



An
Bord
Pleanála

Inspector's Report

ABP-314946-22

Development

Construction of 49 residential units (houses and apartments) including soft landscaped play spaces, an east-west ecological wing, strengthening of existing pathways, drainage works, boundary treatments, bin storage, surface treatments and all ancillary site development works

Location

Site South of Pembroke Wood, Pembroke, Passage West, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

225827

Applicant(s)

Unique Fitout Unlimited.

Type of Application

Permission.

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)

Unique Fitout Unlimited.

Observer(s)

Adrian Cronin
Aoife Garvin

Breda Collins
Brendan Lynch
Christina Kenneally
Deirdre O' Leary
Denis Veeckman
Eoin Buckley
John Marrow
Johnathan Garvin
Karl Herron
Leigh Galvin
Marcia D'Alton
Mary Foley
Michael Collins
Michael Dineen
Padraig O' Callaghan
Susan Shanahan
Tony and Grace Barry

Date of Site Inspection

21st of February 2024.

Inspector

Stephanie Farrington

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Appendix 1 – Form 1: EIA Pre-Screening

Appendix 2 – Form 2: EIA Preliminary Examination

1.0 Site Location and Description

- 1.1. The appeal site is located to the west of Passage West town centre, south of Pembroke Wood, Passage West, Co. Cork. The site, with a stated area of 3.193ha, is overgrown and includes a combination of mature trees, scrub, bracken and hedgerows. The site is located on a sloping landscape with levels ranging from +31.2m – 41.8m along the northern boundary and +58m to +65m along the southern boundary as illustrated on the Existing Site Survey Drawing. The site occupies a ridge which overlooks Cork Harbour to the north.
- 1.2. Access to the site is currently provided via a gated entrance from Pembroke Wood to the south. The site is surrounded by residential development. To the south the site adjoins dwellings on Old Church Road. Existing residential developments at Hillcrest, Foxwood and Pembroke Heights adjoin the development site to the north. The western and eastern boundaries are defined by overgrown scrub, bracken and hedgerows.

2.0 Proposed Development

- 2.1. The proposed development comprises construction of 49 no. residential units comprising 20 no. houses and 29 no. apartments. The development includes permission for the construction of soft landscaped play spaces, an east-west ecological corridor (1.432 hectares).
- 2.2. Access to the site is proposed to the south of the existing Pembroke Wood estate. The proposed development also includes the provision of 80 car parking spaces, bicycle parking, drainage works, landscaping and boundary treatments and all ancillary site development works. The development includes connection to the existing water and wastewater networks on Pembroke Wood.

Site Statistics

- 2.3. The table below provides a summary of key site statistics.

Site Area	3.193 ha gross
Primary Development Area	1.761 ha

No. of Units	49 no. units
Unit type	20 no. houses, 29 no. apartments
Unit mix	20 no. 3 bed houses – Block A 6 no. 1 bed apartments – Block D 21 no. 2 bed apartments – Blocks B, C and D 2 no. 3 bed apartments – Blocks B and D
Density	28 units per ha based on a site development area of 1.761 ha
Height	Houses – 9.7m to 11.5m Apartment Blocks – 12.6m – 16.1m
Car Parking	80 spaces

Application Documentation

The following documentation was submitted in support of the application:

- Planning Statement
- Part V Costings
- Appropriate Assessment Screening Report
- Ecological Impact Assessment
- Engineering Infrastructure Report
- Landscape Architecture Report
- Architectural Design Statement
- Architectural, Engineering and Landscaping Drawings
- Application Cover Letter, Form and Public Notices

Unsolicited Further Information

The applicant submitted unsolicited further information Cork County Council on the 1st of September 2022. This included revised drawings for Unit Type A.

