



An
Bord
Pleanála

Inspector's Report ABP-312067-21.

Development	House.
Location	Rookhurst, The Demesne, Monkstown (Castle Farm), Monkstown, Co. Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	21/6450.
Applicant(s)	Michael & Regine Hall.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Michael & Regine Hall
Observer(s)	Simon & Jeanne Kelly Brian & Mary Walsh Colin P. Bradley Fergal Lennon & Assumpta O'Kane Andrew Gill Kevin Fielding.
Date of Site Inspection	04/03/2022.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The application site is located within the settlement of Monkstown, which is a suburb of Cork City, and lies approximately 10km to the south-east of the city centre. Passage West / Monkstown are located within the jurisdiction of Cork County Council, and on the R610. The two suburbs essentially form a linear settlement along the public road connecting Lough Mahon to Cork Harbour. The topography of this area of Co. Cork sees a steep incline from the waters edge of the harbour to the east, towards the west, and the subject site, with development following the levels uphill.
- 1.2. The site the subject of this appeal, lies to the southern area of Monkstown, within the Monkstown Castle Demesne and to the east of the Monkstown Golf Club. Access to the site is via Castle Terrace to the north-east and over Castle Road from the north-west of the site. Access to Alta Terrace is also provided from via Castle Terrace with the houses in Alta Terrace being located at a lower level to those within The Demesne. The wider area of The Demesne has been developed as a low-density residential scheme which provides for large, detached houses on large sites, set within a woodland environment which formed part of the original Castle Demesne, and with many of the houses offering views of Cork Harbour. The private road network through this residential area is narrow and there are no footpaths present.
- 1.3. The subject site has a stated area of 0.11ha and comprises the north-eastern area of a larger residential plot, Rookhurst. The existing house on the site rises to two storeys in height and the private estate road runs around the site to the south. The access to the existing house is off the private road to the west of the site and there is an existing area of woodland to the south of the site which lies between the landholding and the estate road. The proposed development site comprises a lawned area associated with Rookhurst and the lands to the north of the identified landholding, comprise a woodland area of passive open space for the wider residential development.
- 1.4. The subject site is currently occupied by a single storey garden store which is to be retained as part of the proposed new residential site. In addition, I note that the septic tank which currently serves the existing house is also located within the proposed development site, and within the footprint of the proposed new house. The

site is generally rectangular in shape, narrowing towards the rear, and I note that no development is proposed within the area identified as passive open space woodland in the historical application to the north of the site. The Board will note however, that the area within the landholding does not include woodland, being lawned as part of the larger residential site. The site rises from the public road, with the roadside elevation approximately 1m above the existing road level. The existing eastern boundary comprises a stone wall with planting on top and there is an existing pedestrian gate into the existing house on the wider landholding.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for development consisting of the construction of a new two storey dwelling, a new entrance and driveway, the removal of the existing septic tank, new foul connections to public mains for existing adjacent dwelling and proposed dwelling along with all associated ancillary site works, all at Rookhurst, The Demesne, Monkstown (Castle Farm), Monkstown, Co. Cork.
- 2.2. The application included a number of supporting documents including as follows;
- Plans, particulars and completed planning application form,
 - Design Report prepared by GOFA Architects
 - Letter from applicants solicitor re. boundaries
 - Planning and Design Statement Report prepared by McCutcheon Halley Planning Consultants.
- 2.2.1. The proposed house will occupy a floor area of 241m² with accommodation provided over two floors. The ground floor proposes to provide 3 double bedrooms, including the master suite, and a utility and boot room. The first-floor level proposes a large open plan kitchen / living dining room with a separate drawing room to the north-west, with access onto a large balcony. To the south, and off the living room, the development proposes a second balcony offering views over the harbour.
- 2.2.2. The building will occupy a floor area of 241m² and will rise to an overall height of 7.607m. The house will be finished using a number of materials including painted sand cement render, stone and cladding. The information includes a large variety of potential finishes for the elevations, the roof, windows and doors, soffits, fascias,

gutters and downpipes. It would seem that a final decision on the finish has yet to be decided given the variety of materials and finishes provided for, but I note the detail submitted in the appeal documents which address this matter.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the development for the following stated reason:

Having regard to the character and layout of development in the area, it is considered that the proposed development would be incongruous with the established character of residential development in the area, would have a poor visual relationship with adjoining dwellings and have an adverse impact on the setting and amenity of same. Furthermore, the siting, design, mass and materials of the proposed development would result in an obtrusive and overbearing structure in the streetscape which would seriously detract from the visual character of this area and be detrimental to the visual and residential amenities of the Demesne. The proposed development would be contrary to policy objectives HE 4-6, GI 6-1 and GI 6-2 of the County Development Plan 2014, would set a poor precedent for similar development in the future and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission, planning history and the Development Plan policies and objectives. The report also includes an Appropriate Assessment.

3.2.3. The planning report notes the previous application for development at the site and that the current application does not propose development within the open space area. The red line boundary has been amended to exclude the open space area.

