



An  
Bord  
Pleanála

## Inspector's Report PL28.247182

### Development

Student Accommodation comprising 30 apartments with reception, management facilities, substation, plant room, landscaping.

### Location

The Former Muskerry Service Station, Western Road, Cork

### Planning Authority

Cork City Council

### Planning Authority Reg. Ref.

16/36931.

### Applicant(s)

Ziggurat Rol No 2 LP

### Type of Application

Permission

### Planning Authority Decision

Grant with Conditions

### Type of Appeal

First & Third Party

### Appellant(s)

Ziggurat Rol No 2 LP

Stephanie Dinkelbach & Brendan Roycroft

Patrick O'Toole

Brendan and Patricia Culkin

Tim and Aideen Cronin

Daniel and Angela Hartnett

Avril and Tony Lyons

Tom Kent

Mary Creedon

John and Dolores Creedon

John Collins

Ruairi O'Connor

**Observer(s)**

None

**Date of Site Inspection**

3<sup>rd</sup> November 2016

**Inspector**

Mary Crowley

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## 1.0 Site Location and Description

- 1.1. The site, which has a stated area of 0.32 ha., is roughly triangular in shape and is accessed from the Western Road (N22) in Cork City. The vicinity is characterised by a mix of commercial, residential, institutional and educational uses. The site has been cleared and is somewhat overgrown. Fencing is erected along the roadside and rear boundaries with a concrete block wall along part of the eastern boundary. A 2.3 metre concrete block wall delineates the western boundary.
- 1.2. The River Lee (south channel) and the Gill Abbey Weir bound the site to the south and east with the 5 storey River Lee Hotel to the east of same again. Gougane Barra House which is a three storey detached building bounds the site to the west. It is occupied by the HSE. Inniscarrig Terrace further west again comprises red brick three storey buildings some of which appear to be in educational/institutional use with the remainder in residential use. St. Mary's Villas, opposite the site, is a terrace of two storey dwellings, the majority of which appear to be in residential use. The previous Eye, Ear and Throat hospital, a 3 storey red brick Victorian building immediately opposite the site, is now occupied by UCC's Health Promotion Department with the site immediately adjoining to the west used for carparking, The terrace of three storey dwellings to the west of same again are largely in operation as Guest Houses/B&Bs, some of which provide off street parking. The site is approx. 150 metres from a pedestrian entrance to the UCC main campus.
- 1.3. The Western Road at this location facilitates one way traffic, only, accommodating west bound traffic. There is a dedicated bus lane on the same side as the appeal site with a dedicated cycle lane immediately along the northern footpath separated from the carriageway by on-street parking. The said parking is disc operated and is limited to 2 hours.
- 1.4. A set of photographs of the site and its environs taken during the course of the site inspection is attached. I would also refer the Board to the photographs available to view throughout the appeal file.

## 2.0 Proposed Development

2.1. This is an application for student accommodation at the former Muskery Service Station comprising the construction of 30 no. apartments (202 beds) (ranging in size between 4-8 bedrooms), with reception, management facilities, media and meeting/communal areas and all associated ancillary development including plant and equipment, substation, switch room, recycling/refuse storage, landscaping, vehicular and pedestrian access, 52 no bicycle parking spaces and 5 car parking. The proposed development ranges in height from four to six storeys. The stated gross external floor space of the scheme is 7,000 sqm (gross internal 6,815 sqm).

2.2. The application was accompanied by the following:

- Planning Report
- Otter Assessment
- Design Report
- Architectural Visual Assessment
- Daylight Assessment
- Construction Management Plan
- Engineering Report
- Flood Risk Assessment
- Appropriate Assessment Screening
- Environmental Assessment

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Cork City Council decided to grant permission for the above described development subject to 29 conditions including:

- Condition No 2: Student Accommodation use only
- Condition No 3: Fifth floor to be omitted
- Condition No 16: Maximum 5 no car parking spaces

- Condition No 26: Mitigation measures as outlined in the Otter Assessment to be implemented
- Condition 29: €398,645.02 Section 48 financial contribution.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

3.2.2. The Local Authority Planner recommended that permission be granted subject to 29 conditions. The notification of decision to grant permission issued by Cork City Council reflects this recommendation.

