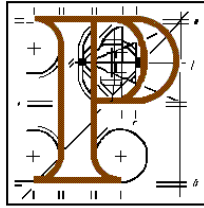


**An Bord Pleanála Ref. No.: PL 28.245315**

**An Bord Pleanála**



**Inspector's Report**

**Proposed Development:** Permission for the construction of 8 student apartments (over two storeys) adjoining Brookfield Leisure Centre and site works, revisions to access and car parks, all at Brookfield Village Student Accommodation and Leisure Centre Complex, College Road, Cork.

**Planning Application**

**Planning Authority:** Cork City Council

**Planning Authority Reg. Ref.:** 15/36267

**Applicant:** Variety Holdings Ltd

**Type of application:** Permission

**Planning Authority Decision:** Grant permission

**Planning Appeal**

**Appellants:**

1. Robert & Maura White
2. Sean & Megan O'Conaill

**Observers:** Catherine Neville

**Type of appeal:** Third Party against permission

**Date of Site Inspection:** 22/10/2015

**Inspector:** A. Considine

## **1.0 THE SITE**

- 1.1 The site the subject of this appeal is located within the 'Brookfield Village' complex which comprises self-catering accommodation, leisure centre and a permitted hotel. The hotel is now closed and planning permission was granted for alterations and change of use of the hotel and leisure centre building to a nursing home under ABP ref 28.242369 - PA ref 13/35660, P.A ref 14/35895 and 10/34436. In addition to the above, an extension to the permitted nursing home was granted under ABP ref 28.240044 – PA ref 11/35072. The permissions for the nursing home have not been implemented and I am unclear as to whether the existing uses of the buildings are in accordance with the relevant permissions associated with the site.
- 1.2 The subject site, and the Brookfield complex, is located to the west of Cork City Centre on the southern side of the River Lee, in a built up area of the City and in close proximity to University College Cork. It is accessed from College Road west of the UCC entrance. The site slopes steeply downwards towards the Curraheen River which runs along the northern site boundary. The site of the proposed development is located to the rear of the leisure centre building and is located within a low lying area of the overall site with a significant slope upwards towards site boundaries. To the west the site adjoins a housing estate, The Grove. The side elevations and gardens of No.1 and No.15 The Grove and the rear garden of No.14 abut the western site boundary. These gardens are elevated above the ground level of the appeal site. Existing holiday accommodation at Brookfield lies to the east of the appeal site, with the UCC Medical Complex beyond. A large detached private dwelling set in substantial grounds ('San Paula') adjoins the site to the south.
- 1.3 The existing buildings in the immediate vicinity of the subject site, which includes the Brookfield Village buildings, generally consist of 3-storey apartment blocks laid out in an irregular pattern along the access road. The permitted nursing home and leisure complex located directly to the north of the subject site rises to 2 and 3 storeys in height. The leisure complex building includes a swimming pool, gym and outdoor children's play area. The area of the site to be development under this proposal, is currently grassed open space surrounded by mature and semi-mature trees. It has been advised through previous ABP inspector reports that this area of the site was previously laid out as 2 no. tennis courts enclosed by wire fencing.
- 1.4 The site has a stated area of 1.16ha.

## **2.0 PROPOSED DEVELOPMENT**

2.1 Permission is sought for the provision of 8 no. student accommodation apartments (over two storeys) adjoining Brookfield Leisure Centre and all associated ancillary development works including revisions to the existing access and car park layout at Brookfield Village Student Accommodation and Leisure Centre Complex, College Road, Cork. The planning application was accompanied by the relevant planning, architectural and engineering drawings.

2.2 The proposed development will result in the construction of a two storey building with a stated floor area of 1,872m<sup>2</sup>. The building will comprise 8 no apartments with 4 on each floor. The apartments will include 4 no. 6 bedroomed apartments and 4 no. 7 bedroomed apartments. All rooms will have ensembles and each apartment will have an open plan kitchen / dining / living rooms. The floor area of the bedrooms range from 12m<sup>2</sup> to 20m<sup>2</sup>. The development will include amendments to the existing car park and the provision of a covered bicycle stand.

2.3 The application submitted to Cork City Council included the following:

- Cover letter
- Completed application form, notices, plans and particulars
- Flood Risk Assessment

## **3.0 REPORTS ON PLANNING AUTHORITY FILE**

3.1 The planning application was lodged with Cork County Council on 22<sup>nd</sup> January, 201 and it is indicated that no pre planning consultation was undertaken.

3.2 In terms of the Planning Authority's assessment, five third party submissions are noted on the planning file. The issues raised are summarised as follows:

- Planning history of the site raised. Previous application in 2007 for student accommodation was refused by ABP who recognised the extremely

sensitive nature of the site and its close proximity to the existing houses of the Grove and their rear gardens.

- The development would seriously injure the amenities of existing properties and the privacy of the houses will be invaded.
- The development would reduce the value of existing houses.
- The amount of boisterous behaviour, loud music etc is unacceptable. There are current issues with noise and anti social behaviour from Brookfield residents which causes disruption to other residents in the area.
- Vehicular access to the site adjacent to garden hedge which will cause noise and light at night time.
- The expansion of Brookfield has occurred at an alarming rate with 510+ bed spaces. A grant of permission in this instance, together with a grant of permission for the change of use of the former hotel would increase the student population of the Brookfield site to a level that the original permission for the site decreed it should never reach.
- Insufficient car parking provision for current needs.
- There are a number of defects and inaccuracies with the application in terms of numbers of trees, identification of the development as student only, internal design of apartments for the numbers of occupants proposed, lack of noise study and issues relating to the site notice.
- There is a material difference to previous permission for nursing home and proposed student accommodation.
- Non compliance with the City development Plan
- Size and scale of the development and proposed provision of accommodation for 52 residents. The proposed apartments are not typical which will accommodate between 6 and 7 residents.
- The development would be out of character with the pattern of surrounding development and the loss of open space is queried.
- The development will result in overlooking of existing homes and is in a backland location.
- Suitability of the site questioned and flooding issues raised. A number of buildings in the area, both old and new, have been devastated by flooding in 2009.
- The proposed development, together with the proposed change of use of the leisure centre is a major change and has included the removal of the

tennis courts. If permitted, the development will impact on the available recreational amenity for the occupiers of the site.

