



An  
Bord  
Pleanála

## Inspector's Report 301637-18.

---

<b>Development</b>	25 residential units.
<b>Location</b>	Glyntown, Ballinaglanna, Glanmire, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	177137.
<b>Applicant</b>	Berrings Property Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Types of Appeals</b>	First and Third Party
<b>Appellants</b>	1. Berrings Property Investments Limited 2. Niall O' Donovan 3. Maeve O'Donovan 4. Seamus Farrell.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	30 <sup>th</sup> July 2018.
<b>Inspector</b>	Mairead Kenny.

## 1.0 Site Location and Description

The site of the proposed development is positioned to the south of the town centre in the Glanmire the suburb of Cork city located close to the Dunkettle roundabout. This area is presently dominated by low density residential development. The site comprises an infill plot of land of stated area of 1.23 hectares. It is located to the rear (east) of a short row of detached dwellinghouses at East Cliff Road and it slopes significantly to the west towards the Glashaboy / Buttlertown River. There is a separate strip of land in separate ownership between the site and the river. The north-eastern corner of the site is at a level of approximately 27mOD and the level at the western boundary is about 21.5mOD. There are mature trees at the river's edge and within the site and site boundaries, particularly at the northern boundary.

The site entrance is proposed to be off local road L-2998 / East Cliff Road which is a main artery in Glanmire. The site entrance is partly in place. There are footpaths in the vicinity of the site but they are not completely continuous. The site entrance is close to a junction with a housing estate across the road and to the south are the continuation of East Cliff Road and another residential street.

Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

## 2.0 Proposed Development

Permission is sought for a development of 25 houses. This includes a range of semi-detached units and detached housing, with options for design at 18 no. of the units.

In the letter accompanying the application, which was received by the planning authority on 1<sup>st</sup> December 2017 there is an outline of the nature of the development, the design approach and matters related to compliance with the development plan policy provisions.

During the course of consideration of the application by the planning authority and in response to a request for further information the applicant provided more detail in relation to:

- The longitudinal sections between the proposed houses numbered 13 and 21 and existing house and the potential for overlooking between proposed houses 13-16 and 17-21.
- Revisions to house design at no. 12 and boundary treatment.
- Confirmation of legal rights in relation to works near the road entrance and involving provision of surface water and foul sewers.
- Detail of the internal road network.
- Public lighting.

The finished floor levels of the proposed houses vary significantly across the proposed development and are best interpreted with reference to the site layout plan. That drawing also shows the finished floor levels and ridge levels of the detached houses at East Cliff Road.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The planning authority decided to grant permission subject to conditions including:

- special contribution in respect of specific exceptional costs not covered in the Council's general contribution scheme in respect of works towards advancing delivery of traffic and transport (including Greenways) infrastructure under Glanmire LIHAF
- lands within ownership of unit 13 shall be extended to include the area of open space to the south of unit 13 and the drip line of trees proposed to extend along the eastern boundary shall run along the extended boundary
- developer's obligations with regards to the building regulations in the Part V units shall also include a space heating source within the property by means of an appropriate heating stove within the living room of the property
- entrance, footpath and utility details including roadside drainage and maintenance of road during construction
- provision of traffic calming measures throughout the estate

- provision of a controlled pedestrian crossing (condition 19)
- drawings to be submitted on completion
- standard of estates construction
- developer to retain way leaves where services transverse private property and to hand these over to the planning authority in the event of taking in charge
- responsibility for maintenance prior to taking in charge, indemnification of planning authority against all claims resulting from defective foul and surface water sewers and relations infrastructure
- developer to provide drawing showing areas proposed for taking in charge prior to commencement of development and to finalise this to the satisfaction of the planning authority
- dwellinghouses not to be occupied until certain infrastructure is completed
- proposals for estate or street naming scheme to be agreed
- conditions 30 to 40 relate to details of the standard and design
- condition 41 refers to developer to adhering to construction traffic management plan
- condition 44 refers to agreement in writing prior to commencement of development of details of public lighting.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The report of the Executive Planner dated 25<sup>th</sup> April 2018 recommends permission. A number of concerns relating to the development required further information and the response to each point is assessed. The sections submitted and the modifications proposed have substantially addressed the planning authority's concerns. There is a concern about the potential for overlooking from Unit 13 on the existing property to the south east. A condition should attach regarding additional planting along this boundary.