#### 3.2.3. Other Technical Reports

3.2.4. The **Heritage Officer** is satisfied with the Appropriate Assessment Report and its findings. The Heritage Officer has no stated objection to the scheme subject to conditions as outlined in their report relating to Otter assessment and control of alien invasive species.

3.2.5. There are four other **internal reports** recorded on the file. However, it is not stated which internal departments are the authors of these reports. None of the four reports have any stated objection subject to conditions set out in the individual reports. The conditions relate to the following as summarised:

- gates / doors, surface water and compliance with DMURS. Further calculations for the general development contribution scheme are set out indicating that a total development contribution of €419,055.67 is required for this scheme.
- compliance with DMURS, maximum provision of 5 car parking spaces, public lighting, mobility management plan and a construction traffic management plan.
- noise, disposal of waste, construction waste, tree felling and waste management.
- drainage, storm run-off, public sewerage, flood mitigation measures.

### 3.3. Prescribed Bodies

3.3.1. The **Inland Fisheries Ireland** has no stated objection subject to a condition requiring that there is no interference with bridging, draining or culverting of the adjacent river

or any watercourse, its banks or bankside vegetation to facilitate the development without the prior approval of Inland Fisheries Ireland.

### 3.4. **Third Party Observations**

- 3.4.1. There are several observations recorded on the appeal below file from (1) Dr Stephanie Dinkelbach & Dr Brendan Roycroft, (2) Patrick O'Toole, (3) Brendan & Patricia Culkin, (4) Tim & Aideen Cronin, (5) Daniel & Angela Hartnett, (6) Avril & Tony Lyons, (7) Tom Kent, (8) Mary Creedon, (9) John and Dolores Creedon, (10) John Collins and (11) Ruairi O'Connor, General Manager, The River Lee Hotel.
- 3.4.2. The issues raised are similar to those raised in the appeal and relate to misleading public notices, inappropriate scale, height, plot ratio and materials, stability of the river bank, flooding, noise and general disturbance, impact on residential amenity, adverse effect on social diversity of the neighbourhood, site more suitable for permanent residential living, visual impact, traffic safety, inadequate provision of car parking, impact on residential amenity, loss of light, overshadowing and overlooking, noise, negative impact on the amenities of the River Lee, negative impact on the amenities of the hotel, loss of privacy, overbearing and visual impact on the streetscape.

## 4.0 **Planning History**

- 4.1. **PL28.24421** – Permission refused for the redevelopment of the site comprising new forecourt building with retail shop, off license area and self-service food area
- 4.2. **PL28.227717** - Permission granted in August 2008 for alterations to previously approved development TP06/30874 resulting in 50 no. apartments.
- 4.3. **TP06/30874** – Permission granted on the appeal site for 48 apartments in two blocks.
- 4.4. **TP07/32051** – Permission granted on the appeal site for limited excavation/ remediation works.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Cork County Council 2015-2021**. Map 3 Central Suburbs identifies the site within an area zoned *ZO4 Residential, Local Services and Institutional Uses* where the objective *is to protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3*. Development Management policies are set out in Chapter 16.

### 5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. There are twelve appeals on file from (1) Ziggurat Rol No 2 LP (applicant), (2) Dr Stephanie Dinkelbach & Dr Brendan Roycroft, (3) Patrick O'Toole, (4) Brendan & Patricia Culkin, (5) Tim & Aideen Cronin, (6) Daniel & Angela Hartnett, (7) Avril & Tony Lyons, (8) Tom Kent, (9) Mary Creedon, (10) John and Dolores Creedon, (11) John Collins and (12) Ruairi O'Connor, General Manager, The River Lee Hotel.
- 6.1.2. The first party, Ziggurat Rol No 2 LP, has appealed against Condition No 3 only (removal of fifth floor) and requested that this condition be omitted for the following reasons:
- The building heights in the proposed scheme, including the fifth floor are fully supported by the Councils Development Plan
  - The proposed scheme, including heights, was very carefully conceived and based on a comprehensive and robust assessment prior to planning application



submission, to ensure that there would not be a negative impact on the residential amenities of the area