The report notes that the site is located on lands zoned 'Existing Built-Up Area' and that the principle of development is acceptable subject to normal proper planning and sustainable development considerations and assessment against the 4 criteria for the 'Existing Built Up Area' zoning. The report considers that the proposed development is out of character with the existing estate and does not accord with the requirements for the zoning. The principle of development on this site has not been established and refusal is recommended.

3.2.4. Further to the above, the report notes that the 'housing estate' is not akin to other estates having regard to its unique setting within a woodland in the demesne of Monkstown Castle and golf course. The proposed subdivision of the site and increase in density would fundamentally impact on the unique character of the private housing development. The report further considers that the proposal does not meet the standard required for high value landscapes and considers that the proposed house has been shoe-horned into the site, breaking the building line. The location of the house in proximity to the road as well as the multiple external finishes are also considered to be inappropriate, while concern is also raised regarding the potential impact on existing trees and their root systems.

3.2.5. The Planning Officer recommends that permission for the development be refused for 1 stated reason. The Board will note that the Cork Co. Co. SEP agreed with the Planning Officers assessment and agreed with the recommendation to refuse. These Planning Reports formed the basis of the Planning Authority's decision to refuse permission.

3.2.6. **Other Technical Reports**

Area Engineer: Notes the previous application on the site (withdrawn) and that the current proposal appears to remove the contentious issue in relation to open space / wooded area.

The report notes the proposal to provide a passing bay and the sight distances of 50m which are acceptable. Car parking for two cars is also acceptable.

Water service proposals are noted and acceptable.

The AE advises no objections to the proposed development subject to compliance with conditions.

Liaison Officer: No comments.

3.2.7. Prescribed Bodies

Irish Water: No objection.

3.2.8. Third Party Submissions

There are 7 third party submission noted on the Planning Authority file. The submissions are summarised as follows:

- Permission was granted for 26 new homes in 1990 (PA ref 89/1710 refers), with 40 houses approx. in total within the Demesne.
- Public open space is managed by a Management Company called Mondral and was clearly marked in 1989 as 'natural woodlands'. It is a requirement of the planning permission that it be kept that way.
- There have been attempts to get around the original permission to protect the open space which have been resisted and a High Court ruling in January 202 upholds the 1989 planning stipulations regarding the public open space in the Demesne.
- The applicants have ringfenced an amount of public open space (marked in blue) on their drawings. Any development on this public open space, including landscaping, driveways etc, are in breach of the original permission.
- The applicants have objected to development in the Demesne in the past.
- A grant of permission would set precedent for others to commercially build houses in their back gardens which would forever change the Demesne environment to a higher density area, losing the uniqueness of the woodland as a local amenity.
- Drainage is an issue in the Demesne with the storm drainage being overstretched.
- Roads issues raised due to the narrow nature of the road at the proposed access/egress point and the lack of visibility.
- A grant of planning permission would impact existing property rights of other homeowners in the Demesne.

- The value of property would be impacted by a multi-property development as proposed. A second property is being sought within the one residential site which will result in 3 houses and a commercial development as proposed will impact the setting and amenities of the area.
- Impacts on existing residential amenity by reason of overlooking.

4.0 Planning History

Pre-Planning:

A pre-planning meeting was held with regard to the proposed development, PA ref: PPS 20/974 refers, where a number of issues were discussed.

The following relates to the parent permission for the subject site:

Overall Estate:

PA ref: 89/1710: Planning permission granted for the laying out of lands to provide for 27 individual residential units on the wider site comprising the Demesne lands. Permission was granted for 26 sites.

Subject Site:

PA ref: 20/5754: Permission was sought for the construction of a house on the current proposed development site (similar to current application but including the area of landholding now outlined in blue). The application was withdrawn prior to the County Council issuing a decision on the case.

PA ref: 09/6043: Permission refused by Cork County Council to the current applicants (and their daughters) for the construction of 4 no. two-storey detached dwellings together with landscaping and all associated site works on the lands which encompassed the current proposed application site as well as the adjacent property. The Board will note that the overall proposed development site included the woodland area to the north.

The reasons for refusal were as follows:

1. The proposed development would be contrary to the proper planning and sustainable development of the area because it would contravene materially existing planning permission register no. 89/1710 which

regulates the development of the overall lands of which the site forms part, and which provides for the continued use of the majority of this site as open space / woodland.

2. The proposed development would compromise the recreational value and use of an area of open space / woodland, would significantly reduce the quantity of public open space serving the dwellings in Monkstown Castle Demesne, have an adverse impact on the setting and amenity of existing dwellings and would therefore seriously injure the amenities of residential properties in this development and the vicinity. Accordingly, the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

An appeal to the Board ABP ref: PL04.234780 against the decision to refuse permission was withdrawn prior to the Board making a decision.