The report of the Senior Executive Planner of 1<sup>st</sup> February endorses the report of the Assistant Planner. The density is appropriate under the development plan and reflects the character of the surrounding area, although it falls short of the National Guidelines Sustainable Residential Development in Urban Areas for this 'outer suburban' site. In general the new layout is a more rational and improved iteration relative to the permitted development. The open space areas are better integrated and the higher density makes better use of the land. The increase in dwelling numbers does generate some concerns regarding the potential impact on existing houses to the east. Further sections are required. Engineering concerns need to be clarified including in relation to a wayleave.

The report of the Assistant Planner dated 1<sup>st</sup> February 2018 includes the following comments:

- To accommodate future development in this area significant local road network improvements are planned.
- Density falls at the upper end of the range for Medium B zoning at net density of 23.58 units per hectare. Acceptable in principle.
- Pedestrian connectivity acceptable and will be improved in area in future.
- There is an increase in the number of units along the western site boundary from 5 to 12 and compared with the previously permitted scheme and a significant change in the relationship with the houses to the east.
- Notwithstanding difference in ground levels some concerns in relation to proposed units 13 and 21. Provision of units at the north-eastern corner of site is a significant change compared with the previous scheme and is acceptable in view of the achievement of higher densities.
- Design approach considered acceptable. Two parking spaces proposed per unit. Housing mix suitable.
- Given the permitted development of 5 serviced sites further to the west retention and strengthening of the western boundary is acceptable.
- Private and public open space acceptable and policy adhered to.

- Modifications to the entrance and road network will be undertaken as part of the development and in other works future.
- Surface water disposal in line with previous permission.
- Further information required.

### **3.3. Other Technical Reports**

#### **Engineering**

Area Engineer Final report dated 5<sup>th</sup> April 2018 recommends permission subject to conditions.

The Area Engineer's report of January 2018 states that entrance sightlines are acceptable and that a pedestrian crossing should be provided. Surface water will be attenuated to greenfield rates prior to discharge to the river, as previously permitted. Further information required in relation to wayleaves and traffic calming.

#### **Estates**

Estates Final report dated 17<sup>th</sup> April 2018 recommends that permission be granted subject to conditions. This includes a requirement to pay in the region of €3,150 per unit in the form of a special contribution towards the cost of advancing the delivery of traffic and transport infrastructure under the Glanmire LIHAF.

The report of 17<sup>th</sup> January 2018 refers. Regarding drinking water and foul main refer to Irish Water for comment. Subject to provision of 2 parking spaces for each house, solid walls at public open spaces, consistent road width at main spine and evidence of rights to undertake footpath, no objection.

#### **Public lighting**

Public Lighting Final report dated 11<sup>th</sup> April 2018 recommends further revisions to the proposed development relating to detail of fittings and of the position of trees.

Report dated 21<sup>st</sup> December 2017 recommends further information and also sets out relevant planning conditions.

#### **Housing Officer**

The report dated 2<sup>nd</sup> January 2018 states that there is a need in the area for the 2 no. three-bedroom units proposed to be provided under the developer's Part V obligations. An appropriate space heating stove should be provided.

### 3.4. **Prescribed Bodies**

**Inland Fisheries Ireland** report dated 19<sup>th</sup> of December 2017 states that the disposal of septic effluent is acceptable subject to confirmation by Irish Water that there is sufficient capacity to ensure no organic or hydraulic overloading of the waters. Otherwise there should be an onus on the developer to provide a separate treatment and disposal option until public facilities are in place. Planning conditions regarding no works near the river without prior approval of IFI.

A submission by **Irish Water** indicates no objection subject to a connection agreement. Notes the proposal to connect to the public water / wastewater network.

### 3.5. **Third Party Observations**

5 no. submissions were received by the planning authority. The issues raised relate to legal control, traffic, excessive density and to impacts on existing houses by way of overlooking, overshadowing and devaluation.

## 4.0 **Planning History**

Under reg. ref. 16/4401 permission was granted for an extension of duration to reg. ref. 10/8176.

Planning reg. ref. 10/8176 relates to a grant of permission for 15 no. residential units at the site.

Under planning reg. ref. 08/4463 permission was granted for alterations to the previously permitted scheme of 11 residential units, which was granted under planning reg. ref. 06/11628.

At the lands to the west permission was granted under planning reg. ref. 14/4245 for an extension of duration of planning reg. ref. 09/5700 which relates to an application for 5 serviced sites.

## 5.0 Policy Context

### 5.1. Cork County Development Plan 2014

The plan is stated to bring in a new approach to housing density as set out in Chapter 3 resulting in requirements to amend the Electoral Area Local Area Plans to ensure consistency.