3.0 Planning Authority Decision

3.1. Decision

Cork County Council refused permission for the development in accordance with the following reasons and considerations:

1. The proposed development is located in an area zoned 'Green Infrastructure' as set out in the County Development Plan 2022-2028 with a specific objective under PW GC-02 for open space with views overlooking Cork Harbour and for provision for landscape protection. The proposal for residential development on this site would be contrary to this zoning objective and objective ZU 18-13 of said Plan, which seeks to retain and generally protect these areas for their landscape, amenity or nature conservation value and where no development other than development which supports Green Infrastructure will be considered in these areas. The proposed development would have a significant negative impact on this area and habitat which is deemed of county importance, would erode the nature conservation function of the site and be detrimental to the landscape character of same. The proposed development would therefore be contrary to policies and objectives of the County Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the topography of the site, the elevated and prominent positioning of the proposed development, together with its overall design, scale, siting and massing, and the associated ground works/excavation/retaining walls required for the proposed development, it is considered that the proposed development would be visually discordant and incongruous in the streetscape/landscape, would be out of character with the existing residential estate to the north of the site, would fail to be adequately integrated into this prominent hillside landscape and would therefore seriously injure the residential and visual amenities of the area. Furthermore, having regard to the proximity and relationship between the proposed development and the existing houses to the north, and to the design and height of the proposed apartment blocks and the extent of vegetation removal and civil works proposed, it is considered

that the proposed development would have an unnecessarily severe impact upon the residential amenities of the area by reason of overlooking, loss of privacy, overbearance and undue disturbance. 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

Area Planner's Report (29/09/2022)

The area planner's report recommends a refusal of permission in accordance with the planning authority's decision. The following provides a summary of the key points raised:

- The entire site is zoned as the Green Conservation subcategory of Green Infrastructure. The proposal for a residential development contravenes this policy objective.
- The report cross refers to the internal report from the Council's Ecologist which recommends a refusal of permission on the basis of significant negative effect on a habitat deemed of county importance.
- An archaeological assessment for the site would be required in accordance with the requirements of Policy objective HE 16-9 of the Cork County Development Plan.
- The applicant should demonstrate that a legal right of way exists to facilitate access to the site and submit revised proposals for alternative construction access.
- The proposal would yield a density of 28 units per ha. Objective HOUS 4-7 of the Cork County Development Plan recommends a Medium A density range (30 – 50) on suburban/greenfield lands within settlements of a greater population of 5,000. On this basis the density is deemed too low. This point is not pursued as the development contravenes the zoning objective pertaining to the site.

- In terms of unit mix, the report refers to an overprovision of 4 bed semi-detached units. A better balance of 3 bed houses should be provided.
- The application is unclear in relation to the quantum of public open space provided. More function open space would be required.
- The report raises concern in relation to the layout and design and integration of the proposal with the site's topography. The report raises concern in relation to the quality of amenity space provided.
- The report outlines that the proposed apartment blocks are very severe, overbearing and dominant and given their design, scale, height and position on a hillside location would have a negative impact on the visual and residential amenities of the area.
- The report outlines that the apartment blocks do not integrate well with the character of Pembroke and insufficient separation distance is provided between the blocks and residential units to the north. Proposed houses 1-5 are also considered to be too close to the residential units to the north.
- Insufficient detail is provided within the application in relation to the details of the proposed gabion wall.
- The proposed development is deemed to be contrary to the proper planning and sustainable development of the area. A refusal of permission is recommended.

Senior Executive Planner's Report (29/09/2022)

- The report recommends a refusal of permission in accordance with the Area Planner's recommendation.
- The report outlines that the proposal contravenes the Green Infrastructure zoning objective pertaining to the site and the policy objective ZU 18-13 of the Development Plan. It is stated that the Ecologists report reinforces the view that the site is not suitable for development. A refusal of permission is recommended on this basis.

- The report refers to other significant issues within the application including demonstration that a right of way exists to provide access to the site, reconsideration of design, layout, unit mix and public open space.

Senior Planner's Report (29/09/2022)

- The report recommends a refusal of permission on grounds of material contravention of the zoning objective pertaining to the site and impact on residential amenities of the area by means of overlooking, loss of privacy, overbearance and undue disturbance.

