.47 agreement with the Council to cede the land in question to the Council for the Council to build the retaining wall and footpath.

- 8.38 The planning authority's response simply states that these conditions were included in the interests of traffic and pedestrian safety along the western boundary.
- 8.39 Whilst I agree with the applicant that the provision of a footpath at the upper level would be of very little benefit to the proposed development, there is clearly a requirement for some form of boundary treatment in such close proximity to the edge of the escarpment. In the interests of the visual amenity of the area and its location within an ACA I consider that this would be best achieved by means of a wall rather than a crash barrier.
- 8.40 Condition 101** states "the developer shall indemnify the County Council against all claims resulting from defective foul and storm sewers, manholes and road gullies." The grounds of appeal state that the applicant does not object to providing indemnity within the lands in the ownership of the applicant until the development is taken in charge. It is requested that the condition be thus amended. I can see nothing, however, in the terms of the condition requiring indemnification of infrastructure outside of the site boundary. Notwithstanding this consideration, I am of the opinion that this is a legal matter and I see no justification for its inclusion as a planning condition.

## **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. The proposed development is reliant on the discharge of treated effluent into Cork Harbour in proximity to the Great Island Channel cSAC (site code 001058) and the Cork Harbour SPA (site code 004030). In the absence of a screening for appropriate assessment under article 6 of the Habitats Directive, the Board is not satisfied that the proposed development alone, and in combination with other plans or projects, would not have significant effects on a Natura 2000 site in view of the site's conservation objectives. The proposed development would not, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the inadequate separation distances between the proposed wastewater treatment plant and the proposed and existing residential properties and the uncertainty regarding the timeframe for the delivery of the upgraded sewerage network, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the applicant has demonstrated satisfactorily that the proposed development would not be prejudicial to public health and seriously injure the amenities of the area. The proposed development would not, therefore, be contrary to the proper planning and sustainable development of the area.

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

18/03/2010