



An  
Bord  
Pleanála

## Inspector's Report ABP-301618-18

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<b>Development</b>	Construct 24. no apartments over 3 floors and all associated development works including access, car parking, landscaping and amenity areas, bicycle storage and service/refuse storage facilities
<b>Location</b>	Pembroke Woods, Pembroke, Passage West, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	17/5739
<b>Applicant(s)</b>	Rowan View Developments Limited
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Cllr. Marcia D'Alton
<b>Observer(s)</b>	1. Karen Ho 2. Grainne Farren & Declan Mullins 3. Residents of Pembroke Wood

4. Michael Horgan
5. Tim and Hilda McCormack
6. Emma and Norma White
7. Darran and Martina McMahon
8. Maeve Barry

**Date of Site Inspection**

6<sup>th</sup> September 2018.

**Inspector**

Fiona Fair.

## 1.0 **Site Location and Description**

The site (0.29 ha) is located in the centre of a housing estate of 415 dwellings entered from a roundabout on the Rochestown Road (R610) on the eastern approach to Passage West in County Cork. The town centre of Passage West is approximately 1.75 kilometres from this roundabout to the south east. The South Ring lies some 5 km to the west of the site. The area is generally characterised as a low/ medium density suburban environment.

Estate roads bound the site to the north (Pembroke Grove) and west (Pembroke Park Drive) with an area of public open space and 2-storey semi-detached dwellings. To the east lies 2 no. blocks of 3-storey duplex units (The Grove and Avenue). Car parking for the duplexes is located in a parking court to the rear of the blocks. 'Doodlebugs' crèche, part 2-storey, part single storey building lies to the south and car parking for the creche abuts the south-east corner of the appeal site.

The site is flat, grassed and a footpath runs along the site boundary to the north, east and west.

## 2.0 Proposed Development

2.1. The proposal comprises permission for:

- Construct 24. no apartments over 3 floors
- Bicycle storage and service/refuse storage facilities
- All associated development works including:
  - access,
  - car parking,
  - landscaping and
  - amenity areas,

The proposal was revised by way of Further Information to comprise 18 no. apartments served by 30 number car parking spaces. Four one bedroom and 14 number two-bedroom apartments. (3 apartments @ 51.7 sq. m, 1 apartment @ 50.2 sq. m and 14 apartments @ 79.5 sq. m)

## 3.0 Planning Authority Decision

### 3.1. Decision

Subject to Further information being requested with respect to (i) sightlines at the junction with the main Pembroke Woods access road, (2) storm water proposals (3) redesign of proposed units to be transferred for Part V (4) proof of legal entitlements (5) redesign of the proposed development to reduce the number of apartments and to increase car parking provision, set out useable, functional open space, safe location for a play area (away from junctions) and omit the proposed western boundary in favour of a tree lines boundary. (6) revised design proposal for a building of max 9m in height and finishes (7) bin store accessibility and size (8) cross sections (9) landscaping scheme (10) indicate the intended users of public open space (11) (12) & (13) public lighting proposals. Planning permission was granted subject to 45 number conditions. Conditions of note include:

C2. Finishes to be agreed.

C3. Revised drawings, at a scale of 1:500 making provision for a revised car parking layout and associated proposals for the numbering of designated parking spaces.

C4. Details of location of disabled car parking

C5. Before first use of the proposed development, or, at the discretion of the planning authority, within such further period or periods of time as it may nominate in writing, car parking as described herein, shall be provided to the satisfaction of the planning authority.

C7. (a) Internal bin store to be omitted. (b) a bike storage room shall be proposed in place of the internal bin store (c) proposals for bike storage in the lobby shall be omitted and resulting area kept clear (d) a new external bin store located to the northwest of the building and south of the three car parking spaces to the north of the site shall be proposed. It shall be covered, secure, accessible and surrounded by a timber fence and hedge.

C8. Waste Management

C9. Landscaping

C10. Taking in charge.

C11. Management Company to be put in place in accordance with documentation submitted to the p.a. on the 02/02/2018

C12. – C17 Lighting

C21. Hours of working during construction shall be agreed with the p.a.

C31. Prior to the commencement of development works on site, details of speed control measures shall be submitted and agreed with the p.a.

C32. Existing footpath bounding the development at the public road are to remain open and kept in good condition. It is the onus of the developer to ensure that all members of the public can safely utilise the public footpath during daytime and night-time hours. A method statement shall be submitted and agreed with the p.a. prior to commencement of development on site.

C33. The developer shall be responsible for the maintenance of all roads, footpaths, open spaces, site boundaries and other services within the estate until taken in charge by Cork County Council and / or Irish Water at its discretion.

C37. Developer to issue and agree with the p.a. / area engineer a photographic record showing an accurate condition of roads and footpaths which are being utilised as access for the construction of the development. Upon completion of the development, a second road condition survey shall be carried out at similar location points and submitted to the p.a. / area engineer.