3.2.2. Other Technical Reports

Ecology Report (23//09/2022)

- The report refers to the Green Infrastructure zoning objective pertaining to the site and outlines that the existing habitats onsite have been classified as county importance per the CDP and as high value at a local level per the submitted EclA, with numerous submissions on file making reference to the biodiversity value of the site and the species in which it supports.
- The report outlines that the site is largely composed of scrub / immature woodland per the submitted EclA. Scrub of varied age, species and structure e.g. transitioning to woodland, can support the widest range of wildlife, as some species depend on specific growth stages of certain plants, others require particular shrubs and other species a range of habitats in a small patch of scrub.
- The report outlines that the habitats recorded on site can not only provide potential breeding, resting and foraging habitat for a range of species but also provide ecosystem services like migratory / commuting corridors for species which can be vital in maintaining gene pools.
- The report recommends a refusal of permission in accordance with the following reasons and considerations:

The granting of permission for this development would be contrary to objective PW-GC-02 of the Cork County Development Plan 2022. It is considered that the application would have a significant negative effect on an area zoned as 'Green Infrastructure' and on a habitat deemed of county importance per the

plan. This would be contrary to the proper planning and sustainable development of the area.

Environment Report (19/09/2022)

The report recommends a request for further information in relation to the following:

- A site-specific Construction Environment Management Plan is required to detail how all atmospheric and aqueous emissions generated during construction phase will be controlled prior to discharge.
- Details of the amount of waste including soil and stone that will be removed from the site and disposal route are required.
- Confirmation of hydraulic capacity in the receiving foul and storm sewers is required, and permission of the owner to discharge via same.

Estates Report (14/09/2022)

The report recommends a request for further information in relation to clarification of boundary treatments and compliance with specifications for roads (5.5m wide), footpaths (1.8m wide) and car parking spaces (5m x 2.5m).

Estates Supplementary Report (16/09/2022)

The report recommends further information in relation to construction access arrangements as detailed below.

- The report outlines that Pembroke Wood is not taken in charge and construction traffic cannot use the same road as local residential traffic due to safety reasons. A refusal of permission is recommended if the applicant cannot provide alternative access arrangements.

Public Lighting Report (31/08/2022)

The report recommends a request for further information in relation to submission of public lighting proposals in line with the specifications set out.

Housing Officer's Report (29/08/2022)

No objection to the proposal. The proposed units are broadly acceptable for social housing.

Part V Report (23/08/2022)

The application can be validated subject to evidence being submitted to support 10% Part V.

3.3. Prescribed Bodies

Uisce Eireann

The report from Uisce Eireann raises no objection to the proposal subject to the following conditions:

- Where the applicant proposes to connect to public water/wastewater network a connection agreement must be signed prior to the commencement of development and the applicant must adhere to the requirements set out.
- The correspondence from Uisce Eireann attached to the applicant's Engineering Infrastructure Report dated the 5th of April 2022 outlines that the existing infrastructure to which the development proposes to connect to has not been taken in charge by Irish Water and the applicant shall demonstrate that Third Party Infrastructure is in compliance with IW Code of Practice and Standards details.
- IW capacity requirements will be subject to the constraints of the Irish Water Capital Investment.

Inland Fisheries Ireland (22/08/2022)

A request for further information is recommended. The submission refers to the proposal to dispose effluent from the development to the public sewer. The submission requests that Irish Water signifies that there is sufficient capacity in existence so that it does not overload either hydraulically or organically existing treatment facilities or result in polluting matter entering waters and cause or contribute to non-compliance with existing legislative requirements.