Policy HOU 3-1 relates to sustainable residential communities. The Council in assessing applications will:

- Have regard to provisions on Sustainable Residential Development in Urban Areas
- Promote development which priorities and facilities walking, cycling and public transport use within individual developments and in the wider context
- Ensure that urban footpaths and public lighting are provided connecting all residential developments to the network of footpaths in an area.

Policy HOU 3-3 includes a requirement to secure the development of a mix of house types and sizes throughout the County as a whole to meet the needs of the likely future population and to require the submission of a Housing Mix statement.

Glanmire is designated as a significant growth area, specifically a metropolitan town within the Metropolitan Cork strategic planning area, designated for population growth, employment and service centre.

Policy HOU 4-1: Housing Density on Zoned Land seeks to ensure the delivery of densities between 12-25 units / ha on lands zoned for medium B density residential development.

### 5.2. Cobh Municipal District LAP 2017

The LAP requires a range of cycle and pedestrian improvements, including:

- Improvements to all inadequate footpaths in the Glyntown area
- Improvements to all inadequate footpaths along East Cliff road extending from Dunkettle road junction to L3010 junction in Riverstown Village



- New signalised junction East Cliff road / L3010 with full pedestrian crossing facilities
- Controlled pedestrian crossing at East Cliff road / Glyntown junction / improved pedestrian facilities
- Various upgrades in the Riverstown area.

The above are presented as amongst a range of measures which appear to me to be mainly relevant to the former Masterplan lands which are now identified as the Dunkettle / Ballinglanna lands as an Urban Expansion Area (UEA) (GM-R-06 to GM-R-09), which does not include the site. These lands and the main residential growth areas are to the south.

The site is identified as GM-R-02 on the relevant maps and there are no specific objectives in the immediate area shown on these maps.

### 5.3. Natural Heritage Designations

The nearest Natura sites are the Great Island Channel SAC (site code 001058) and Cork Harbour SPA (site code 004030).

## 6.0 The Appeal

### 6.1. Grounds of Appeals

Niall O'Donovan

The main points of this third-party appeal are:

- A right-of-way through the property in my ownership exists – the area highlighted in yellow is the granted way leave for 12 houses.
- The enclosed letter relating to the purchase of the property states that the purchaser must comply with the previously agreed-upon arrangements between myself and Murphy Construction.
- I am unable to produce all relevant documentation in support of my objection but my solicitor has become a judge and her practice has been incorporated

by another solicitors in the last five months and is very difficult to search through filing dating back as far as 2006.

- I enclose in addition to legal submissions a brief chronology of the site's history to give some background information.
- The applicants who now owned the site have made a planning application without any correspondence with myself or my solicitor up until the point of my objection.
- A map enclosed shows the lands which remain under my control as well as other lands.
- Enclosed also are details of the sale of the site by me.
- This document refers to 12 no. houses at various points.
- A legal submission on behalf of Mr. O'Donovan refers to the condition of the Murphy contract that a maximum of 12 houses were to be accommodated on the entirety of the land – this is dated 2014 at the time of sale of the site and refers to correspondence with KPMG and NAMA to make sure that future prospective purchasers are aware of this.

### Maeve O'Donovan

The main points of this appeal are:

- The appellant owns land adjacent to the subject property and it is the appellant's understanding that to facilitate access to services for the 25 no. dwelling units the developer would be seeking to rely on the way leave granted by the appellants to Mr. Murphy.
- As is evident the way leave was specifically to service no more than 12 dwelling units and this limitation was incorporated into the deed to protect the appellant's use and enjoyment of her own property, being lands subject adjacent to the subject property.
- The applicant/developer has no permission to use the way leave to serve more than 12 houses. Objection to permission being granted for 25 dwelling houses on that basis.
- It is not clear how the applicant/developer can comply with condition 23.

- Enclosed correspondence which was submitted to McCutcheon Halley in response to the request for further information.
- The appellant is not purporting to deny the existence or validity of the way leave only to refer to the specific prohibition on no more than 12 dwelling houses.

### Seamus Farrell

The main points of this third-party appeal are:

- An enclosed map and various drawings show the location of the appellants has in the context of the proposed development and the previously permitted scheme of 15 houses.
- The earlier proposal for 15 houses included a garden to the rear of the proposed dwellings immediately adjacent our property.
- Under the current proposed layout there are houses situated on two sides of our dwelling, to the west and to the northern boundary.
- On the northern boundary of the proposed houses are positioned directly up such a bedroom window and invade our privacy.
- The houses are positioned approximately 1 m from our boundary wall so as to encroach on the enjoyment and privacy of our dwelling.
- There is no garden separating these dwellings from our property contrary to the original layout.
- The ground of the proposed site to the north of our boundary is infilled to a depth of 2 to 3m and I have serious concerns regarding the stability of our property if there is to be a dwelling constructed in such proximity on infill ground.
- Traffic levels on the road serving this development are very busy - road will not be safe to use with the significant extra traffic.
- Proposed development represents over intensification of an already busy and highly population area.
- Properties in close proximity would be significantly devalued.