- Concern raised regarding the proximity of the works to adjacent property and the potential for causing subsidence.

3.3 There is one external report noted on the planning file from Irish Water advising that further information is required with regard to the proposed development including as follows:

1. CCTV condition of all existing drain connections
2. Calculations to show that existing drains have sufficient capacity
3. Revised proposals where existing drainage is not adequate.

3.4 There are 4 no reports noted from the internal departments within Cork County Council as follows:

Environmental Waste Management & Control: No objections subject to conditions.

Drainage Section: there are two reports noted on the PA files.  
Both advise no objections subject to conditions.

Roads Report: No objection subject to conditions. The report also provides a calculation for development contributions.

Transportation & Mobility Division: Further information required with regard to:

1. Public lighting
2. Permeability of vulnerable road user movement within the development site itself.
3. Bicycle parking
4. Car parking details.

3.5 The Planning report on file address issues relating to the proposed development, policy context, planning history and consultations. The report, in its assessment, considers issues relating to the standard of accommodation, design and visual amenity, impacts on the amenities of adjacent properties,

access, parking and boundary treatment, drainage and flooding and other issues including Part V. The report considers that the principle of the proposed development is acceptable. Further information is requested in relation to 8 issues.

3.6 Further information was sought in relation to the following:

1. Future use of the leisure centre
2. Purpose of the physical link between the buildings
3. Noise impact assessment required
4. Non-compliance with the Guidelines on Residential Developments for Third Level Students, DoES 1999.
5. Details of bin storage and communal facilities
6. Photomontages required to show development on stilts. Details also required of how it is proposed to deal with issues such as rubbish etc, collecting underneath the structure.
7. Details of vehicular and pedestrian layout, including proposed changes.
8. Advising regarding the requirements of Article 35(1) of the Planning & Development Regulations 2001 as amended.

3.7 The applicant responded to the FI request as follows:

1. It is not intended that the proposed student accommodation will be provided in conjunction with any nursing home development. It is requested that the student accommodation be considered in conjunction with the existing leisure centre which is believed to be entirely compatible.
2. There is no internal link between the existing leisure centre and the proposed student accommodation. It is submitted that by keeping the location, size, scale, levels and height of the proposed student accommodation the same as the permitted nursing home, there is no difference in terms of impact on the amenities of the area.
3. Noise Impact Assessment submitted.
4. The proposed student accommodation goes beyond the minimum standard requirements and specifications in the DES Guidelines.
5. Bins storage details provided.

6. Photomontage submitted
  7. Public lighting and car parking layout submitted. The proposal will provide an additional 13 car parking spaces. Bicycle parking provided and landscaping plan submitted.
  8. FI response not considered to be significant.
- 3.8 Following receipt of the response to the FI request, there were no further external reports or third party submissions noted on the Planning Authority file.
- 3.9 Following receipt of the response to the FI request, 2 further reports from the following internal Cork City Council Departments were submitted:
- Transportation Division: issues raised in FI addressed. Conditions recommended.
- Environment Section: Satisfied with the Noise Impact Assessment but requires clarification regarding the exact measures proposed to mitigate against noise.
- 3.10 Following receipt of the response to the FI request, the Planning Officer report noted the adoption of the 2015-2021 Cork City Development Plan. In terms of the response, the report considered that 5 issues had been adequately addressed. Clarification is required with regard to items 3 and 7 of the FI request. Clarification was sought in relation to these issues on the 12<sup>th</sup> June, 2015.
- 3.11 A response to the clarification request was submitted to Cork City Council on the 26<sup>th</sup> June, 2015.
- 3.12 Following the submission of the clarification, the following internal reports were received:
- Transportation Division: Issues raised regarding the inclusion of an additional 5 car parking spaces
- Parks Department: No objections.

Environment Section: No further issues

Planning Policy Unit: raises concern that the proposed landscape plan, and in particular, the inadequate and deficient provision of a landscaped corridor materially contravenes Objective 10.9 River and Waterway Corridors. It is further advised that as part of the site is an area of known flood risk, increased importance that an adequate biodiversity is required. The report concludes that the PPU cannot support the proposed development in its current form, but should permission be considered, a condition is recommended to be included.

3.13 The final Planning Officers report considered that the submissions adequately addressed the issues raised in the FI and clarification requests. The report notes a number of issues but is satisfied that the matters can be dealt with by way of condition. A recommendation to grant permission, subject to 11 conditions, is presented for consideration.

#### **4.0 DECISION OF THE PLANNING AUTHORITY**

4.1 The Planning Authority decided to grant planning permission for the proposed development subject to 12 conditions, including as follows:

Cond 3: No change of use from student accommodation to any other type of living accommodation without prior grant of permission.

Conds 4, 5, 6: deal with landscaping and amenity corridor

Cond 7: Flood Risk Management

Cond 8: Environmental protection and waste management

Cond 9, 10: Noise limits and attenuation

Cond 11 Lighting and roads

Cond 12: Development Contributions.



## 5.0 RELEVANT PLANNING HISTORY

5.1 The following is the relevant planning history associated with the subject site:

**PA ref 91/16963:** Planning permission granted for the construction of a swimming pool, leisure complex and associated catering facilities.

**PA ref 93/17957:** Planning permission granted to extend gym and associated facilities.

**PA ref 96/20907:** Planning permission sought for alterations and three storey extension to existing leisure centre for a 24 bedroom hotel with bar / dining / parking. The application was withdrawn prior to a decision issuing.

**ABP ref PL 28.103792 (PA ref 21407/97):** Planning permission granted for a 3- storey extension to existing leisure centre to provide a 24-bedroom hotel and associated bar, dining and parking facilities.

**PA ref 98/22538:** Planning permission sought for alterations and three storey extension to existing leisure centre for a 24 bedroom hotel with bar / dining / parking. The application was withdrawn prior to a decision issuing.