C41. Mobility management plan...proposals to provide facilities for and to increase the use of public transport and of cycles.

C42. Part V

C43. Bond

C44. S48 Development Contribution

C45. Special contribution €36800.00 in respect of off-site recreational facilities.

### 3.2. **Planning Authority Reports**

#### 3.2.1. **Planning Reports**

The Planners Report sets out that the proposed development is located within the settlement boundary of Passage West as designated in the Ballincollig Carrigaline Municipal District Local Area Plan, 2017. The application site is part of a wider area designated as 'Existing Built up Area.' Of particular note, is the current 'live' permission on site for a mixed use neighbourhood centre (Reg. Ref. 08/9094 / PL04.233744) and the extension of duration (Reg. Ref. 14/6127). In this context, given the zoning designation and the planning history associated with the site, it is considered that this proposed residential development can be considered in principle subject to normal planning and sustainable development criteria. A key consideration in the assessment will be the balance between the quantum of development proposed, parking provision and open space provision.'

**Area Engineer:** Initial report requested Further information, final report sets out no objection subject to condition.

**Estates Engineer:** Initial report requested Further information, final report sets out no objection subject to condition.

**Part V Report:** No objection subject to condition.

**Public Lighting Report:** Further information requested.

**Housing Report:** No objection subject to condition.

3.2.2. **Other reports:**

**Irish Water:** No objection

**Inland Fisheries Ireland:** No objection

3.3. **Third Party Observations**

A number of objections (some 26) were submitted to the planning authority. Concerns raised are similar to those raised in the third-party appeal and observations summarised in detail below.

4.0 **Planning History**

**Reg. Ref. S97/4695** – The planning authority granted permission for a residential development of 445 no. dwelling units (reduced to 417 by condition) subject to 61 conditions. The applicants stated, in covering letter dated 2/12/97, that the layout included “a reservation for community services, such as shop, pub, tennis court, surgeries, crèche etc. And this is indicated on the layout and detailed submissions for these will be made at a later date”.

**PL 04.126423 / Reg. Ref. S/01/3327** permission refused by the Board (5/3/2002) for development comprising the changing of three number duplex blocks consisting of 18 duplex units and 18 duplex apartments (blocks 4, 6 and 8) to three number apartment blocks consisting of 54 number apartments (previous planning register reference number S/97/4695) at Pembroke Avenue, Pembroke Woods, Pembroke, Passagewest, County Cork for the following reason:

‘It is considered that the proposed development would be deficient in quality, in particular, having regard to the design of the apartments and to the provision of parking, including, the amendments to the overall layout proposed in the submission

to the Board. Accordingly, it is considered that the proposed development would provide a poor quality residential environment and would be contrary to the proper planning and development of the area’.

**PL04 .130785 / Reg. Ref. S/01/6933** Permission granted (16/04/2003) for a Creche, 3 no. commercial/retail units including foodstore and medical/beauty therapy centre, offices, public house and restaurant at Pembroke Woods, Pembroke, Passage West, Co. Cork.

**Reg. Ref. 05/2237** Permission granted to use the entire building on the southern side of the site as a creche.

**PL04.233744 / Reg. Ref. 08/9094** Permission Granted (16/10/2009) for a Mixed use neighbourhood centre development including cafe, office/ medical floor space, 18 no. apartments and all associated works.

**Reg. Ref. 14/6127** Permission Granted for extension of duration of PL04.233744 / Reg. Ref. 08/9094.

## 5.0 Policy Context

- 5.1.1. Sustainable Residential Development in Urban Areas, 2009
- 5.1.2. Quality Housing for Sustainable Communities, 2007
- 5.1.3. Development Plan

The site is governed by the policies and provisions contained in the Cork City Development Plan 2015-2021. The site is zoned ‘Existing built up area’ in the Ballincollig Carrigaline Municipal District LAP 2017.

## 5.2. Natural Heritage Designations

The subject appeal site is located some 550m from Cork Harbour SPA (Site Code 4030). Cork Harbour SPA is designated for the occurrence of nationally or internationally important numbers of the following species: Cormorant, Shelduck, Oystercatcher, Golden Plover, Lapwing, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank, for a breeding population of Common Tern and for the regular occurrence of in excess of 20,000 wintering water birds.

## 5.3. Grounds of Appeal

The third-party appeal is summarised as follows:

### **General:**

- Appeal is on behalf of Cllr Marcia D'Alton and concerned residents of Pembroke Wood
- Acknowledge that in the original plans for Pembroke Wood, this green space was identified for a commercial development
- Acknowledge that Cork County Council's grant of permission was for construction of 18 of the 24 apartments, initially proposed in the current planning application.

### **Inadequate Car Parking**

- There is a serious deficiency in the current level of car parking serving existing apartments
- Serious deficiency in the number of car parking spaces proposed to serve the new apartments.
- There is a need for at least 36 car parking spaces to serve 18 apartments.
- Public transport in Passage West is deficient, infrequent and unreliable.
- Residents have to rely upon creche designated parking in the evenings
- Cars parallel park along both sides the estate roads, which was not designed for this.