Adjoining Sites:

Within the applicants landholding:

PA ref: 85/22665: Permission granted for the construction of extension to Rookhurst. (The Board will note that it is indicated that approval for the construction of Rookhurst was given in 1962 – prior to the 1963 Local Government (Planning and Development) Act was enacted, with the house constructed prior to the 1985 application to extend).

ABP-302403-22 (PA ref: 21/6744): Permission sought for the construction of a dwelling on a site to the immediate west of the current proposed development site. This application is made by the current applicants' daughter and was refused permission by Cork County Council. The appeal remains live and is due for decision by the Board on the 11th of May 2022.

Other similar applications within the Demesne:

PA ref: 16/4022: Permission was granted for the construction of a single storey dwelling house and detached store at Legan Lodge, No. 8 The Demesne, Monkstown, Co. Cork.

PA ref: 16/7193: Permission was granted for the construction of a bungalow type dwelling house at No. 24 Monkstown, Castle Demesne, Monkstown, Co. Cork.

PA ref: 15/5099: Permission was granted for the construction of a single storey dwelling house with new entrance gate and driveway to an existing house at Castle Combe, The Demesne, Monkstown, Co. Cork.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

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

5.2. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):

- 5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments. The guidelines state that car parking standards need to be set at realistic levels, having regard, *inter alia*, to proximity to public transport.
- 5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.
- 5.2.3. Section 5.6 of the guidelines suggest that there should be no upper limit on the number dwellings permitted that may be provided within any town or city centre site, subject to the following safeguards:

- compliance with the policies and standards of public and private open space adopted by development plans;
- avoidance of undue adverse impact on the amenities of existing or future adjoining neighbours;
- good internal space standards of development;
- conformity with any vision of the urban form of the town or city as expressed in development plans, particularly in relation to height or massing;
- recognition of the desirability of preserving protected buildings and their settings and of preserving or enhancing the character or appearance of an Architectural Conservation Area; and
- compliance with plot ratio and site coverage standards adopted in development plans.

5.3. **Design Manual for Urban Roads and Streets (DEMURS), DoTTS, March 2013**

- 5.3.1. In terms of the design of the proposed development, including the entrance and access to the site, it is a requirement that they be considered against the Design Manual for Urban Roads and Streets (DEMURS), DoTTS, March 2013. This Manual replaces DMRB in respect of all urban roads and streets and it does not differentiate between public and private urban streets, where a 60kph speed limit or less applies. The implementation of DMURS is obligatory and divergence from same requires written consent from relevant sanctioning authority (NRA, NTA or DTT&S). The Manual seeks to address street design within urban areas (i.e., cities, towns and villages) and it sets out an integrated design approach.

5.4. **Development Plan**

- 5.4.1. The Cork County Development Plan 2014 is the relevant policy document relating to the subject site. The site is located on zoned lands within Monkstown and Section 14.3.1 – 14.3.6 of the CDP deals with Existing Built-Up Areas and provides that:

Within the development boundaries of the main towns, in areas that are not subject to specific zoning objectives, proposals for development will be considered in relation to the following:

- The objectives of this plan;
- Any general or other relevant objectives of the relevant local area plan;
- The character of the surrounding area; and
- Other planning and sustainable development considerations considered relevant to the proposal or its surroundings.

5.4.2. The following sections of the CDP are of note:

Section 14.3.3 of the CDP states:

Within predominantly built-up areas, development proposals normally involve infill development, redevelopment or refurbishment or changes of use. It is important to recognise that this is part of the cycle of development or redevelopment in settlements that contributes to the character of towns. In many ways, this is more sustainable than continually encouraging growth to concentrate only towards undeveloped areas.

Section 14.3.6 of the CDP states:

Within existing built-up areas there will inevitably be some areas of land that are either undeveloped or have some potential to be considered for development. Often these areas perform valuable functions in their existing state, such as providing attractive open space or even providing important local employment. The inclusion of this land within an existing built-up area does not imply any presumption in favour of development or redevelopment, unless this would enhance the character and amenity of the area as a whole.

5.5. **Ballincollig Carrigaline Municipal District Local Area Plan 2017**

5.5.1. The site is located within the settlement boundaries of Monkstown which, together with Passage West is identified as a main Town within this LAP. Passage West, Glenbrook and Monkstown are a series of linked Lower Harbour commuter settlements within the Metropolitan Strategic Planning Area. The towns all have different functions reflective of their historic roles. Monkstown's historic development as a new commuter suburb for the rich middle classes in the 19th century has left a legacy of large and impressive buildings. The Plan further provides that:

This group of small settlements grew as nineteenth century port towns in Cork Harbour. Only in Passage West does any significant commercial activity remain. Monkstown is a significant centre for water-based leisure activities including Monkstown Bay Sailing Club and there is a cross-river ferry from Glenbrook to Carrigaloe which provides easy access to Great Island and East Cork.

