



An
Bord
Pleanála

Inspector's Report

ABP-309932-21

Development	Phase 2 of residential development consisting of the construction of 3 dwellings.
Location	The Stables, South Douglas Road, Cork City.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2039469
Applicant(s)	WRB Investments Ltd
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	WRB Investments Ltd.
Observer(s)	Fionnuala Connolly Patricia McCarthy Donal and Sheila Finn Elizabeth O Driscoll Mary O Herlihy Cathal O Byrne Peter Deegan

Nora Fitzgerald
Cllr Dan Boyle
Naoimh O Regan
Maria O Brien
Sean and Michele Brown
John MacCarthy, Chartered Engineer
on behalf of residents of Berkeley
Court.

Date of Site Inspection

15th July 2021.

Inspector

Bríd Maxwell

1.0 Site Location and Description

- 1.1 This appeal relates to a backland site of 0.08 hectares located to the rear of established residential development on the southern side of South Douglas Road in the south-eastern suburbs of Cork City. The area is characterised by residential development predominantly two storey terraced dwellings. To the north-east is a recent housing development known as The Stables which comprises a total of eight units five of which are incorporated within a former stable building which is listed on the NIAH (NIAH No 20871017) renovated to residential use. The gates at the entrance to the estate are also listed on the Record of protected Structures RPS 1140). To the north terraced dwellings of Berkeley Court back onto the site. To the west and south dwellings on Greenhills Court back onto the site.
- 1.2 The appeal site is currently overgrown. A pedestrian gated access from the rear garden of 12 Berkeley Court serves as access to the rear gardens of 1-6 Berkeley Court. The remaining site boundaries are defined by a mix of stone walling and concrete block walls. The common green area serving the Stables Development is located immediately adjoining the south-eastern site boundary. An opening in the wall has been created at the location of the proposed entrance from The Stables car parking area.

2.0 Proposed Development

- 2.1. The application as described in public notices involves permission for a residential development as phase 2 of The Stables Development granted under permission 15/36625 and 16/37008. The development will consist of the construction of 3 number terraced two bedroomed, 2 storey (mansard type) dwelling units along with 3 number private parking spaces and 2 number visitor parking spaces, electric vehicle charging points, bicycle shelter, public lighting and associated site works.

3.0 Planning Authority Decision

3.1. Decision

Following an initial request for additional information and response thereto the Council decided to refuse permission for the following reasons:

“The proposed development would be contrary to the policies and objectives of the Cork City development Plan 2015-2021, including Section 16, 17, 18 with regard to Public Open Space requirements by means of size, design and accessibility. It is considered that the proposed development would not provide an acceptable standard of open space amenity for future residents. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Having regard to the existing pattern of development, the established character of the area, as well as to the planning guidance in relation to the development of infill housing units as outlined in Paragraph 16.59 of the Cork City Development Plan 2015, the proposed development would, by reason of its inappropriate scale, layout, design, and relationship to dwellings immediately adjoining the site, constitute an inappropriate form of development and be visually obtrusive and overbearing in relation to existing dwellings. The proposed development would represent overdevelopment of the site and would therefore seriously injure the residential amenities and depreciate the value of these properties contrary to the proper planning and sustainable development of the area.

The proposed development would be contrary to the policies and objectives of the Cork City Development Plan 2015-2021, including Objective 10.7 and Section 16.128, with regard to protected species and their habitats. It is considered that the proposed application does not comply with the requirements of the above objective and section. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report considers the principle of development to be acceptable given the infill nature of the site. Concerns are expressed regarding potential for negative impact on established residential amenity. The site is constrained in relation to density on basis of established development and restricted access. A reduced density and greater separation distances should be sought. Concern arises regarding impact of house 9 on established adjacent dwellings at Greenhills Estate (54 & 55). Section drawings are not accurate with regard to floor levels. Noted that the opening in wall within curtilage of the protected structure is not authorised. Impact on heritage and wildlife is of concern.