- The enclosed letter of objection to the planning authority also refers to the proposed planting of coniferous trees adjacent our boundary which will impact on shading and loss of sunlight, which is of particular concern due to glazing to the rear of our house maximizing solar gain.
- This also refers to red squirrels resident and other species including frogs, jays herons and a host of other wildlife.

### First Party

The main points of the first party appeal are:

- The special contribution charges relating to the provision of traffic and transport infrastructure do not relate to exceptional or specific issues relevant to our clients development and is not in accordance with the requirements of the Act
- The existing permission on the site for 15 dwellings had no specific special development contribution charge and the decision to levy under the current application is disproportionate and unwarranted.
- The attachment of the special development contribution levy is based on the incorrect premise is that there is a need for or deficiency in traffic and transport infrastructure to facilitate the proposed development, which is not the case.
- Constitutes a double charge and is in consistence with the guidelines.
- Condition 19 requires the applicant to provide pedestrian facilities yet there is also a special development contribution for traffic/pedestrian infrastructure.
- There are number of planning precedents relating to dismissal by An Bord Pleanála of special development contributions in similar circumstances.

## 6.2. Responses

### Planning Authority

No detailed response received from the planning authority.

### Niall O' Donovan

Re-iterates that the sale was subject to use of land for a development of 12 houses only. NAMA stated that the contract would have to be upheld.

The result of the appeal is that the development under Part 8 of roads, cycle and footpath improvements is being held up as the Council will not progress the negotiations with me as landowner pending resolution of the appeal. Permission has been granted by the Board recently for development of 550 houses in Ballinaglanna and this infrastructure improvements are critical for future residents. The original planning contracts should have been checked by the planning authority according to the Senior Planner. Maps have been removed. The enclosed documents from the planning Department files received by the planning authority on 25<sup>th</sup> July 2007 refer to the granting by Maeve O'Donovan of a 10m wayleave to Murphy Construction for the purposes of discharging sewage to the Council sewer and storm water to the adjacent river. Point 2 of the document refers.

#### Maeve O'Donovan

The first party appeal submission that there is no basis to our appeal is refuted. There is no means of complying with condition 23 and in any event dealing with wayleaves by condition is not appropriate. One wayleave only was granted and it is restricted to 12 no. houses. There was no time limit on that restriction. The vendor at the time sought to protect the amenity of her land in this way and was entitled to do so. Conditions 4 and 12 of the contract are unambiguous – copy enclosed. Enclosed also is a copy of correspondence issued by solicitors for the Receiver to Mary Dorgan Solicitors setting out that the contract puts any Purchaser on notice regarding the special terms of conditions 6-12. The applicant does not have consent to rely on the wayleave to service more than 12 houses.

#### Seamus Farrell

The scheme aims only to put as many houses as possible onto the site without regard for the established community. The appellant has not responded to the points made regarding the impact on our house. Units 21 and 22 in particular constitute a totally undisputable invasion of our privacy. 1.5m setback is inadequate. Impact on traffic has been dismissed. There are dangerous bends in the vicinity along roads which are used by young children. Planting of coniferous trees is not an

appropriate screening, would adversely impact biodiversity and be vulnerable to falling thus risking life and property. Would create unacceptable living environment.

### First Party

The first part response to the appeals includes the following points:

- Site context, planning history and development plan policy are outlined.
- This includes an extensive permission for 15 houses valid until 2021.
- The appeals by Maeve and Niall O'Donovan raised objections over legal title in relation to which a response was provided to the planning authority.
- There is no restriction on the number of houses permissible. Any issues relating to the former owner are not relevant.
- Regarding the house occupied by appellant Seamus Farrell the impact on this house was considered by the planning authority in its report and it was determined, having regards to the 20m separation distance, the significant level difference and the relationship between the units and fenestration the proposal is acceptable.
- The planning authority also considered that an amendment involving loss of a minor residual section of public open space would be beneficial.
- The entrance detail is already established under the extant permission and sightlines are more than adequate.
- Increase in number of dwellings proposed in this application will not be material in terms of traffic safety.
- The planner's report also referred to a suite of improvements for the local road network which are proposed.
- In preparing the design particular attention was given to ensure no impact on privacy and there are no windows and adequate separation between the proposed and existing units including Mr. Farrell's house.
- The proposed development is also accompanied by a high-quality landscape plan and boundary treatments will be implemented.