- The previous permission(s) on site should not pre-determine the height of the development currently proposed
- The omission of the fifth floor and the resultant reduction in student accommodation is unnecessary and should not be contemplated at a time when there is such a chronic shortage of student accommodation

6.1.3. The eleven third party appeals may be summarised as follows:

- Many of the third party appellant's area and adjoining landowners and some own Guest Houses in the area and are concerned for their livelihood
- The proposed development does not comply with the Z05 zoning objective for the site and represents overdevelopment of an inner suburban site in relation to building height, associated visual impact, plot ratio and footprint relative to the small site size. There is no basis for accepting a building height of above 3 stories in the context of the prevailing policies guiding development in this suburban location and to do so contravenes the provision of the current Development Plan. The omission of the fifth floor will not resolve the issues raised. This is not a city centre site. This is a central suburbs site (map 3 of the Development Plan refers) and no exemptions apply.
- The proposed development will have a significant negative impact on the amenity of the River Lee (south channel). The assessment of both the buffer and the structural stability issues in the developer's reports is inadequate and fails to comprehensively address the issue. There are negative implications for the natural amenity value of the River Lee. In terms of design the proposal has no regard for its inner suburban, riverside setting of the site. The scheme does not comply with Objective 10.9 and there is potential to cause disturbance to otters. Condition No 26 is inadequate in this regard. Further it appears that there are works proposed outside the red line boundary to the bank of the river.
- The proposed development will have a negative impact on the amenities of the Hotel and adjoining residential by reason of overlooking, loss of light and loss of privacy. The development has a duty to protect the amenities of the Hotel in accordance with the residential zoning objective that applies to the appeal site.

- The proposed development materially contravenes the development Plan in relation to building heights, plot ratio, with respect to river and waterway corridors.
- Key planning standards such as plot ratio, building height, riverside amenity and above all residential amenity, for this inner suburban (pre-1920s) area as acknowledged by the City Planners report have been overlooked in lieu of clearly more favourable city centre development management standards. The site is not city centre. Regard must be had to context which is 2 – 3 stories in height with plot ratios of 1.5:1.
- There is no plan-led approach to student accommodation in this sensitive area. The scheme is poorly designed student accommodation that will lead to an adverse effect on social diversity and unacceptable anti-social behaviour. Concern is raised regarding the management of accommodation and the potential impacts on neighbouring properties if the accommodation is mismanaged.
- Concern raised regarding the construction traffic and the failure to provide a turning area will require traffic to reverse onto the bus lane creating a traffic hazard. There is also a conflict set down in terms of traffic. There is insufficient car parking proposed.
- Failed to address reason for refusal outline in PL28.244218
- Tall buildings require EIA
- Insufficient AA submitted
- There is a flood risk as the scheme is within a flood sensitive location.

## 6.2. Applicant Response

6.2.1. The first party response to the third party appeal has been prepared and submitted by McCutcheon Halley. The detailed response may be summarised as follows:

- Principle of Student Accommodation on the Site - The development is fully compliant with the zoning, policies and objectives of the 2015 Cork City Development Plan