A detailed request for additional information issued seeking a number of items including:

- Revised drawing to reduce impact on adjacent dwellings to the west and north reducing number of dwellings to two.
- Inclusion of planting and vegetation and trees native to the location.
- Omission of proposed pedestrian access in north-western corner from the site into Berkeley Court with all access through the Stables Development.
- Retention/ reinstatement of access for residents of Berkeley Court to the rear of their properties.
- Provision for public open space in accordance with the requirements of the development plan.
- Details of work carried out to the stone wall adjoining NIAH listed Stables. Conservation report demonstrating scope of works and measures to ensure best conservation methods.
- Noting works to communal area to front of Berkeley Court dwellings - a timeframe for works and measures to mitigate negative impact on established amenity.
- Clarification of cyclist /pedestrian connectivity.
- Detail of construction traffic. Stage 1 / 2 Road safety audit.
- Lighting details.
- Omission of 2 visitor spaces.

- Tree survey. Bat survey and details of derogation licenses where relevant and other correspondence with NPWS
- Photographs of bat and bird boxes erected as part of mitigation measures recommended under Phase 1 at The Stables.
- Soakpit design details having regard to the high ground water and springs characteristic in this locality.
- Foul sewer connection location

Following the submission of further information, the final planner's report recommends refusal.

3.2.2. Other Technical Reports

- Urban Roads and Streets Design report. Initial report sought further information regarding pedestrian and cyclist connectivity. Second report indicates no objection subject to conditions regarding pedestrian priority measures with dropped kerbs and tactile paving.
- Traffic Regulation and Safety Report. Further information required regarding construction traffic, Stage 1/2 Road Safety Audit, public lighting proposals. Visitor parking should be removed. Second report deemed further information to be satisfactory.
- Heritage Officer's report notes that the site was cleared of trees and vegetation prior to the submission of the application. During the previous application in respect of The Stables development the developer would have become aware of the importance of the trees on site for the biodiversity of the area particularly birds and bats. Further information required to address impact on breeding birds and bats. Second heritage report recommends refusal of permission on grounds of prematurity subject to clarification from NPWS of whether an offence under the EU Habitats Directive with respect to bats has taken place.
- Drainage report – Design of soakpits to be submitted. The area is prone to high groundwater and springs. No public foul sewer in Berkeley Court. Pre-connection

enquiry to Irish Water to be submitted to confirm appropriate discharge route and confirm capacity.

- Drainage Report – Clarification report required to include percolation tests to assess feasibility of soakpits. Where not feasible agreement required from Irish Water in respect of discharge of stormwater to public sewer. Greenfield run off calculations to be provided.
- Contributions report – No objection. General Contribution Scheme to apply. €7084.48.

3.3. Prescribed Bodies

Irish Water submission notes that while proposal is to connect to public sewer in Berkeley Court however there is no public sewer in Berkeley court as it has not been taken in charge. Pre connection enquiry to be submitted.

3.4. Third Party Observations

3.4.1 Numerous submissions from the following residents and third parties

- Fionnuala Connolly, Muire na nGrás, 56 Greenhills Estate South Douglas Road.
- Tadhg and Samantha Browne 55 Greenhills Estate.
- Elizabeth (Lily) O Driscoll, 1 Berkeley Court.
- Patricia McCarthy 12 Berkeley Court,
- Cathal O Byrne, 6 Berkeley Court.
- Nora Fitzgerald, 10 Berkeley Court.
- Cllr Dan Boyle, Cork City Council
- Maria O Brien, 5 Berkeley Court.
- Naoimh O Regan, 53 Greenhills Estate.
- John MacCarthy, Consulting Engineer on behalf of residents of Berkeley Court.
- Sheila and Donal Finn Ballyvouhig North Ballygaravan.

- Sean and Michele Browne, Adare Cross Douglas Road.
- Peter Deegan, Atlantic View Eyeries.