- Regarding impacts on wildlife it is considered that there will be no negative impact but that the potential environment would be improved and where possible trees have been retained.
- Regarding shading and loss of sunlight from proposed trees it is noted that there is a large separation distance as shown on figure 4 enclosed and the proposed trees will not have a detrimental effect to the landowner's property.
- The trees will reduce any potential for overlooking.
- Enclosed legal submission 19<sup>th</sup> of June 2018 which states that the third party appeal is based on a misinterpretation of the Deed of Wayleave of 14 August 2007.

### 6.3. Observations

None.

## 7.0 Assessment

I consider that the main issues in this appeal may be considered under the following headings:

- Principle and density
- Legal issues
- Impact on existing residential amenity
- Roads, traffic and connectivity
- Open space, housing mix and Part V
- Water and wastewater infrastructure and Flood Risk
- First party appeal
- Ecology and Biodiversity
- Appropriate Assessment

### 7.1. Principle and density

The planning history, site zoning and the location within an urban area establishes the general principle of development of this site. The relevant zoning objective is for a medium level of density and the proposal achieves a density at the upper end of the development plan policy provision. The planning authority considered the proposal in the context of the prevailing character of the area and in the context of a recent permission for a lower density of development at this site. That permission was recently extended in duration. Having regard to the character of the area and the development plan zoning objective I consider that the proposal is acceptable in terms of the provision of a reasonable level of housing on serviced suburban lands. In this regard I consider that the topography together with the relatively small site size are factors which should be taken into account and which may reasonably be considered to militate against the achievement of higher densities. I conclude the density is acceptable in principle.

### 7.2. Legal issues

Two of the third party appeals relate primarily to legal issues. There are different submissions from different solicitors in relation to the particular matter of whether the wayleaves granted in association with the sale of the site in 2006 limited to 12 no. the future development of the site to no more than 12 no. units.

The third party relies on the memorandum of Agreement dated 29<sup>th</sup> June 2006 which contains a handwritten insert to the effect that ‘the vendor will procure the wayleave for 12 houses’, that the contract is subject to the purchaser obtaining permission for 12 no. houses and that the purchaser will be granted a wayleave to serve 12 houses only (conditions 4, 9 and 12).

A further submission presented is dated 12<sup>th</sup> May 2014 – this is from solicitors acting on behalf of the Statutory Receivers appointed by NAMA. It states that the ‘contractual conditions purporting to restrict development of the lands would not be legally binding on any purchaser’ and in the next paragraph refers to the content of the draft Contract.

The first party position is that the appellants have misinterpreted the legal documents. The legal submission of 19<sup>th</sup> June 2018 enclosed with the response to



the appeals refers to there being two separate and distinct wayleaves , one of which is for the purpose of laying a foul sewer and which is not restricted to the area coloured yellow nor indeed is it restricted to any part of Ms O'Donovan's lands.

In my opinion there is sufficient basis for the Board to determine that applicant has sufficient legal interest to undertake the proposed development. I recommend that the appeal be determined. The requirements of section 34(13) of the Act apply and a person shall not be entitled solely by reason of a permission under section 34 to carry out any development.

### **7.3. Impact on existing residential amenity**

The owner / occupier of the house to the east and south of proposed units 21 and 22 has submitted an appeal on the basis of impact on residential amenity. I address the matters raised below. I refer the Board in particular to the further information requested by the planning authority in response to concerns about the impact of the development on existing residential property.

I note that the appellant has expressed particular concern in relation to the revised layout under the current proposal compared with the previously permitted scheme. The onus on the Board in determining the appeal is not to determine which of the two layouts less impinges on the residential amenities of the existing houses, although it may be reasonable to consider this as part of the overall assessment. A further significant alteration in the current proposed layout comprises a significant increase in the number of residential units. The proposed development should be assessed in terms of its own merits and in this respect in terms of how the proposed development would affect the residential amenities of the existing houses.

Section A-A of the further information submission received by the planning authority on 29<sup>th</sup> March 2018 shows that there is a 4m ground level difference between the main level of the appellant's house and the proposed house no. 21, which would be set back from the shared boundary by 2.5m. In effect when the ground level differences are considered the house at no. 21 would not have significantly greater impact than a single storey house situated on level ground in my opinion. I do not consider that the proposed houses when viewed from the Farrell property or indeed from other houses to the east of the site would be described as being overbearing or

visually intrusive. The impact of no. 22 is lessened by its location to the side of the appellant's rear garden and it would not be within the direct view from the house but it would be seen in oblique views and from the rear garden.