- 5.5.2. The subject site is located on lands zoned 'Existing Built-up Area' within the plan, and the Plan states that:

This approach has been taken in order to allow a more positive and flexible response to proposals for the re-use or re-development of underused or derelict land or buildings particularly in the older parts of the main towns.

5.6. Draft Cork County Development Plan 2022 – 2028

- 5.6.1. The Draft Plan will be made, and adopted, on the 25th of April 2022, and will come into effect on the 6th of June 2022.
- 5.6.2. The subject site remains located within the settlement boundary of Passage West / Monkstown and will have the landuse zoning of Existing Residential/Mixed Residential and Other Uses afforded to it. The Draft Plan acknowledges that lands with this new zoning 'may contain residential development of varied densities ranging from high density historic terraces to more modern lower density housing schemes'.
- 5.6.3. The draft plan supports proposals for increased densities within this land use zoning to optimise the development of lands within settlements, subject to the protection of existing residential amenities and proper planning and development standards.

5.7. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Cork Harbour SPA (Site Code: 004030), approximately 160m to the south-east of the site.

5.8. EIA Screening

5.8.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required.

The proposed development comprises the construction of house which can connect to public services in Monkstown, Co. Cork and is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

5.8.2. Item (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 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha 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.)

Given the nature of the receiving environment, together with the Existing Built-Up Area zoning afforded to the site, it is reasonable to conclude that the development does require mandatory EIA.

5.8.1. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.8.2. Having regard to:

(a) the nature and scale of the development,

- (b) the location of the site within the development boundaries of Passage West / Monkstown,
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first-party appeal, submitted by their agent McCutcheon Halley, against the decision of the Planning Authority to refuse planning permission for the proposed development. The appeal document also includes a Design Statement from Gary O'Farrell Architect. The issues raised are summarised as follows:

- There was no objection to the development on engineering grounds.
- The first part of the refusal is considered to be an inaccurate and subjective assessment which describes the character of the Demesne as being unique in terms of its visual and residential amenities as well as the assessment in terms of the design of the proposed dwelling.
- The current application does not propose any development within the blue lined area, but it is submitted that there is no legal or planning objections to an alternative layout which would move the proposed dwelling further to the north-east, and include the blue lined area, should the Board consider it a more satisfactory layout. It is submitted that this amendment could be made during the current appeal if the Board decide to issue a notice under Section 132 of the Act.
- It is incorrectly implied that there is a consistent pattern to the layout and design of the existing dwellings in the area with the second part of the reason

for refusal claiming a contravention of objectives HE 4-6, GI 6-1 and GI 6-2 of the CDP.

- The PA report includes fundamental flaws in terms of the current zoning and the character of the surrounding area and make no reference in the assessment to the Draft County Development Plan which changes the zoning of the site to 'Existing Residential/Mixed Residential and Other Uses'.
- The subject site did not form part of the permission 89/1710 for the wider estate and should not be subject to conditions attached.
- The reason for refusal does not set out the reasons and considerations for the refusal in sufficient detail to allow the applicant to determine whether there are grounds to appeal or to seek judicial review. It is not accepted that the development would contravene any of the points within objective GI 6-1 of the current CDP.
- It is unreasonable to suggest that the purpose of Objectives GI 6-1 and GI 6-2 is to impose strict controls on the layout, design, landscaping, materials of any dwelling proposed within the large area identified as a High Value Landscape and a distinction should be made between an already built-up area / zoned for development and those areas which form part of the Metropolitan Greenbelt.

The appeal includes a number of enclosures, including photomontages and an appraisal of the other houses within the Demesne. It is requested that permission be granted for the proposed development.

6.2. Planning Authority Response

The Planning Authority submitted a response to the third-party appeal, advising that all the relevant issues have been covered in the technical reports already forwarded to the Board. The PA has no further comment to make.

6.3. Observations

There are 6 observations noted in relation to the subject appeal. The issues raised reflect those raised to the Planning Authority during its assessment of the proposed development and are summarised as follows:

- Planning history of refusals associated with the site.
- The development would set a dangerous precedent for other properties in the Demesne to build houses in their yards.
- The development fails to have regard to the character of the area or the High Value Landscape. The development would result in a dominant structure, detracting from the unique character of the area.
- Infrastructural issues in the Demesne including increased levels of cars and traffic volumes.
- Access to the site will constitute a traffic hazard due to the narrow road and limited visibility.
- Impact on privacy of adjacent homes and property rights of all other residents.
- The development does not accord with the grant of planning permission for the estate under 89/1710. People purchased homes in the Demesne on the basis that it would be confined to 26 houses in all.
- The development is an overdevelopment of the intended low-density development in the Demesne.
- All residents in the Demesne had covenants in their site purchase agreements prohibiting the development of additional houses on their property, to prevent sub-division of sites.
- The residents have a justiciable contract with the PA for a house within a development of 26 houses. The development plan is a contract between the PA and the public and the PA '*shall not effect development which contravenes the plan materially*' McCarthy J, Attorney General (McGarry) v Sligo Corporation (1991) 1 IR .99 at 113.
- It is requested that the repeated refusals by Cork County Council for the proposed development of Rookhust be upheld.
- There has been a lack of consultation with local residents and neighbours about the proposed development.