3.4. Third Party Observations

87 no. third party observations were lodged during the public consultation period. The points raised within the submissions primarily reflect those raised within the observations on the appeal. The following provides a summary of the key points raised:

- Concerns are raised in relation to the access arrangements, insufficient capacity of the road network, traffic impact and traffic hazard.
- The submissions raise concern in relation to construction phase impacts including construction access through the existing estate. The existing estate has not been taken in charge.
- Insufficient capacity of public sewer
- Subsidence impact on property – lack of geotechnical survey
- The development is contrary to the sites “Green Infrastructure” zoning objective.
- Impact on Ecology
- Visual Impact of the proposal
- The scale of the development is not in keeping with the existing estate.
- Impact on residential amenity overlooking, overshadowing and devaluation of existing properties.
- Information deficiencies and inaccuracies within the application documentation.
- The conclusion of the AA assessment that a Stage 2 assessment is not required is based on inaccurate information that wastewater from the proposed development will discharge to the Cork City wastewater treatment plant at Carrigrennan and that there are no watercourses on or adjacent to the proposed development.

4.0 Planning History

Appeal Site

None on site.

Site to the Southeast:

PA Ref: 06/12351 / ABP Reference PL04.221891

Permission refused by An Bord Pleanála in August 2007 for 4 no. houses on the site, in accordance with the following reasons and considerations:

1. The site of the proposed development is in an exposed, elevated position on sloping ground overlooking the Passage West area and the wider Cork Harbour. The site is partly within lands designated 0-01 Passive Open Space, in the Carrigaline Electoral Area Local Area Plan 2005, for which the land use zoning objective is passive open space with provision for landscape protection. This is one of a small number of such areas in the vicinity similarly designated, because of their contribution to the setting of Passage West and the amenity of the upper harbour generally. The proposed development includes construction of four houses, a new access road to the immediate rear of existing residential property and related services, entailing significant alteration of ground levels on the site, which, together with the location and scale of the dwellings and necessary retaining structures, would result in the proposed development being unduly prominent in the landscape. It is considered that the proposed development would, therefore, seriously injure the amenities of the area and of property in the vicinity, would conflict with the policy of the planning authority, as set out in the Local Area Plan and be contrary to the proper planning and sustainable development of the area.
2. On the basis of the submissions made in connection with the application and appeal, and having regard to the particular characteristics of the site, the Board is not satisfied that the impact of the development in respect of civil works, including in relation to ground stability/retention, proximity to boundaries and loss of existing trees, has been adequately addressed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

Cork County Development Plan 2022-2028

- 5.1.1. The Cork County Development Plan 2022-2028 was adopted on the 25th of April 2022 and came into effect on the 6th of June 2022. Section 1.2.5 of the Plan outlines that the Cork County Development Plan 2022-2028 replaces the Cork County

Development Plan 2014, the eight Municipal District Local Area Plans adopted in 2017 and the nine Town Development Plans.

Chapter 2 Core Strategy

- 5.1.2. Passage West is located within the County Metropolitan Cork Strategic Planning Area. The Plan outlines that the County Metropolitan Area (CMA) as set out in the RSES for the Southern Region and the Cork MASP (Metropolitan Area Strategic Plan) Area is the main engine of population and employment growth for the region.
- 5.1.3. Passage West/ Glenbrook / Monkstown is designated as a Metropolitan Town.

Chapter 4 Housing

- 5.1.4. Section 4.8 of the Development Plan relates to Residential Density. Objective HOU 4-7 sets out the new density categories in the Plan and Table 4.1 sets out the new tiered density approach recommended to respond to the diverse settlement scales within the County's hierarchy. Medium A density (minimum net density of 30 and maximum net density of 50) is applicable to suburban/greenfield lands of the larger settlements with a population > 5,000 and those planned to grow >5,000 population including Passage West/ Glenbrook/ Monkstown. The plan identifies that Medium B density (20-35 units/ha) may be applicable in a limited number of peripheral/ sensitive locations.