Regarding the impact on privacy I note that no windows other than small bathroom windows are proposed at the first floor gable wall of house 21 (house type B1/C1) and the separation distance of 20.8m from the main rear façade at first floor level is sufficient to prevent any significant inter-visibility. The fenestration of house 22 is type D1 and there are no windows in the side gable walls and a conventional layout to the rear. Section E-E shows the relationship between the houses to the east and proposed houses 22-25. There is an error in the section B-B which omits the house close to the appellants but there is a gap where the proposed houses should be positioned and the drawings can otherwise be interpreted. Section E-E is more useful in terms of the relationship between the proposed and existing houses.

The house most significantly affected is the appellant's house as the proposed unit is close to the rear site boundary and the proposed house no. 21 would be almost as deep as the garden plot. In addition the proposed house no. 22 would be close to the side wall at the north of the Farrell's house. Nevertheless in view of the ground levels, detailed design and separation distances I do not consider that a refusal of permission or significant revision would be necessary in order to protect the residential amenity of the existing house.

The appellant's house is well provided with extensive amounts of glazing which make it more susceptible to potential overlooking. The detail of boundary screening is of particular importance along the houses at the eastern side boundary. I agree with the appellant that coniferous planting would be unlikely to be appropriate. I consider that this matter is best considered through agreement with the planning authority.

Regarding the matter of ground stability which might be relevant to this boundary including the type of structures to be put in place and to the provision of screen planting I consider that this is an engineering detail which is covered by other codes. Nevertheless in the circumstances of this case this matter is also appropriate for agreement with the planning authority and it is in the interest of all parties that it be resolved in conjunction with the overall landscaping of this area.

Regarding the impact on the other houses at East Cliff Road I note that the mass and depth of the proposed buildings is relatively small and when considered in conjunction with the width of the plots associated with the existing houses, a sense of an open outlook would be retained. The rear of these houses is more conventional with smaller window openings in particular at first floor level. One house does have the benefit of a small rear balcony from which there would be clear views to the development and this structure might be deemed to be of some importance as an amenity associated with the house. My conclusions in relation to the appellant's property remain equally valid however for the remainder of the houses along the eastern side of the site.

I conclude that the development is acceptable in terms of residential amenity.

#### **7.4. Roads, traffic and connectivity**

The road conditions in the vicinity of the development are relatively complicated insofar as the junction of the proposed estate with the public road is positioned close to two other road junctions and at a point where horizontal and vertical alignments are less than ideal. The area is stated to be used by vulnerable road users. Traffic conditions at the time of my inspection did not give rise to any indication of congestion but the inspection took place at mid-day in the height of the summer. There are other planned developments in the Glanmire area, which are likely to give rise to increased traffic volumes along this road.

There are also a range of planned road infrastructure upgrades including in the provision of cycling and footpath infrastructure, which on completion would contribute positively to road user safety. In the interim and allowing for higher volumes of traffic in the peak periods, I consider that the proposed development is acceptable in terms of roads and traffic taking into account:

- The nature of the site entrance, which is deemed to be acceptable to the Council's officials and which include footpath extensions to meet the existing.
- The raised pedestrian crossing proposed as part of the response to the further information.
- The significant level of cycle and pedestrian improvements to be undertaken in the area including at East Cliff Road itself and Glyntown generally.

- The scale of the development and the permitted development.

The site is presently situated in an established suburban area but there are few services in the immediate area and limited public transport by way of an infrequent public bus service. I concur with the position set out in the reports of the planning authority, which is that with the implementation of planned improvements to the road network the connectivity of the site to social and community services in the area will be greatly enhanced.

I conclude that the proposed development is acceptable in terms of roads, traffic and connectivity.

#### **7.5. Open Space, Housing Mix and Part V**

The provision of open space in the development has been assessed by officials of the planning authority on the basis of the Council's recreation policy, which operates on a points system. The open space to be provided complies with the policy requirements and appears to me to be acceptable for a small residential development. Salient features include the 100m<sup>2</sup> play area and the larger play area of 400m<sup>2</sup>. The applicant's submissions include a landscape plan which sets out the crown spread of existing trees and provides in the main for trees and hedging to be retained and supplemented. Rear gardens are reasonably generous in area.

The proposed house types comprise two-storey units as follows:

- 3 or 4 bedroom semi-detached (14 units) – types B1 / C1
- 3 bedroom semi-detached units (4 no. ) type C2
- 4 bedroom detached (3 no. ) types A1/A2
- 3 bedroom town houses (4 no.) house type D.