- Alternative Uses for the Site – The suitability of the site for student accommodation is irrefutable and it is an entirely appropriate for the site
- Scale and Height of Development – The proposed development has been carefully conceived and is of an appropriate height and scale and is fully in accordance with the provision of the 2015 Cork City Development Plan
- Impact on Adjoining Properties – The scheme will not have a negative impact on the area and has been carefully designed to protect the amenities of the area and privacy of adjoining properties
- Impact on Tourism / River Lee Hotel – The scheme has been carefully designed to protect the amenities of the River Lee Hotel and other accommodation / guesthouses in the area and will not have a negative impact on tourism
- Design – The scheme has been designed to an exceptionally high standard by a multi-discipline design team led by Derek Tynan Architects and carefully responds to the exigencies of the site
- Visual Impact – The development of a longstanding vacant / disused site with a high quality student accommodation scheme designed to a very high standard will have a positive visual impact and make a positive contribution to the area
- Management / Anti-social Behaviour – Ziggurat are specialist and highly experienced student accommodation provider and have a detailed Operational Management Plan as part of all their student accommodation schemes. The Western Road scheme is a flagship development for the applicant and will be subject to the same high standards as all their other schemes.
- Proximity / Buffer to the River Lee – Separation distances to the River Lee were discussed at length and agreed with the Planning Authority at pre-planning stage and there will be no risk to the groundwater on the South Channel of the River Lee
- Traffic / Car Parking – The proposed development is located just 130m from the main campus of UCC and does not need not require the level of parking stated in some of the third party appeals. The development is entirely sustainable from a traffic perspective and will not result in a traffic hazard for the area.

- Flood risk – The proposed development has been subject to a comprehensive Flood Risk Assessment (FRA) and very carefully designed from a flood risk perspective
- The Planning Authorities Assessment of the Proposed Development – The development has been subject to extensive pre-panning consultation and was also subject to a comprehensive, robust and balanced assessment by Cork City Council.

### 6.3. **Planning Authority Response**

- 6.3.1. Cork City Council state that they have no comment to make on the appeal other than to refute the allegations made in the appeal in relation to bias against student apartments and the manner in which the application was assessed.

### 6.4. **Observations**

- 6.4.1. There are three observations recorded on the appeal file from (1) The Villiers Consultancy Ltd (Property Construction Expertise), (2) John O'Mahony (Retired Garda) and (3) John Hegarty.

- 6.4.2. The issues raised may be summarised as follows:

- The Consultancy advised a potential purchaser of this site in relation to the likely development achievable thereon based on consultation with An Garda Síochána re the requirement to provide a set down area on site and in turn a reduced footprint and a plot ratio of 1 – 1.5 as set down in the Development Plan. The Consultancy objects to the scheme and urges refusal in the interest of fairness, natural justice and safety.
- The Western Road is a death trap, with a long history of traffic incidents, now exacerbated by the recent cycleway works, the revised parking arrangements and many instances of cars being forced to reverse out into the road against one-way traffic from front garden spaces.
- To permit a scheme that builds hard to the Western Road with no allowance for waste collection, drop-off activity, bus set-down, car set-down, pedestrian management, bin management is irresponsible

- The introduction of student accommodation on Western Road is a gross misuse of prime city centre site and a material contravention of the site zoning that will devalue property in the area and create a traffic and pedestrian hazard
- The proposal ignores the permissible plot ratio for the area; the process is fraught with procedural inadequacies; there is no mention of the student accommodation end use; no Part V provision; no adequate construction management plan and over provision of student accommodation.

## 6.5. Further Responses

6.5.1. There are several Section 131 responses to the appeals recorded on the appeal file from (1) Dr Stephanie Dinkelbach & Dr Brendan Roycroft, (2) Patrick O'Toole, (3) Tim & Aideen Cronin, (4) Daniel & Angela Hartnett, (5) Avril & Tony Lyons, (6) Tom Kent, (7) John and Dolores Creedon and (8) Ruairi O'Connor, General Manager, The River Lee Hotel.

6.5.2. Additional comments may be summarised as follows:

- The subject site as has been confirmed by the Board in appeal PL28.244218 is in fact located in the inner urban area of Cork City and not the City Centre. In accordance with paragraph 16.25 and 16.33 of the Development Plan building height in this urban area is a max of three storeys. In terms of height two further stories should have been removed. The reinstatement of the 5th floor would result in a development that is 3 storeys higher than the max height of existing buildings. Table 16.3 of the Development Plan relates to buildings in the “city centre” and not “central suburbs” as in this case. Application of city centre policies in terms of height at this location is incorrect.
- Purposes built student accommodation and traditional residential accommodation are materially different uses that operate in entirely different ways. A development of this scale and nature would be far better located in the emerging student village at Victoria Cross / Carrigrohane Road. A shortage of student accommodation and the viability or otherwise of this development cannot be sufficient grounds to override carefully thought out and adopted policies that

protect residential amenity and amenities of the River Lee. If just 12 beds are so critical to the viability of this development, then it should not be permitted at all.