3.4.2 The detailed submissions set out objection to the development on the following grounds:

- Excessive density / Overdevelopment
- Lack of green spaces in the area. Appeal site has been used by residents as open space.
- Negative impact on privacy, light pollution, anti-social behaviour.
- Environmental impact.
- Flood risk
- Subsidence.
- Security and privacy risks arising from proposed pedestrian access into Berkeley Court.
- Trees felled prior to submission of application. Negative impact on ecology.- Bats and birds.
- No consultation
- Historic 19th century wall partially destroyed. Application fails to refer to the protected structure.
- Access to rear of 1-6 Berkeley Court, established since 1980 has been denied to residents since February 2020.
- Permission for the Stables made no reference to it being first stage of a multi stage development and the site was not in the possession of the developer. Application misrepresents the development and is invalid.
- Negative construction impacts.
- Proposal relies on unauthorised developments and conflicts with the requirements of TP15/36625 and TP16/37008.
- Details submitted in support of the application are inadequate and cannot be assessed.

- Overlooking and overshadowing
- Infrastructural capacity is questioned. Given location of sewerage and water pipes in front gardens of Berkeley court potential arises for significant disruption to services and health and safety implications arise.
- Noise and light pollution
- Scale bulk and design inappropriate.

4.0 Planning History

16/37008 Permission granted for change of plan to unit type 2 15/36625.

15/36625 Permission granted for residential development within the curtilage of a protected structure consisting 9 no 2 bed units involving change of use of stables to 5 no 2 storey terraced two bed units with porch extension, partial demolition to northern end, re-roofing and modification to elevations, construction of 3 no 2 storey terraced units and single storey detached unit along with relocated entrance using restored gates and pillars, car parking for 12 cars, maintenance shed, refuse storage areas, bicycle rack, 4.5m wide roadway, footpaths and associated site works. Condition 15. Bat survey to determine if the building is used by bats or birds.

5.0 Policy Context

5.1 National Policy

5.1.1 Project Ireland 2040 – National Planning Framework

The National Planning Framework Section 2.6 highlights the importance of securing compact and sustainable growth. National Policy Objective 3a seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements. 3c is to deliver at least 30% of all new homes that are targeted in settlements other than the five cities and their suburbs, within their existing built-up footprints.

Objective 13 states that in urban areas, planning and related standards including in particular building height and car parking, will be based on performance criteria that seek to achieve well designed high-qualified outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

Chapter, No. 6, entitled 'People Homes and Communities' - Objective 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages. Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Objective 35 seeks to increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.1.2 S28 Ministerial Guidelines.

- Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities. Department of Environment, Heritage and Local Government, May 2009.
- Urban Design Manual A best practice Guide. May 2009.
- Design Manual for Urban Roads and Streets, DMURS
- The Planning System and Flood Risk Management (including the associated 'Technical Appendices') Dept Environment Heritage and Local Government November 2009.
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities – Department of Housing Planning and Local Government March 2018

- Urban Development and Building Height Guidelines, Department of Housing Planning and Local Government, December 2018

5.2 Development Plan

The Cork City Development Plan 2015-2021 refers. The site is zoned ZO 4 Residential, Local Services and Institutional Uses. The objective is “To protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3”.

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

5.3 Natural Heritage Designations

The site is not located within any designated site. Cork Harbour SPA, Site Code 004030, and the Great Island Channel cSAC, Site Code 001058 are the closest Natura 2000 sites

5.4 EIA Screening

5.4.1 An Environmental Impact Assessment Screening report was not submitted with the application. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

5.4.2 It is proposed to construct three dwellings. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 0.08ha and is located within an existing built-up area but not in a business district. The site area is therefore well below the applicable threshold of 10 ha. The site is an infill site within a fully serviced built up residential area. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Cork City County Council, upon which its effects would be marginal.

5.4.3 **Having regard to: -**

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands that are zoned for residential development under the provisions of the Cork City Development Plan 2015-2021, and the results of the strategic environmental assessment of the Cork City Development Plan, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of residential development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to ensure no connectivity to any sensitive location,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and

- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case (See Preliminary Examination EIAR Screening Form).