**PA ref 98/22700:** Planning permission granted for 30 apartments with parking.

**ABP ref PL28.233678 (PA ref 07/31787):** Planning permission granted by Cork City Council for the construction of 23 no. student/ holiday apartment units ranging from 2 to 6 bedrooms in 2 no. buildings varying in height from 3 to 5 storeys together with associated site development works. The development was refused on appeal for the following reason:

Having regard to the backland location of the site, the pattern of development in the vicinity, the nature and the intensity of the proposed use, the height and mass of the buildings, their design and their proximity to existing houses and their rear gardens, it is considered that the proposed development would seriously injure the amenities of property in the vicinity by reason of overlooking, visual obtrusiveness, noise, traffic generation, general disturbance and inadequate parking for the holiday apartment use. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**ABP ref PL28.237742 (PA ref 10/34436):** Planning permission granted for alterations and change of use of the existing hotel to provide a nursing home and all associated ancillary development works. First party appeal against development contributions.

**PA ref 10/34642:** Planning permission refused by Cork City Council for 2-storey extension to the nursing home permitted under Ref 10/34436 and partial change of use of the existing leisure centre to nursing home use. The development was refused on the basis of overdevelopment of the site and be out of character and seriously injure the visual and residential amenities of the area.

**ABP ref PL28.239023 (PA ref 11/34799):** Planning permission granted by Cork City Council for a two storey extension to the nursing home permitted under Ref 10/34436 and minor amendments and partial change of use of the existing leisure centre to nursing home use. The development was refused on appeal to the Board for reasons relating to flooding.

**ABP ref PL28.240044 (PA ref 11/35072):** Planning permission granted by Cork City Council for a two storey extension to the nursing home permitted under Ref 10/34436 and minor amendments and partial change of use of the existing leisure centre to nursing home use. The decision was upheld on appeal to the Board.

**ABP ref PL28.242369 (PA ref 13/35660):** Planning permission granted by Cork City Council for the change of use of the existing Brookfield Leisure Centre to nursing home use as an extension to the nursing home permitted under Council ref 10/34436 and 11/35072, ABP ref PL28.240044. The development was refused on appeal to the Board for reasons relating to flooding.

**PA ref 14/35895:** Planning permission granted by Cork City Council for modifications to the ground floor of the nursing home permitted under Council ref 13/35660, ABP ref PL28.242369 by raising the finished floor level by 200mm and providing 13no. bedrooms at ground floor level.

**PA ref 14/36164:** Planning permission was sought for the retention of the change of use from hotel to student accommodation comprising 3 no. student accommodation apartments and all associated ancillary development works. Further information was sought on this application on the 10<sup>th</sup> December, 2014. An extension of time for lodging the response to the FI request was made and granted. A response to the further information request was to be made by the 9<sup>th</sup> September, 2015.

I have consulted with the Cork City Council web site, today, 30<sup>th</sup> October, 2015, and note that there does not appear to have been a response to this further information request made within the specified time period.

The Board will note that the current appeal relates to Cork City Council file reference 15/36267, which was lodged with Cork City Council on the 5<sup>th</sup> February, 2015. Permission was granted by the City Council on the 23<sup>rd</sup> July, 2015 and an appeal was lodged with the Board on the 12<sup>th</sup> August, 2015. Following this date, a further planning application has been lodged with Cork City Council, on the 28<sup>th</sup> August, 2015, as follows:

**PA ref 15/36530:** Planning permission is sought for the following:

- 1) The change of use from hotel to provide 3 no. apartments
- 2) The change of use from Leisure Centre to provide 6 no. student accommodation apartments
- 3) The construction of 8 no. student accommodation apartments to the rear (south) of Brookfield hotel/leisure centre and
- 4) All associated site works including landscaping and revisions to the existing access and car park layout.

Further information was sought in relation to the current application with Cork City Council on the 21<sup>st</sup> October, 2015, a copy of the FI request is attached. The Board will note that there is no reference in the FI request to the fact that a current appeal in relation to item 3 of the proposed development currently lies with the Board. In this regard, I reference the Planning & Development Acts, 2000 as amended Section 37(5). I do acknowledge the fact that the application was submitted to Cork City Council before the appeal was lodged to the Board.

## **6.0 DEVELOPMENT PLAN & NATIONAL POLICIES & GUIDELINES**

6.1 At the outset, the Board should note that at the time the planning application was lodged with Cork City Council, the previous Development Plan, 2009-2015 was in effect. The new CDP was adopted and came into effect on the 20<sup>th</sup> April, 2015. Reference is made to the 2009 Plan in the Planning Officers report. The 2015-2021 Plan is the relevant policy document for the Boards consideration, but both documents are presented in this section of my report, solely for completeness.

### Cork City Development Plan 2009-2015:

6.2 Chapter 15 of the City Plan deals with land use zoning objectives. The subject site is zoned objective ZO 5, Residential, Local Services and Institutional Uses. Objective ZO seeks to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3.

6.3 The provision and protection of residential uses and residential amenity is a central objective of this zoning, which covers much of the land in the suburban area. However other uses, including small scale local services, institutional uses and civic uses and provision of public infrastructure and utilities are permitted, provided they do not detract from residential amenity and do not conflict with the employment use policies in Chapter 3 and related zoning objectives.

6.4 Sections 6.35-6.37 deal with student accommodation and section 6.37 notes that 'Managed student apartment complexes on or adjacent to campuses or which have convenient access to third level colleges are the preferable form of student housing in lieu of losing existing housing stock to accommodate students on a part-time basis. In addition, policies 6.19 – 6.22 deal with the provision of student accommodation.

6.5 Further to the above, the site lies adjacent to an area designated as High Landscape Value. Policy 10.5 seeks to conserve and enhance the special landscape character and visual amenity of such areas. Other relevant policies include Policies 12.10, 12.11, 12.12, and 12.13, which relate to flooding and Table 17.10 sets out the maximum car parking standards for different land use categories.