- The site adjoins an acknowledged major river channel which carries debris which will be captured by the Mesh screens in place. This will interfere with conveyance and can displace flood water. This has not been addressed and the submitted FRA is deficient in this respect. Concerns regarding the stability of the River Bank to accommodate the development. Scheme contravenes Objective 10.9 which requires that proposals shall dedicate 10m in the case of channelized rivers and 15m in the case of non-channelised rivers for “amenity, biodiversity and walkway purposes”.
- While the proposed development contradicts the Development Plan on a variety of levels the first party appeal contradicts itself, is unsubstantiated and misleading. The significant planning matters remain unresolved and the applicants appeal does little to allay the appellants’ concerns

## 7.0 Assessment

7.1. I note the concerns raised by the appellants regarding the planning authority’s assessment of the application. For the purposes of clarity I would point that the development proposed is considered “de novo”. That is to say that the Board considers the proposal having regard to the same planning matters to which a planning authority is required to have regard when making a decision on a planning application in the first instance and this includes consideration of all submissions and reports on file together with the relevant development plan and statutory guidelines, any revised details accompanying appeal submissions and any relevant planning history relating to the application.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application, the planning history pertaining to the site and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle / Policy Considerations
- Design & Visual Amenity

- Residential Amenity
- Traffic Impact
- Development Contribution(s)
- Screening for Appropriate Assessment
- Environmental Impact Assessment
- Flooding
- Construction Impact & Methods
- Impact to Otter Species

### 7.3. Principle / Policy Considerations

- 7.3.1. Given the growth in recent years of the numbers of third level students together with the planned expansion of the city's major educational/facilities, it is evident that there is a demand for specific residential accommodation in Cork City to cater for this need. Under the provisions of the Cork County Council 2015-2021 Map 3 Central Suburbs identifies the site within an area Zoned ZO4 Residential, Local Services and Institutional Uses where the objective is to *protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3*. Having regard to the nature of the development (student accommodation), adjoining the Western Road with a designated bus and cycle route together with proximity of the site to the UCC Main Campus; I am satisfied the principle of this use at this location to be acceptable subject to compliance, with the relevant policies, standards and requirements set out in development plan.
- 7.3.2. The pertinent issue to be considered in this appeal in my view is the height, scale and bulk of the proposed scheme having regard to the relevant criteria for the site as set out in the current Development Plan. The first party in their appeal request that Condition No 3 (fifth floor to be omitted) is removed and that the fifth floor is reinstated in the scheme. The multiple third party appeals are of the view that the scheme represents an overdevelopment of an inner suburban site in relation to building height, associated visual impact, plot ratio and footprint relative to the small site size.
- 7.3.3. Much of the appeal centres on whether the appeal is located within the "city centre" or "central suburbs" as the application of building height criteria is different in both scenarios. The Supreme Court has described an adopted development plan as "an

environmental contract between the planning authority, the Council, and the community, embodying a promise by the Council that it will regulate private development in a manner consistent with the objectives stated in the plan” While any new Development Plan will be open to scrutiny and interpretation it is imperative that for the most part that they provide clear guidance and a high degree of certainty for any member of society to understand. To this end I am satisfied that in this instance the appeal site is located on lands identified as being “central suburbs” (Map 3 of the Development Plan refers) and not “city centre”. I am satisfied that the Development Plan is clear in this regard and that there is no ambiguity. Therefore, Table 16.3 “City Centre River Corridor Building Height Guidelines”, upon which this scheme relies to support the height proposed is not applicable. Rather Paragraph 16.27 “Building Height in suburban Areas” is relevant to this particular site. Paragraph 16.27 states that within the suburban areas of the city low rise buildings (1-3 story’s in height) will be considered appropriate except in the following areas:

- Major development areas identified in this development plan for which a local area plan or Development Brief will be prepared;
- Larger development sites – sites of greater than 0.5 hectares (or one residential block) which are capable of accommodating their own intrinsic character without having an adverse impact on their neighbours.