6 The Appeal

6.1 Grounds of Appeal

6.1.1 The first party appeal is submitted by WRB Investments Ltd. Grounds of appeal are summarised as follows:

- The proposal is a modest terraced proposal for two no two-storey houses and one no single storey unit forming a reasonable and logical extension to The Stables Development.
- Site is centrally located, accessible and well serviced.
- Scheme proposed meets variety of housing needs particularly the local demand for single storey accessible units.
- Development was amended to address concerns of the Planning Authority and third-party objectors.
- Public open space increased from 55sq.m to 137sq,m. in single block in northwestern part of the site equating to 18% of site area. The open space is pedestrian focussed, usable and overlooked.
- Foul drainage and storm water arrangements were redesigned to connect into the Phase 1 Stable Development. No servicing or pedestrian access shall be routed through Berkeley Court or Greenhills Estate.
- Revised landscaping plan includes for the planting of a row of mature native trees along the northwestern and northeastern boundaries of the site in

addition to a 2m high capped wall. Planting scheme includes pollinator friendly species.

- Private open space provided by generous rear gardens ranging from 50sq.m to 88m² which is well in excess of the minimum requirement 58-60m².
- Terraced gable ended units follow similar style and palette to Stables in keeping with the established pattern.
- Proposed density is appropriate to the site equating to 40 dwellings per hectare.
- No windows proposed on northwestern elevation of unit 9. Mature planting along the northwestern and north-eastern boundaries of the site with new block walls of 2m and 1.8m will visually screen neighbouring properties. Photomontage provided in Appendix 2 to demonstrate.
- Ridge height reduced from 14.49m to 14.29m in respect of units 10 and 11 and from 14.49m to 12.74m in respect to unit 9 reduced to single storey. Surrounding dwellings range between 17.58m and 12.66m.
- Daylight analysis study confirms that the development will not overshadow neighbouring properties. Daylight analysis study was prepared at FI stage and therefore does not reflect the further size reductions and set back from the western boundary as proposed which would further reduce overshadowing impacts.
- Very slight overshadowing on the boundaries to Nos 55 and 56 Greenhills Estate takes place early morning in March and September which will have a negligible impact. The only day where any overshadowing takes place is on the morning of 21st December when sun is at lowest with overshadowing of garden space of No 54 and 55 Greenhills estate, however given the extent and limited timeframe impacts are perceived to be only slight.
- BRE guiding principle in relation to impact on amenity areas recommends that at least 50% of the area of amenity space (including rear gardens) should receive at least two hours of sunlight on 21st March. There will be no impact on the amenity space serving residential properties in the vicinity of the site as a result of the development on this date on 21st March which confirms that the

proposal will not have any substantive overshadowing impacts on neighbouring properties.

- Regarding trees and protected species and refusal reason no 3 - no tree protection orders applied to any trees. When the property was acquired in July 2019 there was concern that the scale and condition of a group of overgrown Sycamore trees having regard to the proximity to neighbouring properties. As per Forestry Act 1946 no tree felling licence is required in respect of any tree standing in an urban district or any tree standing within 100 feet of any building other than a wall or temporary structure.
- As outlined in report of Tree Surgeon (Appendix 4) trees were cut down in early February 2020, outside the bird breeding season with no evidence of breeding birds. No breach of Wildlife Act 1976 as amended by the Wildlife (Amendment) Act 2000 took place.
- With regard to potential for bats within the adjoining Stables Development (a separate site), condition 13(c) and Condition 15 of Reg Ref 15/36625 required the applicant to engage the services of a suitably qualified ecologist to identify if the building which were proposed for renovation and demolition were being used by bats and birds. Conditions in respect of Phase 1 of the Stables did not apply to the site.
- In compliance with condition of 15/36624 a bat and bird potential report was prepared by Eco Eireann February 2016. A preliminary bat roost assessment and visual inspection of the building was carried out at this time. Section 3.2 of the report noted that the group of mature sycamore trees with ivy cover located to the west of the site (in the application site) had bat potential given their age and presence of ivy. Report recommended that a bat activity report be carried out or a suitably qualified ecologist be present on the site when works are taking place in respect of the structures.
- Bat monitoring assessment carried out through the use of bat detection monitors and a dusk emergence survey was also carried out. The assessment recorded a single soprano pipistrelle which is the most common and widespread bat foraging adjacent to the sycamore trees and building proposed for demolition to the southwest of the development site. The bat

was recorded approaching from the south not from location of the Sycamore trees. Findings also noted another single bat commuting over the site. Report concluded that as roosting bats were not recorded on the site no mitigation was required.