Cork City Development Plan 2015-2021:

- 6.6 Volumes two and three of the current City Plan provide the maps which support the written statement of the City Development Plan. The subject site remains zoned for Residential, Local Services and Institutional Uses. The site is also included within an Architectural Conservation Area under the new plan, Map 8. Objective 6.5 of the Plan deals with the provision of student accommodation and states 'Any change of use from student accommodation to any other type of accommodation shall require planning permission. Generally such applications shall be resisted unless it can be adequately demonstrated that an over provision of student accommodation exists in the city'.
- 6.7 In terms of development management guidelines, chapter 16 of the CDP is relevant and in particular, Part C, Residential Development, sections 16.68 and 16.69 are relevant. In particular, section 16.68 provides that when dealing with planning applications for such developments a number of criteria will be taken into account including:
- The location and accessibility to educational facilities and the proximity to existing or planned public transport corridors and cycle routes;
  - The potential impact on local residential amenities;
  - Adequate amenity areas and open space;
  - The level and quality of on-site facilities, including storage facilities, waste management, bicycle facilities, leisure facilities (including shop/café uses), car parking and amenity;
  - The architectural quality of the design and also the external layout, with respect to materials, scale, height and relationship to adjacent structures. Internal layouts should take cognisance of the need for flexibility for future possible changes of uses;
  - In all schemes the applicants will be required to provide written documentary confirmation for a 'Qualifying Lease' as defined in the Guidelines on Residential Developments for third level students published by the Department of Education and Science in May 1999, to prove that the accommodation is let to students within the academic year.

- 6.8 Further to the above, the site lies immediately adjacent to an area identified as an area of High landscape Value while the northern area of the site is affected by a designated Amenity Route and as such, Objective 10.9 of the 2015 Plan is relevant. A number of Objectives are considered relevant including Objective 10.8, which deals with Non Designated Areas of Biodiversity Importance, Objective 10.9, which deals with River and Waterway Corridors and Objective 10.10, which deals with Trees and Urban Woodland.
- 6.9 The site is also in a flood risk zone and in this regard chapter 12 of the Plan, which deals with Environmental Infrastructure and Management is relevant. The site is located within Zone 3 for parking requirements and Chapter 16, Part G, deals with Car & Cycle Parking Requirements, with Table 16.8 setting out the maximum car parking standards for different land use categories. Table 16.9 deals with Bicycle Parking Requirements.

### **Relevant National Policy & Guidelines**

#### Flood Risk Assessment Guidelines

- 6.10 The Guidelines for Planning Authorities on The Planning System and Flood Risk Assessment (DEHLG) provides guidance in respect of proposed development in areas susceptible to flooding. The Sequential Approach seeks to ensure that development is first and foremost directed towards land that is at low risk of flooding. Three types or levels of flood zones are defined in accordance with the level of probability of flooding. Flood Zone B is defined as an area where the probability of flooding is moderate. Part of the subject site, car part to the north, is also located within a Flood Zone A. The Guidelines also identify three Vulnerability Classes (highly vulnerable, less vulnerable, and water compatible). Student halls of residents and dwelling houses fall within the Highly Vulnerable class of development. Such uses are generally considered inappropriate in Zone B, unless the requirements of the Justification Test can be met. The terms of the Justification Test are set out in Chapter 5 of the Guidelines.

#### Sustainable Residential Development in Urban Areas

- 6.11 The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DEHLG) state that there should be adequate separation (traditionally about 22m between 2-storey dwellings) between opposing first floor windows.

Guidelines on Residential Developments for 3<sup>rd</sup> Level Students.

- 6.12 These guidelines issued by the Department of Education and Science in 1999 are of relevance in relation to the design of student accommodation.

## **7.0 GROUNDS OF APPEAL**

This is a multiple third party appeal against the decision of Cork City Council to grant planning permission for the proposed development. The grounds of appeal are similar to those issues raised during the PAs assessment of the proposed development and are summarised as follows:

### **7.1 Robert & Maura White:**

- If permission is granted, then the Leisure Centre will be closed and more student accommodation applied for.
- The developers have tried to sanitise the planning history by applying for a nursing home after being refused for student accommodation, and then reapplying for student accommodation.
- The 2007 application for student accommodation was refused by ABP who recognised the sensitive nature of the site and its proximity to existing homes of the Grove. It was acknowledged that a grant of permission for the use would seriously injure the amenities of the homes.
- Reference is made to poor planning decisions in the Victoria Cross area and ABP ref 28.217028 is referred to.
- The proposed development needs to be considered in the context of the close proximity of family homes resulting in overlooking of gardens, loss of privacy, devaluing property and would result in undoubted noise and nuisance.

### **7.2 Sean & Megan O'Conaill:**

- Virtually identical application refused in 2007 by ABP 28.223678 refers, due to proximity to housing, injury of amenities, overlooking, visual obtrusiveness, noise, traffic generation, general disturbance and inadequate car parking.

- There are a number of defects with the application:
  - Location of site notice
  - Number of trees on the site
  - Description of the development as student only when the development is used as holiday and casual summer accommodation
  - References to previous permission for nursing home are irrelevant and inappropriate given the manifest and material differences between student accommodation and a nursing home
- The 2009 City Development Plan notes the need for student accommodation however, the area around Brookfield, Victoria Cross, Dennehy's Cross has entirely been overdeveloped and any further permission for such uses would be a material breach of the requirement that any such student accommodation be facilitated "in a manner compatible with surrounding residential amenities".
- The development fails to adhere to the objective of the City Development Plan to "protect and provide for residential uses, local services, institutional uses and civic uses".
- Size and scale of the development would be an intensive use adjacent to the private open space of suburban housing.
- The development is not a typical apartment development and is exceptional in scale with the density presenting serious issues with regards to noise, parking, traffic and safety.
- Non compliance with Section 17.42 of the City Development Plan – relating to bins and refuse sites.
- Development out of character with the area and the loss of open space is an issue as it was to be preserved as an open/sporting area as an original condition of planning .
- The plans misrepresent the scale and number of trees that are on the site boundary, and the absence of trees has an effect on the level of noise from the development.
- Proposed development does not accord with the Guidelines on Residential Developments for 3<sup>rd</sup> Level Students.
- Development will result in overlooking and is a backland location.



- Anti-social and noise issues are existing on the site as evidenced by the need for the development to deploy security staff on week nights.
- Inadequate parking
- The site has flooded.

## **8.0 RESPONSES**

### **8.1 Planning Authority:**

The Planning Authority has responded to this appeal advising no further comments.