7.3.4. Neither of the above exceptions apply to the proposed development site. Reference to the adjoining River Lee Hotel in justifying the height of the proposed development is noted. However, the hotel is located within MAP 1 of the Development Plan which designated the zonings for the “**City Centre** and Docklands” area and therefore it appears that the height is in accordance with the Development Plan Heights Policies for City Centre area (emphasis added). Further I agree with the appellants that removing additional floors by way of condition in order to comply with the requirements of the Development Plan will not solve the adequately resolve the issue.

7.3.5. As set out in the Development Plan the plot ratio expresses the amount of floor space (proportionally) in relation to the site area and provides a useful indicator when considering the capacity of a development site and ascribing building volumes to be placed on a site and in determining the necessary infrastructure that will be



required to service a development. Table 16.1 Indicative Plot Ratio Standards of the Development Plan states that a plot ratio of 1.0 – 1.5 is appropriate for “Inner Suburban pre 1920 city”. The proposed plot ratio is stated as 2.1:1 (based on a total GFA of 6,815 sqm) which is in the city centre indicative plot ratio range of 1.5 – 2.5. As set out in the Local Authority Planners Report the submitted accommodation spreadsheet attached to the Planning Report indicates the plot ratio of 2.9:1 taking the GFA to be 7001 sqm while the accommodation sheet attached to the Architectural Report gives a plot ratio of 2.28: using a GFA of 7280 sqm. The Local Authority Planner states that the plot ratio of that permitted under the approved apartment scheme as amended in 2007 was stated to be 1.42:1. As established above this is a “central suburb” site and not a “city centre” site where by the Inner Suburban Plot Ration applies. Accordingly, the plot ratio proposed is excessive and is in my view symptomatic of the inappropriate scale of the scheme relative to the site area.

7.3.6. With regard to the planning history pertaining to the site and in particular the decision of the Board in 2008 (PL28.227717 refers), it is important to note that this previous application was assessed in the context of the Cork City Development Plan 2004 which did not contain specific policies on appropriate building heights. The operative plan for the area is now the Cork County Council 2015-2021 and the scheme now before the Board is assessed in accordance with this plan.

7.3.7. Overall I consider that proposed development by reason of its height, scale, massing and plot ratio would constitute overdevelopment of the site area. It is my view that this visible and important site warrants careful consideration and given the standards applicable to the site as set out in the current Development Plan the scheme merits consideration from first principles. Refusal is recommended.

#### **7.4. Design & Visual Amenity**

7.4.1. As set out above this is a very visible and important brownfield site that requires careful consideration in terms of architectural expression. While it is accepted that the design has been specifically formulated to make the best use of the available space for the intended use it is my view that what is proposed is poorly designed and is symptomatic of the requirement to maximize development on the site to the detriment of the visual amenities and character of the area. This is a functional

structure that while respecting the absolute basic design criteria for the site provides limited contribution to the streetscape or overall architectural portfolio of the area. The scheme before the Board represents an inappropriate and unsympathetic design response to an important underutilized serviced site. I consider that to permit the proposed development would result in a significant impact on the visual amenity of the area. Refusal is recommended.

## 7.5. Residential Amenity

- 7.5.1. Concern is raised throughout the appeal regarding the impact of the scheme on adjoining residential amenities by reasons of overlooking and loss of light, loss of privacy and anti-social behaviour. As set out previously the site is zoned Residential, Local Services and Institutional Uses where the Land Uses Zoning as set out in the Development Plan states that *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* (emphasis added). In line with previous comments I share the concerns raised and consider that the scale of the scheme together with the design response to the site are contributing factors in the potential loss of residential amenity to adjoining properties and is a further indicator of the inappropriate scale of this scheme. While it is not unreasonable that student accommodation would be located proximate to the main UCC campus. However, I share the concerns raised with regard to the management of anti-social behaviour and it is therefore recommended that should the Board be minded to grant permission that a condition be attached requiring that 24-hour management / caretaking presence be maintained on site.