- The potential use of sycamore trees was ruled out and no further bat surveys were carried out in respect of the felling of trees on site. As a precautionary measure the trees surgeon checked all trees for the presence of bats before gradually felling. Trees were left to lie for 48 hours to allow for any wildlife present before chipping the removal off site.
- Respectfully submit the Board that the applicants have adhered in full to requirements under compliance with condition 15/36625 which is a separate site to the proposed development site, with the wildlife acts (as amended) and the Habitats Directive and no protected species have been impacted by the felling of trees on site.
- It is proposed to create a 1.2m wide walkway along the northern boundary to enable residents of No 1-6 Berkley Court to access rear gardens. A maintenance gate proposed to the north-western corner of the site.
- Proposal promotes sustainable and green forms of transport with good pedestrian connectivity. EV charging points proposed all 3 spaces.
- Stage 4 RSA carried out by MHL & Associates Transport Engineers (Appendix 7) - all recommendations have been incorporated into the final design including improved lighting, sight distances and pedestrian safety. A CMP including traffic management proposals has also been prepared in respect of the proposed development.
- Updated conservation report prepared in consultation with Gareth Sheils of GS Stonework an experienced and qualified architectural stonemason and conservator (Appendix 11) Parts of the wall were infested with Buddleia an invasive species now being managed on the site. Part of the wall dismantled for health and safety reasons leaving an opening of 3.7m.
- It is proposed to widen the entrance to 9m and create two large pillars similar to those at the main entrance to the Stables development.

- Lighting is suitably designed to ensure no negative impact.
- Proposal seeks to make the most sustainable use of existing urban land and the proposal adheres to principles of good design
- No adverse impact arises on the residential amenities of the area from overlooking, loss of light and privacy.

6.2 Planning Authority Response

6.2.1 The submission of the Planning Authority maintains that with regard to the application it has carried out its duties accordingly in terms of the provisions of the Planning and development Acts 2000 as amended and the decision to refuse permission is consistent with the provisions of the Cork City Development Plan 2015-2021 and the proper planning and sustainable development of the area.

6.3 Observations

6.3.1 A number of observations are submitted by the following third parties:

- Fionnuala Connolly, Muire na nGrás, 56 Greenhills Estate.
- Patricia McCarthy, 12 Berkeley Court.
- Donal and Sheila Finn, Ballyduhig North, Ballygarvan owners of 4 Berkeley Court.
- Elizabeth O Driscoll 1 Berkeley Court.
- Mary O Herlihy, 19 Halldene Avenue, Bishopstown. Owner of 2 Berkeley Court,
- Cathal O Byrne, 6 Berkeley Court.
- Peter Deegan, Atlantic View, Eyeries,
- Nora Fitzgerald , 10 Berkeley Court.
- Cllr Dan Boyle, Garden Flat, 2 Glenville Strand Road, Monkstown.

- Naoimh O Regan, 53 Greenhills Estate,
- Maria O Brien, 5 Berkeley Court.
- Sean and Michele Brown, Adare, Cross Douglas Road.
- John MacCarthy, Chartered Engineer on behalf of the residents of Berkeley Court.