### **8.2 First Party Response to Third Party Appeal:**

The first party, through their agent, has responded to the third party appeals under a number of headings as follow:

- The student accommodation has been designed to a high standard, will have a very positive impact on this part of the City and is fully supported by the 2009 and 2015 Cork City Development Plans.
- There will be no adverse impact on or devaluation of adjoining properties.
- Brookfield Leisure Centre does not form part of this planning application and is a commercial enterprise. The applicant is under no obligation to retain the existing commercial facility.
- Ample car parking has been provided and there will be no adverse traffic generated from the proposed development.
- The planning application was subject to a Flood Risk Assessment and will not have an adverse impact in relation to flood risk in the area.
- The historical planning history of the site is not a material consideration in this appeal.

It is requested that the decision to grant planning permission be upheld.

### **8.3 Third Party Response to First Party Response to Third Party Appeal:**

Mr. White made a further submission to this appeal and the detail is summarised as follows:

- The decision by the Board to refuse 28.223678, made it clear that the gravity of such a large scale development in proximity to the family homes was appreciated.
- It was determined that the development of student accommodation / holiday lets so close to family homes would 'cause serious injury to the amenity of the properties in the area by reason of overlooking, visual obtrusiveness, noise, traffic generation, general disturbance and inadequate parking for the holiday village.
- A condition attached to the 1991 decision, 16.96391 clearly sought to restrict development on the site to a degree compatible with its unique character and riverside location.
- It is submitted that the applicants have lodged a further planning application with Cork City Council on the subject site for student accommodation. Clarification is sought in this regard from the Board.
- It is required that it be noted that when Brookfield and the Grove were built, the purpose of the tennis courts was not only to act as an amenity for the students, but also as a natural division and screening between the residential homes and the student accommodation.

### **9.0 OBSERVERS TO APPEAL**

There is 1no observer noted in relation to this appeal from Mrs Catherine Neville, submitted on her behalf by Mr. Declan Tyner, Chartered Architect. The observation seeks to object to the proposed development with reference to the grounds for appealing the planning decision summarised as follows:

- Site suitability, particularly with regard to flooding. References to U tube videos are provided and recommended to be viewed. Reference is also made to old and new buildings which were affected by flooding in 2009 also depicted in cited U tube videos.
- Planning history. A number of refusals have issued with regard to the development of this area and the reasons remain valid.

- The application is a major change to the leisure facilities which include the removal of the outdoor tennis courts and the construction on the open recreation space. The area is extensively used during the academic year by students, and by the families, and other occupants of the short term holiday rentals during the holiday periods.
- Concerns are raised with regard to the potential for subsidence of existing property given the difference of site levels.
- Noise is also raised as an existing and ongoing source of friction between the residents of Brookfield and the adjoining home owners.

## **10.0 ASSESSMENT**

10.1 Having considered all of the information submitted with the planning application, together with the appeal documentation and responses, and having undertaken a site visit, I consider it appropriate to assess the proposed development application under the following headings:

1. The principle of the development and compliance with current City Development Plan.
2. Amenity Issues
3. Planning History
4. Flooding Issues
5. Other Issues
6. Appropriate Assessment

### **Principle of development**

#### Compliance with the Cork City Development Plan 2009-2015:

10.2 The subject site is located on lands which are zoned Objective ZO 5. This zoning objective seeks to protect and provide for residential uses, local services, institutional uses and civic uses. The development will provide for a development which will consist of 8 no. student apartments over two storeys. In terms of compliance with the zoning objective for the subject site, I am satisfied that the proposed development adequately complies in principle, being a development for a residential purpose.

10.3 In terms of development management guidelines, chapter 16 of the CDP is relevant and in particular, Part C, Residential Development, sections 16.68 and 16.69. In particular, section 16.68 provides that when dealing with planning applications for student accommodation developments a number of criteria will be taken into account including:

- The location and accessibility to educational facilities and the proximity to existing or planned public transport corridors and cycle routes;
- The potential impact on local residential amenities;
- Adequate amenity areas and open space;
- The level and quality of on-site facilities, including storage facilities, waste management, bicycle facilities, leisure facilities (including shop/café uses), car parking and amenity;
- The architectural quality of the design and also the external layout, with respect to materials, scale, height and relationship to adjacent structures. Internal layouts should take cognisance of the need for flexibility for future possible changes of uses;
- In all schemes the applicants will be required to provide written documentary confirmation for a 'Qualifying Lease' as defined in the Guidelines on Residential Developments for third level students published by the Department of Education and Science in May 1999, to prove that the accommodation is let to students within the academic year.

These criteria are discussed further below.

10.4 The location and accessibility to educational facilities and the proximity to existing or planned public transport corridors and cycle routes;

The subject site is clearly well located in terms of this criteria being located just off College Road beside the U.C.C campus and Brookfield Health Science & School of Nursing Building. The site is also well serviced in terms of public transport.

10.5 The potential impact on local residential amenities;

This issue forms the primary basis for the third party objections to the proposed development and will be discussed further below.

10.6 Adequate amenity areas and open space;

This matter must be considered in that the proposed development site, currently comprises an open space area which is currently accessible and used by the students who reside in the wider Brookfield Village development. The development, if permitted, will result in the loss of this open space. The site is located adjacent to the Curragheen River and the existing Brookfield Village development comprises a number of open space areas. Certainly the development of the current site will result in the loss of possibly the most useable in terms of active recreational open space. I also refer the Board to Objective 11.7 of the CDP which deals with Public Open Space and where it is the stated objective of the Plan to, amongst others:

- a. To protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. There will be a presumption against development of land zoned public open space for alternative purposes;
- b. There will be presumption against development on all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation/ amenity open space, and also including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes;

10.7 The level and quality of on-site facilities, including storage facilities, waste management, bicycle facilities, leisure facilities (including shop/café uses), car parking and amenity;

The subject site is located within an established development which currently enjoys a variety of services including a shop on the site and the Brookfield Leisure Centre which includes a swimming pool and gym. The Board will note that the applicant, in response to the request for further information, suggests that the existing leisure centre use is in fact a unique and very popular facilitate within the student village, with a high student membership. It is also submitted that the Leisure Centre makes Brookfield Village a popular location for students.