- Access for emergency vehicles is impeded by cars parked along the access roads
- Pedestrian routes are impacted by haphazard car parking
- Health and safety hazard, in particular, for children playing

#### **Gross Overdevelopment of a restricted site**

- Proposed development would have a density of 62 units / hectare
- Passage West is not a town where higher density can be justified
- Public transport consists of a single decker bus approx. once per hour, the reliability of which is poor.
- In considering the 2008 application Cork County Council considered that a residential density of 18 apartments, over proposed commercial ground floor, was 'excessive at this location'. Consequently, permission was granted for 12 apartments.
- The types of density recommended by the Cork County Development Plan 2014 for towns such as Passage West is echoed in the Design Standards for New Apartments (2018). Passage West best meets the 'peripheral and / or less accessible urban location' category which is regarded as generally suitable for net densities of less than 45 units / ha.

#### **Loss of Light to existing Residents**

- 3 storeys over bearing along the main spine road within the estate.
- Doodlebugs is north – facing.
- Loss of light due to proximity and orientation would directly impact upon the well-being of existing residents and children in adjacent buildings.
- The existing ground floor apartments have no area of private open space
- Loss of light coupled with loss of the only proximate green area is entirely unacceptable.

#### **Traffic Hazard on Estate Road and at Estate Junctions**

- Creation of a significant traffic hazard in the vicinity of the proposed apartments and the creche.

- Concern at introducing additional 36 cars into this area, in particular, peak time traffic at creche and residents leaving for work.
- The junction of Pembroke Grove / Ashmore road with the main spine road is particularly dangerous
- Speeding along the straight stretch of Pembroke Park Drive is an issue.
- On foot of Reg. Ref. 08/9094 Cork County Council conditioned the developer to contribute money to the construction of three ramps on Pembroke Park Drive. This condition has not been repeated in the subject draft grant of planning permission.
- The difficulty in installing the ramps in the absence of the estate being taken in charge, is acknowledged, however, it is important the intention to provide them is reflected in any grant of permission

#### **Unacceptable Design**

- Questionable whether the proposed building will integrate with the existing estate
- Highly visible location within the estate
- Concern with respect to glass balconies. Visually unacceptable and may be used for storage of bulky goods.
- Location of bin storage undesirable from a visual amenity perspective.
- The residential development of 18 apartments does nothing to contribute to the needs of Pembroke Wood.
- If the time is not right to provide the commercial development originally intended then those needs of the estate are far best served by maintaining the site as public open space.

#### **Inadequate Useable Open Space**

- Long established green space
- There is a deficit of useable public open space and recreational facilities to serve the neighbourhood.

### **Applicants Failure to Prove Ownership of the Site**

- The estate has not been taken in charge by the County Council
- The original developers of the estate (Histron Ltd was a joint venture between John F. Supple and Manor Park Homes) both went into receivership. Several issues remain outstanding for completion of the estate. The bondholder has to date refused to engage with Cork County Council on release of the Bond. Pembroke Wood is therefore still not taken in charge.
- The resident's association has corresponded with both the receiver and liquidator of John F. Supple and the receiver of Manor Park Homes in an unsuccessful attempt to confirm ownership of the estate roads.
- Building works carried out in 2008-2010 left open space areas in poor condition.
- Residents association have been left to maintain the estate.
- Question the legal entitlement of the applicant to making the application. No formal documents giving the applicant permission, is attached to the file, despite repeated requests from the third party and from the planning authority.
- Neither Rowan View Developments nor Unique Fitout from whom the applicants solicitor states permission to develop has been received is identified as the current owner for the site on the Land Registry Certificate.
- Paul Hanlon, to whom the 2008 permission was granted remains the last registered owner.
- Proof of ownership is required prior to any grant of permission being given by the Board.
- If the applicant is not the owner then proof of agreement between the registered owner and the applicant is required.
- Critical to residents that permission to traverse and interfere with the infrastructure of the estate is demonstrated beyond reasonable doubt.
- If the apartment development goes ahead, the residents are the ones on the ground, left to finance and execute the clean-up after it is complete.

- In the absence of proof of legal entitlement to carry out the development request that the Board refuse planning permission.
- It is appropriate to observe Paragraph 5.13 of the Development Management Guidelines (2007)

**The Appeal is accompanied with:**

- Copy of Land Registry Folio 138221F
- Copy of third party Objections to the planning authority dated 10<sup>th</sup> August 2017 & 11<sup>th</sup> February 2018.