6.3.2 Observers submissions set out detailed objection to the development on a number of grounds which I have summarised as follows:

- Request that the Board uphold decision to refuse.
- Sales brochure for Berkeley Court highlights the appeal site as open space in reference to 'private green'. Communal area was included as part of the sale to residents of Berkeley Court. (Original sales brochure appended). Original planning file in Cork City Council missing and old documents showing green area were not stored electronically. Green and common areas not taken in charge by the Council but remained in the hands of the original developer. Land has been in use by the residents of Berkeley Court for over 40 years and they have adverse possession. Resident at number one Berkeley court has extended her garden into the green area and this was destroyed by WRB investments to gain access to fell native trees.
- Pedestrian facilities at exist from Stables Development onto South Douglas deficient therefore suitability for mobility impaired persons is questionable.
- Residents were obliged to hire engineers and solicitors to defend their right of way.
- Security and residential amenity impact of maintenance gate. Anti-social behaviour, litter and loitering.
- Loss of amenity, privacy and security.
- Dominating impact on residents. Overlooking and loss of privacy
- Loss of light, noise and disturbance.
- Existing and proposed overshadowing is not clearly demonstrated.

- No bat bird or wildlife study carried out before the felling of the native trees.
- Cork City Council inspected the trees on 22 May 2017 and deemed them to be safe. Yet Able Tree Services on behalf of the developer said they were precarious.
- Reject claim that the wall was dangerous.
- Excessive density of development with inadequate open space.
- Failure to comply with The Stables Phase 1 planning conditions noted, no bird or bat boxes were erected.
- No limit on height of proposed hedging /screening along some boundary walls.
- Construction impacts.
- Devaluation of the property.
- Developer unreasonable in his actions.
- Stormwater discharge through down pipe to car park in Berkeley Court when soakway was required.
- Heritage value of the site needs to be protected.
- No conservation works carried out to the wall.
- Scheme submitted to the Board is materially different from that originally submitted to Cork City Council

7 Assessment

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions, I consider that the

key issues arising in this appeal can be addressed under the following broad headings.

- Principle of development Ownership & Legal Issues and adequacy of the application
- Quality of design and layout and Impact on Established Residential Amenity.
- Traffic and Servicing
- Appropriate Assessment.

7.2 Principle of development Ownership Legal Issues

7.2.1 As regards the principle of development, the site is zoned Z04 Residential Local Services and Institutional Uses the objective “to protect, and provide for residential uses, local services, institutional use and civic uses, having regard to employment policies outlined in Chapter 3.” The proposal to provide three modern residential dwellings on the site is appropriate in terms of this zoning objective. I note that the site is well-located in close proximity to all amenities and to public transport and therefore the proposal is in accordance with the general policy desirability to increase densities within serviced urban areas in the interest of efficient land use resources and economies of scale.

7.2.2 I have noted the contention raised in the submissions of the third-party observers that the appeal site formed the public open space serving Berkeley Court. To support this contention a brochure from Frank V Murphy & Co Ltd, Auctioneers dating from circa March 1970 is provided noting its reference to “Berkeley Court, An Exclusive Development of Twelve Townhouses (In a cul-de-sac setting incorporating private green (open space) besides individual gardens).” The submissions also contend that the appeal site was referenced as public open space within the original planning permission for Berkeley Court granted on 33 May 1975 Reg No TP4554. It is noted

in third party submissions that the planning documents in relation to this file are missing and are not stored electronically at Cork City Council. The Local Authority is silent on this matter.