The size of houses varies between 90m<sup>2</sup> and 168m<sup>2</sup> and the plot sizes would allow for future expansion if required, including by way of an attic conversion.

The proposals for compliance with Part V are acceptable to the planning authority subject to the provision of an efficient stove for heating purposes. I do not consider that the latter requirement is a planning matter and I consider that the standard Part V condition should be attached.

I consider that the development is acceptable in terms of open space, housing mix and Part V.

#### 7.6. **Water and wastewater infrastructure and Flood Risk**

The surface water will be discharged after on-site attenuation to the nearby Buttlerstown River, which is to the west of the site and which is separated by lands in the ownership of one of the third party appellants. The maximum rate of discharge is greenfield rates. I consider that the applicant's proposals are acceptable. I note that IFI suggested that a condition might be attached to the effect that no works beside the river would be undertaken without their consent. In view of the separation of the main body of the site from the riverside, the general onus on developers to prevent water quality impacts and the limited nature of the works I do not consider that this requirement is relevant in this case.

There is no indication of any reason for concern relating to the proposed connection of the development to the public water supply and sewerage system. The development is deemed to be acceptable to Irish Water subject to connection agreements. The applicant states that pre-connection enquiries to Irish Water received favourable response. I consider that this matter can be addressed by the Board's standard planning conditions.

The site, which is elevated is not within an area where flood risk is an issue.

I consider that the development is acceptable in terms of proposals for water and wastewater infrastructure as well as flood risk.

#### 7.7. **First party appeal**

The appeal is against the attachment of a planning condition which requires a special financial contribution. The wording of condition 2 is:

*At least one month before commencing development or at the discretion of the planning authority within such further period or periods as it may nominate in writing, the developer shall pay a special contribution of €78,750.00 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect*

*of specific exceptional costs not covered in the Council's General Contribution Scheme, in respect of works to be carried out, for the provision or towards the cost to Cork County Council of advancing delivery of traffic and transport (including greenway) infrastructure under Glanmire LIHAF Initiative project to accommodate significant housing development within the Glanmire area. The cost should be applied as €3,150 per unit.....*

**Reason:** *It is considered that the developer should contribute towards these specific exceptional costs for works which will benefit the proposed development.*

The appellant considers that the costs sought are neither exceptional nor specific to the development and therefore condition 2 is not in accordance with the provisions of the Act. It is noted that the national funding to support housing included payment of €5.9million towards public infrastructure to include the Riverstown Road bridge and a new link road. There is an onus on the planning authority to demonstrate that the required traffic and transport under the LIHAF is exceptional in the sense that they could not have been envisaged during preparation of the DCS and that they are specific to the proposed development rather than the general area.

The requirement that the particular works be specified by the planning authority is noted and is not met. This is a fundamental requirement of the Act.

The appellant further states that the levy is disproportionate in addition and was not applied under the previously permitted scheme. That permission was extended up to July 2021 and could be implemented without any special contribution obligation. The DCS includes a levy in respect of roads and traffic. The special contribution would be double charging and the additional amount sought is higher than that which would be payable under the DCS. The special contribution refers to payment towards a pedestrian crossing, which is also required to be constructed under condition 19.

The planning authority has not responded to the Board's standard letter which has requested details of the works to which the payment refers. The Board has recently granted permission for a large development at Ballinaglanna / Glanmire which involved payment towards infrastructure in the area but that was to be subject of a section 47 agreement and a draft of same had been presented as part of the application documentation. I refer to case ABP-300543-18.

I agree with the first party that the planning authority has not demonstrated as required that specific exceptional costs arise. I consider that a special contribution is not warranted and that the financial contribution condition should not be attached.

## **7.8. Ecology and Biodiversity**

The impact of the development on the ecology of the area is referenced in the third party appeals. There are stated to be red squirrels and other species of note on or in the vicinity of the site. I note that the applicant in the AA Screening Report indicates that the river is potentially suitable for otter.

There are no conservation designations or specific development plan policies relating to the protection of ecology, which are of relevance to the immediate site context. The site is close to the Buttlertown River but there is a separate land holding which is not affected by the proposed development and which will act as a buffer zone providing a refuge for any wildlife and minimising potential for construction phase water quality effects. I have referred above separately to the surface water outfall, which I consider does not warrant any particular response by the Board.

Having regard to location of the site in a suburban area, the development plan policies including the zoning objective, the lack of conservation designations, the fact that the majority of works are some distance from the river and the protection of mature trees, I do not consider that there is any evidence to warrant refusal of permission or significant alteration of the proposed development for reason of protection of local ecology and biodiversity.