All third-party observations request that permission for refusal be upheld by the Board.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development & Planning History
2. Design, Scale & Visual Impacts
3. Other Issues
4. Appropriate Assessment

7.1. Principle of the development & Planning History

- 7.1.1. The subject site is located within the settlement of Monkstown, within the residential area of The Demesne, and on lands zoned 'Existing Built-Up Area'. The Demesne comprises a low-density residential area which is set within a woodland environment and generally comprises of large, detached houses, on large sites. The proposed development seeks to subdivide an existing residential site, Rookhurst, and provide for the construction of a new two storey house.
- 7.1.2. In terms of planning history, the Board will note that there is some objection to the development on the basis of the parent permission for the wider residential estate. In this regard, I note that the subject property does not appear to have formed part of the parent permission site, PA ref: 89/1710 refers, and that permission for Rookhurst was approved in the 1960s, with its construction prior to 1985, when an application was lodged to extend the house. I note the legal case which relates to an area of land which appears to have been included within the site associated with PA ref: 89/1710 incorrectly. This area is identified within the blue line landholding for the current proposed development, but the Board will note that there is no proposed development within this contested area. The reason for this is that conditions attached to PA ref: 89/1710 require the retention of the area as part of the woodland open space associated with the wider residential scheme. It is the argument of the

applicant that as this area of land was erroneously included as part of the 1989 application, the conditions should not affect the area.

- 7.1.3. In this regard, I consider it appropriate to address the issue of the ownership of the land delineated in blue on the submitted plans and particulars. Having undertaken a site inspection, I can confirm that the subject area does not have the appearance of a 'woodland' area, being lawned as part of the larger residential site associated with Rookhurst. I note the legal history in relation to this area and I am satisfied that the applicant has demonstrated sufficient legal interest in this area to make a planning application. I also note the provisions of Section 34(13) of the Planning and Development Act, 2000, as amended, which states that:

'A person shall not be entitled solely by reason of a permission under this section to carry out any development.'

- 7.1.4. With regard to the principle of the proposed development, the Board will note that the subject site is located on zoned and serviced lands. The zoning objective for the site is 'Existing Built-Up Area' as detailed in the current Ballincollig Carrigaline Municipal District Local Area Plan 2017. Under the provisions of the current Cork County Development Plan 2014, development within such zoned lands is noted to include infill development and Section 14.3.3 of the Plan supports such development as it is 'more sustainable than continually encouraging growth to concentrate only towards undeveloped areas.' I would also, however, acknowledge the provisions of Section 14.3.6 which clearly provides that within such zoned areas, the inclusion of areas of undeveloped land which perform valuable functions such as providing open space, does not imply a presumption in favour of development, 'unless this would enhance the character and amenity of the area as a whole'.
- 7.1.5. Monkstown is also served by a Bus Eireann commuter service, seven days a week which connects the settlement with Cork City. The bus service is regular, commencing at approximately 6.55am with a service every 20-25 minutes. The LAP notes an obstacle to an efficient bus service during the peak hour congestion along the R610. Monkstown is also connected to Rochestown via Passage West on a shared walking / cycle route which has public lighting. Monkstown is therefore well connected to areas of employment.

- 7.1.6. Having undertaken a site inspection and having regard to all of the information available to me in relation to the site, I would advise that the subject site comprises part of an existing residential site and is laid out as a lawn and planted area. There is a level access to this area from the adjacent estate road, with existing sight distances in the order of approximately 48m to the south and 50m to the north. The adjacent contested area delineated in blue and lying immediately adjacent to the woodland open space area, does not contain features suggesting it is a 'woodland' area, nor does it appear to be used by the public. There is a lawned area towards the rear, with laurel hedges delineating the area from the woodland area to the north. I accept the indication from the applicant that there will be no interference with the woodland open space, conditioned for protection under conditions of permission PA ref: 89/1710.
- 7.1.7. In terms of the above and having regard to the existing character of The Demesne, I do not consider that the principle of the proposed development is in conflict with the provisions of the current CDP, the LAP, the draft CDP or national policy. The site is located within a settlement boundary, is serviceable in terms of water and wastewater, as well as public transport, and the site area proposed is considered large for an urban residential development. This in itself would not compromise the established character of the wider Demesne residential estate and would provide for an appropriate use of serviced lands. I, therefore, have no objection in principle to the proposed development. In terms of the planning history of the wider estate, the Board will also note that there have been 3 grants of permission for the sub-division of existing residential sites within The Demesne for the provision of additional houses. I consider that each application must be considered on its merits and a grant of permission in this instance, would not set a precedent as suggested in the third-party submissions.
- 7.1.8. The Board will note the first-party submission that the area outlined in blue could be incorporated into the overall application site, with the relocation of the proposed house within the wider site. Given that there is no evidence that this area of the landholding is occupied by the woodland open space area, protected under conditions of PA ref: 89/1710, I would have no objection in principle to this, but I do not consider it critical for the determination of this appeal. Should the Board be so minded to facilitate the extension of the site into this area, further public notices

would be required. In addition, full drawings with the proposed layout and details of finished floor levels and sections would be required to be submitted for a full assessment.