The matter of the future of the Leisure Centre is dealt with in the response to the third party appeals on the basis that it is a separate commercial enterprise and does not form part of this planning

application. In this regard, the amenity that is the Leisure Centre is in question. Further, the Board will note that there is a current planning application with Cork City Council which is seeking the change of use of the Leisure Centre for student accommodation use, as referred to above. I will come back to this matter below. In considering the proposed development against this Development Plan Criteria, I am concerned that there would appear to be an ongoing intention to reduce open space within the overall Brookfield Village site as well as an intention to eliminate other existing amenities within the site.

The proposed development provides for a separate bin store and a covered bicycle parking area. The proposed landscaping also provides for the retention of a number of trees on the site and the provision benches and picnic tables. In addition, it is proposed to provide for a 2m wide river walkway as required in the County Development Plan. Car parking is located within the existing car park area to the north of the site and Leisure Centre. There is no car parking proposed in the immediate vicinity of the proposed building. Pedestrian access and access for emergency vehicles only is proposed to the building.

- 10.8 The architectural quality of the design and also the external layout, with respect to materials, scale, height and relationship to adjacent structures. Internal layouts should take cognisance of the need for flexibility for future possible changes of uses;

The proposed development site is located to the rear of a number of buildings, including the permitted leisure centre and hotel, and also two blocks of existing residential accommodation buildings within the Brookfield Village development. In addition, the site is located to the north of the private residence, 'San Paula' and to the east of The Grove residential estate. In this regard, the site is located within a backland location. In this regard, I have concerns regarding the external layout of the proposed development site.

I acknowledge the submission of the application regarding the fact that a similar type structure was permitted on the site, but the Board will note that the current proposal is significantly different in terms of use than the previously permitted nursing home. Access to the nursing home was through the existing building from the car park elevation. Access to the proposed building is via a pedestrian channel which runs between the existing hotel building which rises to nearly 12m on one side, and a high retaining wall. The retaining wall is necessary given the difference in site level between the proposed development site and

the existing student accommodation buildings to the east. I am not satisfied that this arrangement is appropriate and overall, I consider that the external layout of the proposed development is not acceptable.

In terms of the external treatment of the building, I do note that the finish proposed does not correlate or relate to the existing developments within Brookfield. The existing development comprises red brick buildings while the current proposal is for a smooth plaster finish building which is to be constructed on piles. Overall, the height proposed relates to the existing leisure centre and rises to 11m at its highest point.

10.9 In all schemes the applicants will be required to provide written documentary confirmation for a 'Qualifying Lease' as defined in the Guidelines on Residential Developments for third level students published by the Department of Education and Science in May 1999, to prove that the accommodation is let to students within the academic year.

I am satisfied that this issue is not a concern.

10.10 In light of the above, I have concerns regarding the proposed development in terms of the following:

- Impact on residential amenity of existing residents
- Loss of open space and amenity
- External layout of the development and the backland nature of the proposed development.

10.11 Further to the above issues, the site is also included within an Architectural Conservation Area under the new plan, Map 8. Having regard to the location of the proposed development site, together with the peripheral location of same within the ACA, I am satisfied that there is no significant or negative impacts arising in terms of the ACA.

10.12 In addition, it is noted that the site lies immediately adjacent to an area identified as an area of High landscape Value while the northern area of the site is affected by a designated Amenity Route and as such, Objective 10.9 of the 2015 Plan is relevant. The amended site layout plan provides for the

amenity route as required in the plan. I do note that two trees are identified as having to be removed in order to facilitate the proposed development, if permitted. A landscaping plan was submitted by the applicant in support of the proposed development which provides details relating to the landscaping proposal for the site, and includes additional planting throughout the site.

10.13 Objective 10.9 of the CDP requires that a minimum of 10m shall be dedicated from the waters edge for amenity, biodiversity and walkway purposes. I note the concerns of the Planning Policy Unit of Cork City Council in this regard. I would agree that the proposed development, while indicating a 2m wide walkway on the site layout plan submitted to Cork City Council on the 26<sup>th</sup> June, 2014, fails to adequately comply with this development plan requirement. If pressed to fully comply, the applicant will lose 28 proposed new car parking spaces along the northern boundary of the site, which comprises the boundary with the Curragheen River. These 28 car parking spaces are achieved by amending the existing car parking layout in this area of the site. The quality of the walkway indicated by the applicant is very questionable, in my opinion.

10.14 Objective 11.7 of the CDP deals with Public Open Space and it is the stated objective of the Plan to, amongst others:

- a. To protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. There will be a presumption against development of land zoned public open space for alternative purposes;
- b. There will be presumption against development on all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation/ amenity open space, and also including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes;

Having regard to the nature of the proposed development, I am not satisfied that the proposal adequately accords with this objective.



## **Amenity Issues**

- 10.15 I have raised a concern above in terms of the potential impact associated with the proposed development on the residential amenities of existing residents within the Brookfield and the other primary residential areas adjacent to the site. I note the submission of the first party in terms of the fact that the proposed development is essentially a residential development and accords with the zoning objectives afforded to the subject site. I also note the fact that development has been permitted on the site for a nursing home. I have also commented on this issue in terms of the access to the permitted nursing home, and I would suggest that there can be no comparison in terms of the permitted nursing home and the current proposal. While I acknowledge the submission of the first party that the Brookfield Village is well managed, there are significant residential amenity issues associated with a student accommodation building, with the potential to accommodate 50+ students, rather than a nursing home. In particular, issues arise relating to noise and general disturbance which, in my opinion, would have a significant impact on the existing residential amenities of the residents of The Grove and other private residences adjacent to the subject site.
- 10.16 In terms of the existing residents within Brookfield Village, I have a real concern regarding the loss of this existing open space and general amenity spaces within the overall complex. I am further concerned in terms of the potential residential amenity of the future residents, particularly with regard to the external layout of the development site. Given the intentions of the applicant in terms of the future of the leisure centre, which has been held up as a unique feature of this student accommodation development, and the proposals to change the use of same to provide additional student accommodation, it is clear that the amenities of the Brookfield Village development, and indeed, the wider area are being eroded. I of course acknowledge that the continued operation of the commercial entity that is the Leisure Centre is entirely a matter for the owner / operator. In this instance however, I am mindful of the current planning application with Cork City Council for the change of use of same, as well as the fact that the application also includes the building the subject of this appeal, for student accommodation. Given the potential population that could be accommodated in Brookfield should permission be granted, I am not satisfied that adequate amenities would exist to support such a population.