## 7.6. Traffic Impact

- 7.6.1. Concern raised in the appeals and observations regarding the impact from traffic generated, set down area together with the provision of inadequate car parking are noted. Having regard to the layout of this particular scheme I would share these concerns particularly with regard to set down. However, given the location and zoning of this brownfield site and in the light of the substantive reason for refusal recommended above regarding height, scale and design it is recommended that any future application for development on this site should consider traffic safety and set down from first principles and provide the necessary information in order to

determine whether or not such development would have an adverse impact on traffic and pedestrian safety at this location.

#### **7.7. Development Contribution(s)**

7.7.1. **Section 48 Development Contribution** - Cork City Council has adopted a Development Contribution Scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14th October 2013. Section 1.7 Exemptions and Reduction sets out the categories of development which will be exempted from the requirement to pay a development contribution under the scheme. The proposed scheme is not exempted from the payment of a Section 48 Development Contribution. I recommended that should the Board be minded to grant permission that a Development Contribution condition is attached.

7.7.2. **Section 49 Supplementary Development Contribution** - In relation to the Section 49 Supplementary Development Contribution Schemes (re-opening of an operation of suburban rail services on the Cork to Middleton line; provision of new rail services between Blarney and Cork and the upgrading of rolling stock and frequency on the Cobh rail line as demand increases) it is noted that the subject site is located outside the catchment area of these projects (1km corridor) and therefore the Section 49 scheme is not applicable in this case.

#### **7.8. Screening for Appropriate Assessment**

7.8.1. I refer to the report the Local Authority Planner and the Appropriate Assessment Screening Report submitted with the planning application. The site is not located in or immediately adjacent to a Natura 2000 site. The River Lee is however a pathway from the site to identified Natura Site downstream. The proposed development was screened for potential significant adverse impacts on European Sites within 15km of the proposed development site. This was determined by assessing the potential for significant impacts on the qualifying interests; conservation objectives and the risks presented to the Natura 2000 sites; the source-pathway-receptors routes between the site and potential Natura 2000 sites. The report concluded that the proposed development will have no significant effect on the qualifying interest and conservation objectives of the Great Island Channel cSAC and the Cork Harbour SPA. It is recommended that measures outlined in Section 4 of the report pertaining

to the construction and operational phase of the development be implemented to mitigate potential ecological risk to the SAC and SPA downstream of the site.

- 7.8.2. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest European site (Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058)), it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European site. An appropriate assessment (and submission of a NIS) is not therefore required.

## 7.9. **Environmental Impact Assessment**

- 7.9.1. The proposed development falls below the threshold levels in Schedule 5 of the Regulations in relation to EIA, and does not involve potential impacts on any sites or areas of specific environmental sensitivity. Having regard to the size of the development, the absence of any nature conservation designation in the immediate area and the absence of any emission from the development must be concluded that the development will not have a significant impact on the environment. Overall it is considered that the proposed development does not come within the scope of the classes of development requiring the submission of an EIS as set out in Schedule 5 of the Planning and Development Regulations 2001-2011.

## 7.10. **Flooding**

- 7.10.1. The site is located in an area identified as liable to flood in extreme rainfall events and there is also potential for risk of tidal flooding. The Local Authority Planner states that the site is located within Flood Zone A & B. However, the Flood Risk Assessment prepared by Horgan Lynch Consulting Engineers, accompanying the planning application states that the site lies within the Zone B flood area. The Assessment, concluded that the proposed development is fully protected from the 1% Annual Exceedance Probability (AEP) mid-range future flood and does not increase the risk of flooding downstream of the site. A floor level of 4.5m OD was therefore set for the lowest level of the building which is above the recommended level. Therefore, to mitigate flood risk, the lowest ground floor level for the development is set at 4.5m OD which is above the 1% mid-range future flood event.

The only levels lower than this will be the pits which will be fully tanked. The proposed development increases the flood storage capacity on the site which achieves the objective of not increasing flood risk elsewhere and in fact reducing it by the introduction of mitigating measures. Having regard to the information available on file I am satisfied that the potential impacts of the proposed development in terms of flooding have been established and that the type of development proposed is appropriate for this flood zone. I do not consider that the proposed development would exacerbate the risk of flooding in the area.