- 7.1.9. In terms of the above, I consider that the principle of the proposed residential development at this site can be considered acceptable. The matter of design, scale, height and visual impacts of the proposed development is discussed further below.

7.2. Design, Scale & Visual Impacts

- 7.2.1. The subject site lies within the residential estate of The Demesne, which as previously described, comprises a number of large, detached houses on large sites. The estate locates houses off a narrow winding private road which includes large areas of mature trees and woodland. Most of the residential sites are mature and also include mature planting and trees. This leafy estate provides excellent amenity for its residents and the narrow private road restricts traffic speeds providing safe pedestrian environment.
- 7.2.2. The subject site rises from the east towards the west with the current site level approximately 1m above the existing road level, at the roadside, and rising towards the rear of the site. There are natural boundaries in place along the northern boundary, and the proposed development will require the removal and setting back of the existing roadside boundary in order to achieve adequate sight distances of 50m in both directions.
- 7.2.3. The proposed house will occupy a floor area of 241m² with accommodation provided over two floors. The ground floor proposes to provide 3 double bedrooms, including the master suite, and a utility and boot room. The first-floor level proposes a large open plan kitchen / living dining room with a separate drawing room to the north-west, with access onto a large balcony. To the south, and off the living room, the development proposes a second balcony offering views over the harbour.
- 7.2.4. The building will rise to an overall height of 7.607m, and will be finished using a number of materials including painted sand cement render, stone and cladding. The information includes a large variety of potential finishes for the elevations, the roof, windows and doors, soffits, fascias, gutters and downpipes. In the event of a grant of

permission, a condition should be included to require that the materials and finishes be agreed in writing with the PA prior to the commencement of development.

- 7.2.5. In principle, I have no objection to the proposed house design. While I acknowledge the concerns of the planning authority, I do not share them in this instance. I have noted that The Demesne estate contains a variety of house types, ranging from bungalows to two storeys, dormer dwellings to split level dwellings, some with balconies and overhangs and that there is no consistent design strategy across the development. In terms of the proposed design before the Board, I consider that the house has been designed to sit appropriately into the subject site and will not so significantly impact on the visual amenity or character of the landscape within The Demesne. The sections through the site, together with the photomontages included in the first-party appeal, suggest that the building will not impact on views towards the water from existing houses, and due to the separation distances, will result in any overlooking or overbearance of adjacent homes.
- 7.2.6. The Board will note that the third-party appellant has raised concerns in terms of the proposed development, citing the height and scale of the development as well as the previous refusal of permission on the site. I would note that the previous application was withdrawn prior a decision issuing rather than permission being refused.
- 7.2.7. Overall, I am satisfied that the proposed development is acceptable and would accord with the policy objective provisions of the Cork County Development Plan 2014 or the Ballincollig Carrigaline Municipal District Local Area Plan 2017, as it relates to residential development and infill development on appropriately zoned lands.

7.3. Other Issues

7.3.1. Wider Residential Amenity Issues & Third-Party Issues

I note the reference by a third-party to the issue of Justiciable Contract, and the references to case law cited. I would note that the case law relates primarily to contravention of development plans. It is submitted that the original planning permission for the development of The Demesne provided for a maximum of 26 houses and associated public open space. I note that the road network within the development has been in place prior to the original grant of permission, and that

Rookhurst, the site the subject of the current appeal, was also in place prior to the grant of permission for the 26 sites.

I further note that there have been a number of planning permission granted for infill development including the subdivision of originally permitted residential sites within the development, including at Nos 8 and 24 The Demesne, with other developments permitted using the access roads, and outside the original 1989 site area, including 5 houses to the east of the currently proposed development site. The Board will also note that the subject site did not form part of the original permission referred to by the third parties and therefore, is not bound by the conditions of said permission.

Given the legal history associated with the current proposed site, together with the fact that the proposed development does not propose to remove or impact on any designated area of public open space, comprising part of a privately owned property, I am satisfied that the principle of the development can be considered acceptable in this instance and that the Board is not precluded from determining the application having regard to the planning history of the wider area. The current appeal is considered in the context of national and local policy and the proper planning and sustainable development of the area.

In terms of potential impacts on the wider amenity of existing residents, I am satisfied that the proposed design of the house, together with conditions relating to boundary treatments and landscaping, will address any potential overlooking of adjacent residential properties. I also note the separation distances between surrounding property, and I am therefore satisfied that the development is acceptable in terms of residential amenity.