## **Planning History**

10.17 The appellant has raised concerns regarding the planning history associated with the subject site. I also acknowledge the submission of the first party in this regard. There is clearly a long and varying planning history associated with the subject site and the Board has considered the development of further student accommodation on the site of the tennis courts under ABP ref PL28.233678 (PA ref 07/31787) where planning permission was refused on appeal for the construction of 23 no. student/ holiday apartment units ranging from 2 to 6 bedrooms in 2 no. buildings varying in height from 3 to 5 storeys together with associated site development works. The development was refused on appeal for the following reason:

Having regard to the backland location of the site, the pattern of development in the vicinity, the nature and the intensity of the proposed use, the height and mass of the buildings, their design and their proximity to existing houses and their rear gardens, it is considered that the proposed development would seriously injure the amenities of property in the vicinity by reason of overlooking, visual obtrusiveness, noise, traffic generation, general disturbance and inadequate parking for the holiday apartment use. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

10.18 While I accept that the overall design and height of the development refused under the above appeal, has changed since the decision, issues of the backland nature of the site, together with the nature of the use and the existing uses in the vicinity of the site, and the impact on the existing amenities of property in the vicinity of the site by reason of noise and general disturbance, together with the loss of amenity open space, have not changed.

10.19 Further to the above, I note the inclusion of a condition, as presented by the third party appeals, in the original planning permission for Brookfield in 1991, reference TP91/16963, which is advised as stating 'Permission does not imply a favourable attitude to further development on the application site. The building as proposed excluding the future tennis courts building outlined is likely to remain the maximum permissible site coverage'. 'Reason: To restrict development to a degree compatible with its unique character and riverside location in accordance with its zoning in the development plan as 'Land on which development may be restricted or prevent for amenity reasons.' The Board should note that I was unable to see a copy of this decision.

## **Flooding Issues**

- 10.20 The site is located within a flood risk zone and in this regard chapter 12 of the County Development Plan, which deals with Environmental Infrastructure and Management is relevant. Parts of the subject site have flooded in the past, notably the area to the north, adjacent to the river, and the proposed location for 28 new car parking spaces, in the extreme weather and flood event of November, 2009, and previously in 1990 and 1986. The proposed student accommodation development is to be located in a flat and hollow area of the site, to the rear of the Leisure Centre and hotel and the area might be described as a natural amphitheatre as the difference in ground levels is in the region of 10m and the site is defined by a steep slope from College Road to the south, through the Brookfield Village Development and towards the river to the north. The finished floor levels of the hotel building has been identified at 4.79m OD.
- 10.21 Objective 12.15 of the 2015 CDP deals with restrictions on development in Flood Risk Areas except where the applicant satisfies the Justification Test. The Board will note that the subject site is not located within an identified Urban Centre, and as such, the Justification Test does not necessarily apply in accordance with the Flood Risk Management Guidelines. Objective 12.16 deals with Floodplains and seeks to protect, enhance and manage same as 'vital green infrastructure. Objective 12.17 deals with Flood Impact Assessment and advises that all significant developments impacting on flood risk areas will be required to identify potential loss of floodplain storage and include proposals to ensure that flood risk as a result of the development is not increased elsewhere. The Flood Risk Assessment (FRA) Guidelines published by the DEHLG categorise flood risk areas as A, B and C in descending order of risk.
- 10.22 The Lee Catchment Flood Risk Assessment and Management Study (Lee CFRAMS) for Cork City was published in early 2010. The study provides a map of the Flood Extent both currently, and in a mid-range future scenario. A copy of these maps is appended. The northern part of the site lies within Flood Zone A as designated in the FRA Guidelines. The proposed building is located within the 0.1% AEP flood extent on the current map – i.e Flood Zone B. However, the AEP increases to 10% for the mid-range future scenario (Flood Zone A). The proposed student accommodation use is classified as Highly Vulnerable Development by the FRA Guidelines. This category of development is generally considered inappropriate in Zone B. The Guidelines advise that most types of development would be considered inappropriate in

zone A and that “development should be avoided and/or only considered in exceptional circumstance such as city or town centres or in the case of essential infrastructure that cannot be located elsewhere and where the justification test has been applied”. As the site is not located within a defined Urban Centre, and is not essential infrastructure, the requirements of the Justification Test are not necessarily applicable. The CDP objective, however, require consideration of same.

#### 10.23 Justification Test:

*i. Compliance with Zoning Objective*

The subject site is zoned for residential, local services and institutional use. In principle, the proposed development complies with the zoning objective for the site.

*ii. Flood Risk Assessment*

The Justification Test requires that the FRA demonstrates that a proposed development will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk. The previous inspector who considered proposals for development on this site, and indeed the Board in deciding to grant permission for the nursing home, accepted that the proposed pile foundation which will support the proposed building, will result in the undeveloped grassed area on the site will remain intact. As such, it is contended that the proposed development will not impact on the flood regime either within the site or elsewhere and that there will be no impact on the flood plain/ storage capacity of the site.

In addition, it is considered that proposals for stormwater attenuation (including an attenuation tank) in accordance with SuDS are contained in Appendix C of the submitted flood risk assessment. It has therefore, been accepted that the use of stilt foundations means that the proposed development will not substantially increase the impermeable area discharging to the surface water sewer, and would not, therefore, represent a risk to the flood regime in the area.

*iii. Includes measures to minimise risk to people, property, the economy and the environment.*

As indicated above, the Board’s previous decision to grant permission for a nursing home extension on the site, considered the risk to people, property, the economy and the environment. It is acknowledged that

the residential use of the site is a highly vulnerable use and that the site is located within Zone B of the Curragheen River flood plain. Previous inspector's reports identified potential for flooding of the nursing home building itself, and the possibility of access/ egress routes being cut off in a flood event. The permitted nursing home development addressed the identified potential impacts by increasing the finished floor level of the building to 5.7m and relocating the access, including emergency access, so that it avoids any flood risk zones.