**5.4. Planning Authority Response**

- None

**5.5. Observations**

Observations have been submitted by the following: 1. Karen Ho, 2. Grainne Farren & Declan Mullins, 3. Residents of Pembroke Wood, 4. Michael Horgan, 5. Tim and Hilda McCormack, 6. Emma and Norma White, 7. Darran and Martina McMahon and 8. Maeve Barry, they are summarised as follows:

**Safety / Traffic / Parking**

- Lack of car parking
- 30 car parking spaces cannot be compressed into such a tight site
- Speed of cars
- Congestion
- Injury to children at play
- Parallel parking would ensue impacting two lane traffic on the main road.
- Negative impact upon emergency vehicles access
- Traffic issues on the Rochestown road needs to be resolved prior to this development going ahead.

## **Negative Impact Upon Adjoining Creche**

- Lack of physical divide between the creches 19 parking spaces and the new developments proposed spaces.
- Negative impact upon drop off to creche
- High risk to child safety, in particular, Doodlebugs patrons due to increased traffic.
- Creche has 23 staff and 120 children to cater for.
- A speed ramp is proposed for the northern entrance of the development which will encourage motorists to use the existing west entrance directly in front of the creche.

## **Ownership Issue**

- Pembroke Wood is a private estate, which has not been taken in charge. Rowan View Developments have not proven that they own the site.
- An indemnity is required to be provided to perspective purchasers from the developer to maintain the common areas until such a time as the estate is taken in charge.

## **Green Area**

- Needed for children playing sports
- The area has been used as public open space for years
- Other green areas within the estate are unsuitable for children playing due to hills, not level or too wet.
- Proposed development does not meet the requirements for recreation and amenity set out in the Development Plan.
- Monetary contribution towards recreation and amenity deficit will not necessarily benefit residents of this estate directly.
- Quality and design of useable open space proposed is deficient.

## **Design / Visual Impact**

- Proposal (3 storeys) would give rise to over development.

- 10m high block does not comply with the p.a.'s request for a maximum height of 9 m
- Mass, scale and proximity of the front elevation will present an overbearing and intrusive element to adjoining property
- Amendments was requested to the steel railing and hedge along the main estate road (Pembroke Park Drive). This has not been amended.
- Inadequate internal storage proposed in apartments.
- Concern balconies would be used for storage. Glass screening is unsuitable.
- Disagree that bin storage and bike storage can be dealt with by way of condition
- CGI images submitted are misleading.
- Drawings submitted do not accurately depict existing adjoining buildings on the ground.
- Density is out of character with the surrounding area. The development is larger than one of the existing duplex blocks and contains 18 units whereas each duplex block contains 12 apartments.
- Building line is proposed too close to the road.
- Concern that ground levels shown on plans submitted are accurate.
- Cladding proposed is not acceptable material visually.
- How will bin trucks enter and turn. Bin storage location needs to be resolved.
- Visually oppressive and out of character with the design and character of the existing semi-detached spacious houses on Pembroke Park Drive (the main artery into the estate)

#### **Concern with respect to Construction Traffic and Safety of residents**

- Where is building equipment and material to be placed.
- How are residents to freely and safely access their properties
- Danger to children at play. Health and safety issues during construction.
- Impact upon fresh air for residents and children at play

- Concern with regard to noise

#### **Loss of residential Amenity**

- Loss of green space and play area
- Overbearing impact to adjoining apartment block
- Loss of light and overshadowing to adjoining existing apartments
- Detrimental to privacy of existing residents
- Noise pollution
- Parking congestion
- Proposal to provide one 100 sq. m circular play area is inadequate

#### **There is no need for the development**

- The estate is already mature and is densely populated
- Adjacent estate Harbour Heights already has planning for additional residential units (249 apartments Reg. Ref. 03/4501)
- Passage west is a small maritime / harbour town with just two grocery shops.
- Development of the scale and nature proposed does not fit within a rural and coastal setting.

### **5.6. First Party Response**

A first party response was received it is summarised as follows:

- The proposal has cognisance to the current live planning application 08/9094 approved by An Bord Pleanala under PI04.233744 and extended under 14/6127.
- Existing commercial unit vacancy rates within Passage West is very high.
- Applicant had regard to Pembroke Woods Residents and local Councillors previous appeal on the subject site which feared that medical and retail units would remain vacant as happened in the adjoining Ardmore Estate. That such units should be provided for within the town itself.

- Taken the foregoing into account the decision was made to re-design and scale down the proposed scheme and remove the commercial units on the ground floor.
- Surprised to see that the resident's association have changed their stance.
- A mixed use commercial development is not viable on the subject site.
- There is a need for residential development to accommodate predicted increasing population.
- The provision of 33 car parking spaces to serve 18 no. apartments is far in excess of both local and national policy guidance documents. Table 1a Car Parking Requirement set out in the Cork County Development Plan requires 1.25 spaces per apartment.
- The proposal is 23% smaller and has a overall ridge height 350mm lower than the permitted live planning permission on the site.
- Substantially increases light to existing residents than the permitted scheme.
- Proposal will provide less traffic than the permitted scheme. Reduced traffic hazard and is an improvement on what has been permitted.
- The design of the apartment block and finishes proposed is an improvement on what has been permitted.
- Public Open Space (POS) provision of 53%, far in excess of the standards set out in the Cork County Development Plan. It is an improvement on what was previously permitted.
- The site is zoned 'Existing built up Area'.
- Passage West's commercial vacancy figure of 26% is far higher than the national average
- Nearby former Eurospar shop which formerly had vacant units is currently being converted into an Aldi store and also has an associated planning application 17/7376 to convert two former vacant units into one café.
- The proposed redesign also offers a large area of POS with a play area which can be enjoyed by the entire Pembroke Woods community.