- 7.2.3 I note that the third parties indicate that the existing gated access to the appeal site from the garden to the rear of 12 Berkeley Court was commonly used by dwellings 7-12 Berkeley Court to access this area while 1-6 Berkeley Court had the benefit of direct access to the site prior to it having been fenced off by the first party.
- 7.2.4 I note that the first party claims ownership of appeal site and indicates that it was acquired in 2019. The appeal site boundary as initially defined on the site location and site layout plans extends into the garden area to the rear of 12 Berkeley Court. However, the delineation of the site boundary as outlined in red was amended in the site layout plan submitted with the first party appeal to exclude the area to the rear of 12 Berkeley Court and to exclude the 1.2m wide walkway along the north-eastern boundary. It is outlined within the written submissions on appeal that no servicing or pedestrian access is proposed via The Berkeley Court or Greenhills Estate (however the layout plans depict a new maintenance personnel gate towards the north-western extremity of the site and the purpose and intended use of this gateway is somewhat unclear.
- 7.2.5 I note that the issue of ownership and planning history was not addressed in any detail by the City Council nor queried in the request for additional information. I note that the submitted plans do not demonstrate wayleaves as required by Article 23(1) a of the Planning and Development Regulations 2001 as amended. Whilst the issue of site ownership is essentially a civil matter and I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: “*A person shall not be entitled solely by reason of a permission under this section to carry out any development*”, I consider that further clarification on the applicant’s legal interest in the overall site is required in advance of a decision. Furthermore, I note that revisions in response to the appeal propose service infrastructure (new attenuation tank and pumped rising main) within the existing Stables development and in light of these works site boundaries should incorporate all necessary works. Given the discrepancies within the application and appeal documentation with respect to site boundaries and having regard to the submissions of the third parties I

consider that further clarification is required with regard to the planning history on the appeal site, the ownership and details of rights of way affecting the site. In the absence of further detail on these matters I consider that the application does not demonstrate that the proposal would not have a material negative impact on established residential amenity.

7.2.6 On the matter of the description of the development I note that the third-party observers contend that reference to the proposal as “Phase 2 of the Stables Development” is misleading and misrepresents the proposal by suggesting pre-authorisation whereas a second phase of The Stable’s Development was not previously envisaged. The third parties are also critical of the failure to reference the protected structure within the public notices and on this basis suggest that the application should have been invalidated. Whilst I acknowledge the potential for misperception, I consider that the description as phase 2 aptly describes the intention that the proposal follows on from the existing Stable’s Development and the nature of the intended development was in my view sufficiently detailed within the public notices. As regards the absence of reference to the protected structure - Entrance Gates to Ballincurrig House Protected Structure RPS1140, I consider as the proposal does involve works to the protected structure reference to same in public notices is not necessary.

7.2.7 On the questions raised with regard to compliance with the terms and conditions of the original Stables permission 15/36625, I note that enforcement issues are not a matter for the Board. As regards the issue of impact of removal of vegetation and trees on protected species, and the implications of protections under the Wildlife Act 1976 and subsequent amendments and the EU Habitats Directive this is beyond the remit of the Board and is a matter for the National Parks and Wildlife Service. I consider however that in light of the concerns raised and given the background to the site it would be appropriate that in terms of the holistic approach to the proposal as a second phase of The Stables development that the ecology and biodiversity of the site would be addressed in detail by a suitably qualified ecologist.

7.2.8 Notwithstanding the concerns outlined above with regard to the level of detail provided with respect to ownership, rights of way and boundary issues I propose to

review the detailed nature of the development with particular reference to design and layout, impact on established residential amenity and the issue of appropriate assessment also needs to be addressed.

7.3 Quality of Design and Layout and impact on residential amenity and the amenities of the area

- 7.3.1 As regards the issue of the residential amenity of the proposed dwelling units, I note that City Council's first reason for refusal relates to the open space provision which the City Council deemed not to be of an acceptable standard. The Planning Officer's report refers to Paragraph 16.18 of the City Development Plan which specifies a minimum of "10% public open space in all major non-residential development to provide for passive recreational needs, with the exception of the central area of the city unless otherwise appropriate". Paragraph 16.19 outlines that public open space will normally be required in all developments apart from exceptional circumstances which would include where developments are close to existing public parks and other amenity facilities, smaller residential and commercial development where it may not be appropriate to provide public open space and in the case of the need to protect the established pattern of streets spaces and or development. Exceptional circumstances will be assessed on their merits on a case-by-case basis.
- 7.3.2 I note that within the grounds of appeal the public open space is increased to 137 sq.m equating to 18% of the site area. I note the limited open space area available to the existing Stables Development residents which is somewhat isolated from the established dwellings. It is evident that the proposal will further impact on the quality of this existing open space area in terms of impediment to access arising from increased traffic and movement. I consider that given that the proposal is promoted as phase 2 of the Stables Development the impact of the proposal in this regard and potential compensatory measures should be addressed in a holistic manner. I note that this issue was raised in the report of the City Council Planning Officer in terms of

the weight it added to the argument that the density of development should be reduced to mitigate such impacts.