In relation to the current proposed student accommodation development, the finished floor level of the proposed building is indicated at 5.7m, which is above the recorded flood water level at the site during the flood event of November 2009. The existing ground level at the site is indicated at 4.4m at its lowest point and generally between 4.5m and 4.7m in the area of the proposed building. The Lee CFRAMS estimates that the flood level risk in the vicinity of, and including, the site will be in the order of 4.41m-4.42m (10%), 5.15m-5.16m (1%) and 5.64m-5.66m (0.1%). As such, the proposed construction of the building on piled foundations, will move it out of the flood risk zone in a vertical direction.

In relation to the access, the Board will note that the proposal to alter the existing vehicular access layout, as previously permitted, remains under the current proposal. In terms of FRA, I am satisfied that in the event of a flood incident, pedestrian access for emergency vehicles could be maintained. The issue with the altered roads and car park layout however, remains in relation to the provision of car parking spaces, an appropriate river walkway and the amenities of same, as required by the County Development Plan.

*iv. Urban Design/ Streetscape*

As the appeal site is not located within the Urban Centre, where the justification test is required, there is no requirement to integrate into a traditional streetscape.

In terms of the Justification Test, which is applicable to developments within Urban Centres, and not peripheral sites such as the subject site, and given the flood risk zoning afforded to the site, together with the proposed use, I am not satisfied that the development can be justified. Should the Board agree, it might be considered that this issue is a reason for refusal.

## **Other Issues**

10.24 The site is located within Zone 3 for parking requirements and Chapter 16, Part G, deals with Car & Cycle Parking Requirements, with Table 16.8 setting out the maximum car parking standards for different land use categories. Table 16.9 deals with Bicycle Parking Requirements. I am satisfied that the site can be suitably serviced with regard to the provision of car parking spaces and bicycle parking. I do restate the concerns relating to the location of 28 proposed car parking spaces along the boundary of the site with the river. The omission of these spaces would result in an under provision of car parking spaces.

### **Appropriate Assessment:**

10.25 The Curragheen River flows into the South Channel of the River Lee, which in turn flows into the Cork Harbour SPA (code 04030) 7.5 kilometres away on the far side of the City and the Great Island Channel SAC (code 1058) at a distance of 12 kilometres. The subject proposed development seeks to construct building for student accommodation in such a manner as to not alter the flood regime of site by constructing on a stilt foundation. The potential for impacting on a NATURA 2000 site is minimal in this regard and the development is therefore, not likely to have a significant effect on the European sites identified above in view of the sites' conservation objectives. Given the location of the subject site within an established and mature residential area, together with the nature of the proposed construction of the development, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

## **11.0 CONCLUSION & RECOMMENDATION**

### Conclusion:

11.1 Having regard to the location of the site within an established residential area, I consider that the principle of the proposed development can be considered as according with the zoning objective for the site. However, I consider that the development, if constructed as proposed, would contravene Objective 10.9 of the CDP which requires that a minimum of 10m shall be dedicated from the waters edge for amenity, biodiversity and walkway purposes. Given the proposed site layout, and the introduction of 28 car parking spaces at the northern area of the site adjacent to the river, would render compliance with

this objective of the plan impossible. In addition, I would question the quality of the amenity given the position of the path and the car park.

11.2 Further to the above, I have a concern regarding the potential impact the development would present on residential amenity, on a number of levels.

- In terms of existing residents of Brookfield Village, the loss of the largest area of open space within the complex to further development would be a real concern in my opinion. I further consider that the proposed development would contravene Objective 11.7 of the CDP which deals with Public Open Space and where it is the stated objective of the Plan to protect, retain, improve and provide for areas of public open space for recreation and amenity purposes and that there will be presumption against development on all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation/ amenity open space, and also including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes. In the context of the subject site, I consider this objective reasonable
- In terms of the existing residents of the adjoining residential estates, I consider that the nature of the proposed development, being student accommodation, has the potential to generate general amenity issues, particularly in terms of noise and visual amenity.
- In terms of the future residents of the development, if permitted, I consider that the location and general layout of the site, being in a backland location in terms of existing developments, would not give rise to appropriate levels of general and residential amenity. Given the difference in the site levels, together with the proposed pedestrian only access to the building, I am not satisfied that the development is acceptable for the intended use.

Recommendation:

11.2 I recommend that planning permission be REFUSED for the proposed development for the following stated reasons:

## REASONS & CONSIDERATIONS

1. Having regard to the provisions of the current Cork City Development Plan, 2015 – 2021, the pattern of existing and permitted development in the vicinity and area and having regard to the information submitted as part of the planning application, together with the information submitted with the appeal, and notwithstanding the zoning afforded to the site, the Board is not satisfied that the development is acceptable by reason of non compliance with a number of policy objectives of the City Development Plan.
  - It is considered that the development, if permitted, would contravene Objective 11.7 of the CDP which deals with Public Open Space and where it is the stated objective of the Plan, amongst others, to protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. The objective further provides that there will be presumption against development on all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation/ amenity open space, and also including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes. Given the historical use of the subject site as the primary open space area serving the overall Brookfield Village development, it is considered that the development, if permitted would be contrary to this Development Plan Objective and would be contrary to the proper planning and sustainable development of the area
  - It is further considered that the development as presented, contravenes Objective 10.9 of the Plan which deals with River and Waterway Corridors and seeks to protect and maintain the integrity and maximise the potential of the natural heritage and biodiversity value of the River Lee and its associated watercourses. Developments in river corridors are required to dedicate a minimum of 10m from the waters edge in channelized rivers for amenity, biodiversity and walkway purposes. Having regard to the proposed layout of the site, together with the proposed provision of 28 new car parking spaces along the boundary with the river, the development, if permitted, would contravene this Development Plan objective and would be contrary to the proper planning and sustainable development of the area.



2. Having regard to the backland location of the proposed student accommodation building, together with the differing ground levels, the Board is not satisfied that development, if permitted, would result in appropriate levels of residential or general amenity for the future residents of the building. It is further considered that if permitted, the development would negatively impact on existing residential amenities for existing residents of Brookfield Village by reason of the loss of public open space and the residents of the wider area, by reason of proximity to private homes, noise and impacts on the general amenities of the area. The development therefore, would seriously injure the residential and general amenities of the area and would therefore, be contrary to the proper planning and sustainable development of the area.

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**A. Considine**  
**Planning Inspector**  
**30<sup>th</sup> October, 2015**