**Response Accompanied with Letter from Pdraig J. Sheehan Solicitors:**

- Rowan View Developments Limited are the owners of the lands contained within folio CK138221F.
- Rowan View Developments Limited purchased the lands along with other lands within the Pembroke Wood Estate on 22 September 2016 from Ulster Bank DAC who sold the lands of Paul Hanlon and Fred Sweeney who in turn has mortgaged the lands to Ulster Bank DAC.
- Confirm their clients title deed is registered on 6<sup>th</sup> January 2017 serial reference 2016108298.
- It is anticipated that a Bond will be required by Cork County Council as a consequence of the development, if permitted. This will provide a financial obligation to complete the development to the required standard.
- There is no requirement that the L.A. reach any agreement with Histron Limited before it calls in the Bond and spends the money as it see fit.
- Encl.
  - Deed of transfer Histron Limited to Paul Hanlon 14<sup>th</sup> Dec 2006
  - Deed of transfer Ulster Bank DAC to Unique Fitout (Redated as to Value of Transfer) 22<sup>nd</sup> September 2016
  - Maps
  - Visual Perspectives

**Response also accompanied with:**

- Photomontage perspectives, plans and drawings of previously permitted development, still live, for apartments, retail and medical.

**5.7. Further Responses**

A response was received from the appellant Cllr Marcia D'Alton. It is summarised as follows: (Note: I do not propose to reiterate concerns already raised in the third-party appeal).

- The development as initially proposed did not represent a 'scaling down' of previous proposals, in particular development permitted in 08/9094.
- The only approach taken to this development was how best to avoid providing potentially unsalable commercial units in favour of maximising the delivery of residential units.
- Do not accept that the proposed design takes account of concerns raised by Pembroke Woods Residents and local councillors.
- The car parking proposed is seriously deficient when assessed in the context of permitted development and the existing situation on the ground.
- The four conditions attached to the draft decision to grant permission is an indication of the council's own concerns with respect to car parking.
- Amendment to the design of the proposal to provide additional car parking would be of a fundamental nature and should not be addressed by way of condition.
- Apartment living in Pembroke Wood is very much car dependent, only one bus per hour, during most of the day, between Passage West and Cork City.
- Personal car ownership is little less than compulsory
- To grant planning permission for this development would give rise to a 114-apartment development comprising 4 no. 1 bedroom apartments, 62 no. 2 bedroom apartments and 48 no. 3 bedroom apartments. If one assumed each bedroom had only one occupant, this is potentially 272 residents. That is potentially a requirement for 272 car parking space. If one was to assume even a 50% occupancy there would be a requirement for 136 car parking spaces, but only 124 parking spaces would be available, incl. the 30 proposed under Reg. Ref. 17/5739.
- Disabled parking spaces have not been detailed.
- Requirement for a condition to ensure glazing to balconies/screens are opaque.
- Inadequate useable green space / recreational areas for both residents of the existing estate and of the proposed development.

- Incompatibility with the original design aims for Pembroke Wood
- Negative consequences for existing residents of Pembroke Wood arising from the applicant's failure to prove ownership of the site.
- Totally unacceptable that permission would be given to a third party to potentially place at risk the estate roads, footpaths and other infrastructure on which the residents of Pembroke Wood depend.
- Should anything go wrong with the construction and / or completion these same residents, still bearing the brunt of the wrongs experienced in the completion of 97/4695 would, unsupported, have to put those wrongs right.
- Integration is about contributing to an established area, not squeezing the life out of it.

## 6.0 **Assessment**

6.1. I consider the key issues in determining this appeal are as follows:

- **Principle of the Development on the Site**
- **Visual amenity**
- **Residential Amenity**
- **Traffic Impact & Car Parking**
- **Ownership of the Site**
- **Environmental Impact Assessment (EIA)**
- **Appropriate Assessment (AA)**

### 6.2. **Principle of the Development on the Site**

6.2.1. The site is governed by the policies and provisions contained in the Cork City Development Plan 2015-2021. The appeal site is part of a wider area designated as 'Existing Built up Area' in the Ballincollig Carrigaline Municipal District LAP 2017. Of particular note, is the current 'live' permission on site for a mixed use neighbourhood centre (Reg. Ref. 08/9094 / PL04.233744) and the extension of duration (Reg. Ref. 14/6127). This permission is valid until 13/10/2019.