#### **7.11. Construction Impact & Methods**

7.11.1. I note the Construction Management Plan submitted with the application. It is acknowledged that there are significant construction works required to facilitate this development and that there will be general disruption in the area in terms of construction related noise and general disturbance during the construction phase. However, while this impact is considered an inconvenience it is also considered to be short term in nature and therefore acceptable. I am satisfied that this matter can be addressed by way of suitable condition. The attachment of a construction management condition notwithstanding it falls to the relevant Planning Authority to ensure the developer complies with these conditions and that there is no unreasonable disturbance or loss of amenity associated with construction activities.

#### **7.12. Impact to Otter Species**

7.12.1. Concern is raised that the scheme does not comply with Objective 10.9 and there is potential to cause disturbance to otters. It is considered that Condition No 26 which requires that the mitigation measures as outlined in the Otter Assessment to be implemented is inadequate in this regard. Objective 10.9 River and Waterway Corridors states the following:

*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.*

*To promote an integrated approach to the future development of the River Lee so that it includes all aspects of use e.g. recreation, maritime history and economic factors*

*Development proposals in river corridors shall:*

- a) *Dedicate a minimum of 10m from the waters edge in channelized rivers for amenity, biodiversity and walkway purposes;*
- b) *Dedicate a minimum of 15m from the top of the bank in non-channelized rivers for amenity, biodiversity and walkway purposes;*
- c) *Preserve the biodiversity value of the site subject to Ecological Assessment by a suitably qualified Ecologist;*
- d) *Shall not involve landfilling, diverting, culverting or realignment of river and stream corridors;*
- e) *Shall not have a negative effect on the distinctive character and appearance of the waterway corridor and the specific characteristics and landscape elements of the individual site and its context.*

7.12.2. I have considered the Otter Assessment submitted with the application together with the report of Cork City Council Heritage Officer. It is documented that the site is adjacent to the southern channel of the river Lee which is known to provide a suitable habitat for otters. Otters are legally protected under the Irish Wildlife Acts and the EU Habitats directive. It is an offence to hunt or interfere with or destroy their breeding or resting places unless under statutory license / permission. While the survey showed evidence of occasional otter activity in two locations along the southern boundary of the site there was no evidence of otter activity on the actual site itself and is unlikely to provide a suitable habitat. No breeding site / holt was noted during the site survey. The proposed development will retain the vegetation along the river banks as much as practicable and where vegetation is removed it will be replaced with native shrubs and all artificial lighting will be positioned to prevent light spillage onto the adjoining River Bank and Channel.

7.12.3. I agree with the Heritage Officer that the application offers an opportunity to enhance the existing River Bank and potential habitats for otters along the River Lee. In line with the recommendation of the Heritage Officer I have no objection to the proposed development subject to the attachment of a condition similar to condition No 26 of the notification of decision to grant permission issued by Cork City Council requiring implementation of the mitigation measures as outlined in the Otter Assessment; river bank to be kept as intact as possible, physical barrier to be installed during construction; no artificial lighting; method statement to be agreed and management plan for the control of invasive species on site.

## 8.0 Recommendation

- 8.1. Having considered the contents of the application, the provision of the Cork City Development Plan 2015 - 2021, the provisions of government guidance, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **REFUSED** for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. Under the provisions of the Cork County Council 2015-2021 Map 3 Central Suburbs identifies the site within an area Zoned ZO4 Residential, Local Services and Institutional Uses where the objective is *to protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3*. Having regard to the restricted nature and prominent location of this central suburbs site and the established pattern of development in the surrounding neighbourhood, it is considered that the proposed development by reason of its height, scale, massing and plot ratio would constitute overdevelopment of a limited site area and would be visually obtrusive on the streetscape and out of character with development in the vicinity. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area

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**Mary Crowley,**

**Senior Planning Inspector**

**5<sup>th</sup> December 2016**