7.3.2. Roads & Traffic

The proposed development is to be accessed via the local road network in the area, including the existing and long established, private estate road which traverses through the Demesne. I note that this road is narrow and as such, traffic speed is low. While there are no footpaths within the Demesne, the area is used as a walking route by residents and locals in the vicinity. I note that the Area Engineer has not raised a concern in terms of the road, noting the applicant's proposal to provide a passing bay in the vicinity of the site. I also note that parking is proposed within the

site and that the layout will facilitate the turning of cars in the site so as to prevent the need to reverse out onto the road.

I have noted above that the area outlined in blue to the north of the proposed redline site already has a gap in the hedge with the potential for vehicular access. Should the Board be minded to consider the first party's request with regard to the use of the lands outlined in blue in the submitted landholding maps, the relocation of the entrance to this area could be considered. The relocation of the proposed entrance may also minimise the extent of the front boundary to be set back, with the potential to retain the existing vegetation along this roadside boundary. This would require however, amended site layout plans which include an assessment of sight distances in order to assess such a proposal.

However, having regard to national and local policy, together with the location of the site within the settlement boundary of Monkstown on serviced land as well as the proposal to provide car parking spaces within the site, I am generally satisfied that the proposed development is acceptable, and I have no objections in terms of roads and traffic.

7.3.3. Water Services

The proposed scheme will connect to public services in Passage West / Monkstown. The Board will also note that permission is sought to remove the existing septic tank system which currently serves Rookhurst and to connect the existing house to the public network in the area. I note no objections in this regard.

7.3.4. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.4. Appropriate Assessment

Introduction:

- 7.4.1. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site

in view of its conservation objectives. The site is not located within any designated site. The closest Natura 2000 site is the Cork Harbour SPA (Site Code: 004030), approximately 160m to the south-east of the site.

7.4.2. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:

- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

7.4.3. Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

Consultations:

7.4.4. With regard to consultations, the Board will note that no issues relating to AA were raised by any party. I also note that the third-party observers do not raise concerns in terms of AA.

Screening for Appropriate Assessment

7.4.5. The proposed development will connect to the public water services in the settlement of Passage West / Monkstown. I note that there is capacity in the system to accommodate the proposed development and no objections from Irish Water or Cork County Council in this regard.

7.4.6. The applicant did not prepare an Appropriate Assessment Screening Report as part of the subject application and did not submit a Natura Impact Statement. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. There are 2 Natura 2000 Sites occurring within a 15km radius of the site, the closest one being the Cork Harbour SPA (Site Code: 004030), approximately 160m to the south-east of the site. In addition to the above, the Great Island Channel SAC (Site Code: 001058) lies approximately 5.4km to the north-east of the site.

7.4.1. I am satisfied that the following site can be screened out in the first instance, as it located outside the zone of significant impact influence because the ecology of the

species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated site to the development site and therefore, I conclude that no significant impacts on the following site is reasonably foreseeable. I am satisfied that the potential for impacts on the following Natura 2000 site can be excluded at the preliminary stage:

Site Name	Site Code	Assessment
Great Island Channel SAC	001058	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p>Screened Out</p>

7.4.1. I consider that the following Natura 2000 site, located within 15km of the subject site, can be identified as being within the zone of influence of the project, for the purposes of AA Screening, as follows:

- The Cork Harbour SPA (Site Code: 004030)

Qualifying Interests for Natura 2000 Sites within Zone of Influence

7.4.2. The subject development site is located within the settlement boundaries of the linked settlements of Passage West / Monkstown, Co. Cork, on lands zoned Existing Built Up Area. The site is not located within any designated site. The site does not appear to contain any of the habitats or species associated with any Natura 2000 site.

7.4.3. The following table sets out the qualifying interests for the identified Natura site:

European Site	Qualifying Interests
<p>Cork Harbour SPA (Site Code: 004030)</p> <p>Located approx. 160m to the South of the site</p>	<ul style="list-style-type: none"> • Little Grebe (<i>Tachybaptus ruficollis</i>) [A004] • Great Crested Grebe (<i>Podiceps cristatus</i>) [A005] • Cormorant (<i>Phalacrocorax carbo</i>) [A017] • Grey Heron (<i>Ardea cinerea</i>) [A028] • Shelduck (<i>Tadorna tadorna</i>) [A048]

	<ul style="list-style-type: none"> • Wigeon (<i>Anas penelope</i>) [A050] • Teal (<i>Anas crecca</i>) [A052] • Pintail (<i>Anas acuta</i>) [A054] • Shoveler (<i>Anas clypeata</i>) [A056] • Red-breasted Merganser (<i>Mergus serrator</i>) [A069] • Oystercatcher (<i>Haematopus ostralegus</i>) [A130] • Golden Plover (<i>Pluvialis apricaria</i>) [A140] • Grey Plover (<i>Pluvialis squatarola</i>) [A141] • Lapwing (<i>Vanellus vanellus</i>) [A142] • Dunlin (<i>Calidris alpina</i>) [A149] • Black-tailed Godwit (<i>Limosa limosa</i>) [A156] • Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] • Curlew (<i>Numenius arquata</i>) [A160] • Redshank (<i>Tringa totanus</i>) [A162] • Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] • Common Gull (<i>Larus canus</i>) [A182] • Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183] • Common Tern (<i>Sterna hirundo</i>) [A193] • Wetland and Waterbirds [A999]
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Cork Harbour SPA (Site Code: 004030)