- 6.2.2. Third party concern is raised with respect to incompatibility of the proposed development with the original design aims for Pembroke Wood. Cognisance is had to the argument by the applicant that a mixed use commercial development is not viable on the subject site. The applicant submits that regard was had to Pembroke Woods Residents and local Councillors previous appeal on the subject site which feared that medical and retail units would remain vacant as happened in the adjoining Ardmore Estate. Existing commercial unit vacancy rates within Passage West is high. Therefore, I consider that the applicant's argument that such units should be provided for within the town itself valid. I am also satisfied, given the planning history, that the appeal site was never intended to be reserved for open space.
- 6.2.3. The nature and scale of the proposal is compatible in principle with the existing pattern of development and the policies and objectives of the LAP and the County Development Plan.
- 6.2.4. There is a need for residential development to accommodate predicted increasing population and the current housing shortage. In this context, given the zoning designation and the planning history associated with the site, it is considered that the apartment development is acceptable in principle subject to normal planning and sustainable development criteria.

### 6.3. **Visual amenity**

- 6.3.1. The proposal is 23% smaller and has an overall ridge height 350mm lower than the permitted live planning permission on the site. The number of apartments proposed was reduced from 24 to 18 by way of further information and the design of the apartment block was altered to a more compact form, contemporary design, including a butterfly roof. The palette of materials proposed is similar to the existing palette of materials of the existing duplex apartments and houses within Pembroke Woods, namely red brick finish and smooth plaster. I agree that the design of the apartment block and finishes proposed is an improvement on what has been permitted (Reg. Ref. 08/9094 / PL04.233744).
- 6.3.2. The proposed development of three storeys, some 10.6m in height, is of comparable parapet height to the adjoining duplex apartments and the creche building. I am also

mindful that a live permission (14/6127) exists for a three storey building which has a butterfly roof and which had a greater scale (2049.7 sq. m approx.) This is zoned serviced lands upon which a precedent has been set for three storey development. The proposed development designed in contemporary idiom, with materials and components that express a sense of presence and quality will sit well within its urban context. Given the live permission on this site I am of the opinion, in agreement with the planning authority, that the proposed development is visually acceptable.

6.3.3. I also highlight C2. of the draft grant of planning permission which sets out that details of materials colours and textures of all external finishes shall be subsequent to approval in writing of the p.a. I recommend that should An Bord Pleanála decide to grant planning permission, for the subject development, that a similar condition be attached to the decision to grant.

6.3.4. Certainly, the insertion of a contemporary apartment building onto this site will alter the character of the area generally. However, I consider that separation distances, the form, scale and height of the building is appropriate and would be aesthetically pleasing in its context.

#### 6.4. **Residential Amenity**

6.4.1. Third party concern is raised with respect to overdevelopment of a restricted site within an established estate, loss of light to existing residents, inadequate useable green space / recreational areas for both residents of the existing estate and of the proposed development. It is the opinion of the appellants that the quality, quantity and design of the useable open space is seriously deficient. It is noted that previous schemes included commercial uses which would benefit the community as a whole. It is the opinion of the appellant and observers to the appeal, that the proposed development of residential only use at this scale is therefore inappropriate.

6.4.2. The scheme has been reduced from 24 units to 18 units. The GFA has been reduced from 2030 sq. m to 1528 sq. m which represents a 23% reduction. The redesigned scheme contains 30 number car parking spaces. It is intended that all areas of public open space can be used by the entire community. 1214 sq. m public open space area is proposed in addition to 100 sq. m neighbourhood play area. The play area has been moved away from the junctions as required and shall be

fenced with seating. The 1.2m steel western boundary fence has been omitted in favour of a tree lined boundary.

- 6.4.3. In terms of recreation and amenity, 18 units results in a requirement for 3 points. A 100 sq. m neighbourhood play area represents 1 point, so there is still a 2 point deficit. A special contribution of €36,800 (18,400 x 2) is required in respect of off-site recreational facilities, by way of condition (Condition 45) in the draft grant of planning permission. I consider that the proportion of open space to building scale, mass and nature has improved and is acceptable subject to condition as per the draft grant of planning permission (Reg. Ref. 17/5739).
- 6.4.4. In terms of concerns raised with respect to over development and negative impact upon light to existing residents. Cognisance is had that the design is quite similar to that originally proposed and a reduction in scale and change in roof profile type has improved the appearance of the building and ensures that it integrates more successfully in its context. I am again mindful that a live permission exists for a three storey building, in a similar position and orientation to that currently proposed, which has a butterfly roof and which has a greater scale (2049.7 sq. m approx.) I note the separation distances of 29.4 m between the proposed apartment block and the existing duplex apartments to the east, some 27.8 m separation distance to the existing houses to the west and a separation distance of some 32m from the creche Doodlebugs. Given the separation distances and live permission on the site I consider that it would not be reasonable to refuse planning permission on grounds of loss of light and or overbearing impact.
- 6.4.5. In terms of concerns raised with respect to construction traffic, noise and health and safety issues I note that no construction management plan has been submitted with the proposal and therefore the construction plan for the site is unclear at this stage. Regard being had to the location of the site within a zoned designated 'Existing Built up Area', within walking distance of Passage West and an established residential area I acknowledge that while some disruption would result to neighbouring properties, during the construction period, this would be for a finite period of time, if planning permission was to be forthcoming. I consider that subject to a construction management plan being put in place, required by way of condition, of any grant of planning permission, that the proposed development would be acceptable from a construction access and management point of view.