7.3.3 As regards the interface of the development with Berkeley Court, I have noted above the anomaly within the application whereby the original site included the 1.2m wide strip along the north-eastern site boundary whereas this area is shown outside the site boundary in plans submitted to the Board on appeal. The proposal provides for a 1.8m high boundary wall along the north-eastern site boundary with the adjacent walkway. It is not clear how and by whom this walkway will be accessed and maintained and in the absence of same the potential arises for it to become problematic in terms of maintenance issues.

7.3.4 As regards the detailed design and proposed house layouts the floor areas of the proposed dwellings generally meet the minimum standards in terms of floor areas and private open space provision and provide for an adequate standard of residential amenity. The proposed design approach it is contemporary in character and I am satisfied that the proposal can successfully integrate with its context.

7.3.5 On the issue of sunlight daylight and overshadowing I note the daylight analysis and overshadowing report by Heffernan 3D dated 14 December 2020 based on the further information proposal (footprint was further reduced in the grounds of appeal). I accept the findings that no significant overshadowing arises and the proposed development will not result in any substantive overshadowing that would diminish residential amenity. As regards overlooking given the separation distance to established development undue overlooking does not arise and could be appropriately mitigated by way of landscaping.

7.3.6 On the impact on architectural heritage I consider that the development can be competed in accordance with best conservation practice.

7.4 Traffic Access and Servicing

7.4.1 As regards traffic I note that a stage 4 road safety audit by MHL and Associates was submitted with the response for additional information and is also included in the first

party appeal submission. The audit identified a number of issues including absence of stop signage or markings, a public lighting fault, discontinuous pedestrian footpath and junction sightlines. The road safety audit feedback form indicated acceptance of the problems and measures to resolve same. It is noted that in relation to the wall impeding the footpath to the east of the Stables site entrance the relevant owner was approached during phase 1 of The Stable's Development in an attempt to achieve agreement to remove the problem however such agreement could not be reached and the first party suggests that the local authority should use its powers to resolve the issue. I note that as the remaining issues should be addressed as part of a future application incorporating the existing Stables development or at least the access within the redline boundary.

7.4.2 Given the extent of traffic arising from a three-house proposal and having regard to the established vehicular access, on balance I consider that the proposed development will not give rise to a significant increase in traffic. As regards the construction impact I consider that subject to an appropriately designed traffic management plan construction traffic can be appropriately managed. On the basis of my assessment, I consider that the issue of access and traffic is not an impediment to the development of the site.

7.4.3 As regards servicing, technical reports on file including the submission from Irish Water indicate capacity in terms of public sewer and public water supply. I note that the first party appeal submission changed servicing proposals from a route to public sewer connection via Berkeley Court to connection via the existing Stables infrastructure. I note that the concerns raised with regard to stormwater discharge to the combined sewer.

7.5 Appropriate Assessment

7.5.1 On the matter of appropriate assessment, I note that the closest European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058). Having regard to nature and scale of the proposed development the fully serviced nature of the site and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposal would

be likely to have a significant effect individually or in combination with other plans or projects on a European site

8 Recommendation

I recommend that permission be refused for the reasons and considerations set out below

Reasons and Considerations

1. Having regard to the planning history in respect of the existing Stables development and on the basis of the submissions made in connection with the planning application and appeal with regard to the historic use of the appeal site, the lack of detail with regard to the interface of the development with Berkeley Court and to the anomalies in submitted documentation with regard to appeal site boundaries and site configuration the Board is not satisfied that the proposed development would not cause significant and material injury to the established residential amenity of the Phase 1 Stables residents and the residents of Berkeley Court. On this basis the proposed development would seriously detract from the residential amenity of existing and future occupants and is considered to be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector
14th September 2021