7.4.4. Cork Harbour is a large, sheltered bay system, with several river estuaries - principally those of the Rivers Lee, Douglas, Owenboy and Owennacurra. The SPA site comprises most of the main intertidal areas of Cork Harbour, including all of the North Channel, the Douglas River Estuary, inner Lough Mahon, Monkstown Creek, Lough Beg, the Owenboy River Estuary, Whitegate Bay, Ringabella Creek and the Rostellan and Poul nabibe inlets.

7.4.5. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the species listed above, and is also of special conservation interest for holding an assemblage of over 20,000 wintering waterbirds. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this

SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds. Cork Harbour is an internationally important wetland site, regularly supporting in excess of 20,000 wintering waterfowl. Cork Harbour has a nationally important breeding colony of Common Tern (102 pairs in 1995).

7.4.6. Cork Harbour is of major ornithological significance, being of international importance both for the total numbers of wintering birds (i.e. > 20,000) and also for its populations of Black-tailed Godwit and Redshank. In addition, it supports nationally important wintering populations of 22 species, as well as a nationally important breeding colony of Common Tern. Several of the species which occur regularly are listed on Annex I of the E.U. Birds Directive, i.e. Whooper Swan, Little Egret, Golden Plover, Bar-tailed Godwit, Ruff, Mediterranean Gull and Common Tern. The site provides both feeding and roosting sites for the various bird species that use it. Cork Harbour is also a Ramsar Convention site and part of Cork Harbour SPA is a Wildfowl Sanctuary

Conservation Objectives:

7.4.7. The Conservation Objectives for the relevant designated sites are as follows:

European Site	Conservation Objectives
<p>Cork Harbour SPA (Site Code: 004030)</p> <p>Located approx. 160m to the South of the site</p>	<ul style="list-style-type: none"> The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the species listed as a Qualifying Interest (detailed above), as defined by a list of attributes and targets.

Potential Significant Effects

7.4.8. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 site, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no

direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 160m from the boundary of any designated site, and within an established settlement area. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within a low density, developed environment. No qualifying species or habitats of interest, for which the designated site is so designated, occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.
- **Water Quality:** The proposed development relates to the construction of a house on a site which lies within the settlement boundary of Passage West / Monkstown and which will connect to public water services. Having regard to the scale of the proposed development, together with the separation distances between the site and the boundary of the SPA, I am generally satisfied that the development, if permitted, is unlikely to impact on the overall water quality of the Cork Harbour SPA (Site Code: 004030).

I am generally satisfied that the potential for likely significant effects on the qualifying interests of the Cork Harbour SPA (Site Code: 004030) can be excluded given the distance to the sites, the nature and scale of the development and the lack of a hydrological connection.

In Combination / Cumulative Effects

- 7.4.9. Given the nature of the proposed development, being the construction of a house on a serviceable site within a designated settlement, I consider that any potential for in-combination effects on water quality of any of the Natura 2000 sites can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in the Cork Harbour SPA via rivers and other surface water features are also subject to AA.

Conclusion on Stage 1 Screening:

7.4.10. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

8.0 Recommendation

I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the following stated conditions.

9.0 Reasons and Considerations

Having regard to the Objectives of the National Planning Framework, the pattern of permitted development in the area, to the provisions of the Cork County Development Plan 2014, and the Ballincollig Carrigaline Municipal District Local Area Plan 2017, and to the layout and design as submitted with the application, the Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of adjoining properties, would not seriously injure the residential amenities of future occupants and would be acceptable in terms of traffic safety and convenience.

The development is also considered to be justified in accordance with:

- (a) Government policy to ramp up delivery of housing from its current under-supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016, and
- (b) Objective 13 of the National Planning Framework,

which supports denser residential development on public transport corridors and on serviced land, as is proposed in this case. 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 6th day of September 2021, 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. External finishes including all materials, colours and textures shall be in accordance with the details submitted to, the planning authority, unless otherwise agreed prior to commencement of development.

Reason: In the interest of visual amenity.

3. 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.

4. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

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

Reason: In the interests of visual and residential amenity.

6. Site development and building works shall be carried out only between the hours of 0800 and 1800 from Mondays to Fridays inclusive, between the hours of 0800 and 1300 on Saturdays, and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of protecting the residential amenities.

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

Reason: In the interests of clarity, orderly development and amenity.

8. A construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic and parking during the construction phase, the location of the compound for storage of plant and machinery and for storage of deliveries to the site.

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

9. 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 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.

A. Considine

Planning Inspector

30/03/2022