## 6.5. Traffic Impact & Car Parking

- 6.5.1. Third party concern has been raised with respect to lack of adequate car parking to serve the existing and proposed development, exacerbation of traffic chaos and creation of serious traffic problems within the estate. It is argued that the proposal could result in a serious health and safety hazard and traffic hazard.
- 6.5.2. The approved design proposal contains 18 no. apartments and the design has provided for 30 no. car parking spaces in total. Table 1a Car Parking Requirement set out in the Cork County Development Plan requires 1.25 spaces per apartment. I agree that this provision of parking is in excess of both local and national guidance documents. I also note the 3 additional potential parallel spaces identified outside of the site boundary to the north of the appeal site.
- 6.5.3. The first party argues that proposal will provide significantly less traffic than the permitted live scheme. I can see merit to this argument in terms of reduced traffic hazard and that the subject proposal is an improvement on what has been permitted.
- 6.5.4. I note the conditions attached to the draft notification to grant planning permission in respect of condition of roads, access and car parking. In particular, the following draft conditions are of note:
- Condition 3. Revised drawings to be submitted for written agreement by the p.a. making provision for a revised car parking layout and associated proposals for the numbering of designated parking spaces.
  - Condition 4. Details of location of disabled car parking to be submitted for written agreement by the p.a.
  - Condition 5. Before first use of the proposed development, or, at the discretion of the planning authority, within such further period or periods of time as it may nominate in writing, car parking as described herein, shall be provided to the satisfaction of the planning authority.
  - Condition 31. Prior to the commencement of development works on site, details of speed control measures shall be submitted and agreed with the p.a.
  - Condition 32. Existing footpath bounding the development at the public road are to remain open and kept in good condition. It is the onus of the developer

to ensure that all members of the public can safely utilise the public footpath during daytime and night-time hours. A method statement shall be submitted and agreed with the p.a. prior to commencement of development on site.

- Condition 33. The developer shall be responsible for the maintenance of all roads, footpaths, open spaces, site boundaries and other services within the estate until taken in charge by Cork County Council and / or Irish Water at its discretion.
- Condition 37. Developer to issue and agree with the p.a. / area engineer a photographic record showing an accurate condition of roads and footpaths which are being utilised as access for the construction of the development. Upon completion of the development, a second road condition survey shall be carried out at similar location points and submitted to the p.a. / area engineer.
- Condition 41. Mobility management plan...proposals to provide facilities for and to increase the use of public transport and of cycles.
- Condition 43. A bond to be put in place to ensure satisfactory completion of the development.

6.5.5. I see no fundamental impediment to the proposed development from a car parking perspective. Given the land use zoning, planning history and context of the proposed development located within an 'Existing Built up Area' location. I consider that the car parking layout and quantum as proposed is acceptable in principle subject to adequate covered cycle parking provision and a Mobility Management Strategy being put in place.

6.5.6. Overall it is considered given the location of the proposed development and the traffic management and car parking proposed that, subject to condition, the proposed redevelopment would not have any significant adverse traffic impact on the existing local road network that planning permission should be refused. Should the Board agree that permission be forthcoming I recommend that similar conditions be attached to those attached in the draft grant of planning permission.



## **6.6. Ownership of the Site**

- 6.6.1. The existing estate has been subject of developers going into receivership and so the estate still remains in a condition not satisfactory to be taken in charge by Cork County Council. Concerns have been raised, with respect to the legal entitlement of ownership / legal rights and ambiguity over ownership of the roads in addition to any securities held upon the estate.
- 6.6.2. The First Party have submitted a letter from Pdraig J. Sheehan Solicitors, it is summarised above in section 5.6 of this report. It sets out that Rowan View Developments Limited, the applicants, are the legal owners of the lands contained within folio CK138221F.
- 6.6.3. It is argued that a Bond will be required by Cork County Council as a consequence of the development, if permitted. This will provide a financial obligation to complete the development to the required standard. It is submitted that there is no requirement that the L.A. reach any agreement with Histron Limited before it calls in the Bond and spends the money as it see fit.
- 6.6.4. It is my opinion, that the applicant has demonstrated 'sufficient' legal interest, for the purpose, to seek and be granted planning permission on the appeal site. However, site ownership and legal entitlement over lands are civil matters and not a matter for consideration by An Bord Pleanala. In this regard I highlight that Section 34 (13) of the Planning and Development Act, 2000, as amended, states that a person shall not be entitled solely by reason of a grant of planning permission to carry out development on land where they have no sufficient legal interest. I recommend that should the Board decide to grant planning permission in line with my recommendation that a condition be attached requiring a bond be required as per the draft decision to grant planning permission by the p.a.