## **7.9. Appropriate Assessment**

An AA screening report was submitted as part of the application submissions. The report considers the following Natura 2000 sites which are located within 15km of the site of the proposed development:

- Cork Harbour SPA (site code 004030) c. 1.1km from the development site
- Great Island Channel SAC (site code 001058) c. 3.6 km from the development site

- Blackwater River (Cork / Waterford) SAC (site code 002170) c. 12km from the development site.

There relevant qualifying interests are outlined in detail in Table 2.1 of the report and include:

- Cork Harbour SPA – wintering bird species, breeding bird species and wetlands.
- Great Island Channel SAC – Tidal Mudflats and Sandflats, Atlantic Salt Meadows.
- Blackwater River (Cork / Waterford) SAC – a range of aquatic species including Freshwater Pearl Mussel and various habitats including estuaries, salt meadows and others.

There are no direct impacts. Indirect effects may arise due to water quality impacts only and the potential pathway is the Buttlerstown / Glashaboy River. There is no potential for indirect hydrologically effects on the Great Island Channel SAC or Blackwater River (Cork/Waterford) SAC by way of surface water impacts or treated wastewater as these sites are not located downstream of the discharge points.

The potential pathways for impacts on the Cork Harbour SPA through hydrological connections include:

- Potential discharge of contaminated run-off during construction work.
- Potential discharge of surface water drainage into the Glashaboy River.
- Potential discharge of treated effluent from the development into Cork Harbour by way of the wastewater treatment plant.

However, as a result of the design measures incorporated in the application submissions and the construction and operation / maintenance of the scheme and in particular its infrastructural components, no indirect hydrological impacts on Cork Harbour SPA are anticipated. The application submissions outline best practice measures to prevent such impacts. Regarding the operation of the scheme including in terms of wastewater treatment and discharge the indications from Irish Water is that there are no constraints.



Having regard to the nature and scale of the development, to the proposed foul and surface water treatment measures and construction mitigation measures, the nature of the receiving environment and proximity to the nearest European sites, it is reasonable to conclude that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment is therefore not required.

## **8.0 Conclusions and Recommendation**

I conclude that the development is acceptable and that the decision of the planning authority to grant permission should be upheld for the reasons and considerations and subject to the conditions below.

## **9.0 Reasons and Considerations**

Having regard to the provisions of the Cork County Development Plan 2014 and the Cobh Municipal District Local Area Plan 2017, to the planning history of the site and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 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 29<sup>th</sup> day of March, 2017, 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. Prior to commencement of development, the developer shall submit for the written agreement of the planning authority, a detailed specification for the boundary treatment to the eastern side of the development site. Details may include a concrete retaining wall topped by a decorative mild steel galvanised, powder coated railing, which shall be suitably planted, or other finish agreeable to the planning authority. No planting of coniferous trees along this boundary shall be undertaken.

Reason: In the interest of residential amenity.

3. Prior to the commencement of development the developer shall submit to the planning authority for written agreement, a full Arboricultural Assessment of the site. The developer shall implement all the recommendations pertaining to tree retention outlined in that report. All recommendations contained in the submitted report, including tree felling, surgery and remedial works shall be completed within one year of the completion of development works on the site. The arborist shall carry out a post construction tree survey/assessment on the condition of the retained trees. A completion certificate shall be signed off by the arborist when all works are completed and in line with the submitted original tree report and landscape drawings.

Reason: To protect the trees on site including during the course of construction.

4. All areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work

shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space 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.

5. Prior to commencement of development, the developer shall submit to the planning authority for written agreement, full design details of the play areas, which shall be in accordance with the requirements of the planning authority.

Reason: In the interest of amenity.

6. The entrance detail, pedestrian crossing and internal road network serving the proposed development, including turning bays, junctions, sight distances, parking areas, footpaths, cycle tracks and kerbs shall be in accordance with the detailed requirements of the planning authority for such works.

Reason: In the interest of amenities and public safety.

7. 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 interest of amenity and public safety.

8. Prior to commencement of development, proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development.

9. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

10. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

11. Prior to commencement of construction of the houses, details of the materials, colours and textures of all the external finishes to the proposed houses/apartments shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

12. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste and, in particular, recyclable materials

within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

13. Prior to commencement of development, a Construction Management Plan shall be submitted to the planning authority for written agreement. 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 interest of amenities and public safety.

14. 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 social and affordable housing in accordance with the requirements of section 96 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 (other than a matter to which section 97(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.

15. 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 planning authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the planning 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.

16. 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, as amended. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

---

Mairead Kenny  
Senior Planning Inspector

23<sup>rd</sup> August 2018