## **6.7. Environmental Impact Assessment (EIA)**

- 6.7.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.8. Appropriate Assessment (AA)**

- 6.8.1. The closest European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058).
- 6.8.2. The planning authority has carried out an AA screening report which concludes that there would be no risk of significant negative effects on any European Site as a result of the proposed development, either alone or in combination with other plans or projects.
- 6.8.3. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest Natura 2000 sites. No Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

## **7.0 Recommendation**

I recommend that planning permission should be Granted subject to the following conditions.

## **8.0 Reasons and Considerations**

- 8.1.1. Having regard to the land-use zoning of the site as a designated 'Existing Built up Area', planning history associated with the site and the existing pattern of development in the vicinity, it is considered that subject to compliance with the conditions set out below, the proposed development would not be injurious to visual amenity of the area or injure residential amenity of property in the vicinity would be acceptable in terms of traffic, access and carparking. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 9.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 15th February 2018 and 26<sup>th</sup> March 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed apartments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Roof colour shall be blue-black, black, dark brown or dark grey in colour only. The brick colour to be used shall be the same as that used in the adjoining residential area.

**Reason:** In the interest of visual amenity.

3. 30 no. car parking spaces shall be provided within the site. The location and layout of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure adequate off-street parking provision is available to serve the proposed development

4. Details of the following shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(a) Internal bin store to be omitted.

(b) A bike storage room shall be proposed in place of the internal bin store

(c) Proposals for bike storage in the lobby shall be omitted and resulting area kept clear

(d) A new external bin store located to the northwest of the building and south of the three car parking spaces to the north of the site shall be proposed. It shall be covered, secure, accessible and surrounded by a timber fence and hedge.

**Reason:** In the interest of visual and residential amenity.

5. (a) Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

(b) All foul sewage and soiled water shall be discharged to the public foul sewer.

(c) Only clean, uncontaminated storm water shall be discharged to the surface water drainage system.

**Reason:** In the interest of public health.

6. That all necessary measures be taken by the contractor, including the provision of wheel wash facilities, to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

**Reason:** To protect the amenities of the area.

7. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

9. 20 no. bicycle parking spaces shall be provided within the site. Details of the layout and marking demarcation of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

10. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work and the provision of the 100sq. m play area shall be completed before any of the dwelling units are made available for occupation and shall be maintained as public open space / recreational play area by the developer until taken in charge by the local authority.

**Reason:** In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose

11. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

**Reason:** In the interests of amenity and public safety.

12. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) A plan to scale of not less than 1:500 showing –

(i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder, which shall not include prunus species,

(ii) Details of screen planting which shall not include cupressocyparis x leylandii

(iii) Details of roadside/street planting, which shall not include prunus species

(iv) Hard landscaping works, specifying surfacing materials, furniture play equipment and finished levels.

(b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment

(c) A timescale for implementation

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of residential and visual amenity.

13. Details of the following shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(a) Details of speed control measures.

(b) Existing footpath bounding the development at the public road are to remain open and kept in good condition. It is the onus of the developer to ensure that all

members of the public can safely utilise the public footpath during daytime and night-time hours. A method statement shall be submitted in this regard.

(c) The developer shall be responsible for the maintenance of all roads, footpaths, open spaces, site boundaries and other services within the estate until taken in charge by Cork County Council and / or Irish Water at its discretion.

(d) A photographic record showing an accurate condition of roads and footpaths which are being utilised as access for the construction of the development. Upon completion of the development, a second road condition survey shall be carried out at similar location points and submitted to the p.a. / area engineer.

**Reason:** In the interest of orderly development and public safety.

14. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company to be put in place in accordance with documentation submitted to the planning authority on the 02/02/2018, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure the satisfactory completion and maintenance of this development.

15. Prior to the occupation of any of the residential units, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling and walking to reduce and regulate the extent of parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development.

**Reason:** In the interest of encouraging the use of sustainable modes of transport.

16. All service cables associated with the proposed development such as electrical, telecommunications and communal television shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

18. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7)



applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

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

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

20. The developer shall pay the sum of €€36800.00 (thirty six thousand eight hundred euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of works to be carried out for the provision of off-site recreation facilities in line with the adopted Recreation and Amenity Policy. This contribution shall be paid prior to commencement of development or in such phased payments as the planning

authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

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Fiona Fair  
Planning Inspector  
04/12/2018