Chapter 14: Green Infrastructure and Recreation

- 5.1.5. Section 14.8 refers to the Landscape Character Assessment of County Cork. Passage West is located within an area designated as a High Value Landscape as illustrated in Figure 14.2 of the County Development Plan.
- 5.1.6. The Plan outlines that *“High sensitivity landscapes are vulnerable landscapes with the ability to accommodate limited development pressure. In this rank landscape quality is at a high level, landscape elements are highly sensitive to certain types of change. If pressure for development exceeds the landscape's limitations the character of the landscape may change”*.
- 5.1.7. The following Green Infrastructure objectives are of relevance:
- *County Development Plan Objective GI 14-2: Green Infrastructure Objectives for Main Towns and Settlements a) Ensure that all main towns have an adequate level of quality green and recreational infrastructure (active and passive) taking account of existing deficits, planned population growth as well*

as the need to serve their surrounding hinterlands. To ensure where possible that this green and blue infrastructure maximises its multifunctional capacity (ecosystem services). b) Promote the corridor concept, in particular using rivers and streams as one of the natural foundations for multi-functional green and blue infrastructure corridors. c) Seek to create new and improved connections (physical/ecological corridors) between open spaces/ green infrastructure and other important destinations as part of the enhancement of the overall network. d) Where other statutory plans/masterplans are being prepared it will be a requirement that they include detailed and integrated green and blue infrastructure proposals with a particular focus on nature-based solutions to significant infrastructure and climate change challenges.

- *County Development Plan Objective GI 14-3: Green Infrastructure and Development a) Require new development and redevelopment proposals, to contribute to the protection, management and enhancement of the existing green and blue infrastructure of the local area in terms of the design, layout and landscaping of development proposals. b) Require all development to submit a green infrastructure statement outlining how the proposal contributes to green and blue infrastructure both within its environs as well as within the wider settlement or rural area. Larger developments (multiple residential developments including Part 8 applications, retail, industrial, mineral extraction, etc) will be expected to prepare a Landscape/ Green (and Blue) Infrastructure Plan including a Landscape Design Rationale. This Plan should identify environmental assets and include proposals which protect, manage and develop green infrastructure resources in a sustainable manner. c) Over the lifetime of the Plan the Council will prepare a guidance note/update on best practice in integrating green and blue infrastructure/biodiversity within development proposals.*
- *Objective GI 14-6: Public/Private Open Space Provision a) Public Open Space within Residential Development shall be provided in accordance with the standards contained in Cork County Council's Interim Recreation & Amenity Policy (2019) and any successor policy , the "Guidelines on Sustainable Residential Development in Urban Areas" and "Making Places : a design guide for residential estate development. Cork County Council Planning Guidance*

and Standards Series Number 2". b) Promote the provision of high quality, accessible and suitably proportioned areas of public open space and promote linking of new open spaces with existing spaces to form a green infrastructure network. c) Apply the standards for private open space provision contained in the Guidelines on Sustainable Residential Development in Urban Areas and the Urban Design Manual (DoEHLG 2009) and Cork County Council's Design Guidelines for Residential Estate Development. With regard to apartment developments, the guidelines on Sustainable Urban Housing: Design Standards for New Apartments will apply.

5.1.8. Section 14.8 of the Plan relates to the Landscape Character Assessment of County Cork. Landscape Character Types which have a very high or high landscape value and high or very high landscape sensitivity and are of county or national importance are considered to be our most valuable landscapes and therefore are designated as High Value Landscapes (HVL), highlighted in green in the Table in Appendix F Landscape Character Assessment attached and shown in Figure 14.2. The site is designated as a High Value Landscape in Figure 14.2 of the Development Plan.

5.1.9. The following objectives are of relevance:

- *County Development Plan Objective GI 14-9: Landscape*
 - a) Protect the visual and scenic amenities of County Cork's built and natural environment. b) Landscape issues will be an important factor in all land-use proposals, ensuring that a pro-active view of development is undertaken while protecting the environment and heritage generally in line with the principle of sustainability. c) Ensure that new development meets high standards of siting and design. d) Protect skylines and ridgelines from development. e) Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.*
- *County Development Plan Objective GI 14-10: Draft Landscape Strategy*
Ensure that the management of development throughout the County will have regard for the value of the landscape, its character, distinctiveness and sensitivity as recognised in the Cork County Draft Landscape Strategy and its recommendations, in order to minimize the visual and environmental impact of development, particularly in areas designated as High Value Landscapes

where higher development standards (layout, design, landscaping, materials used) will be required.

Chapter 15: Biodiversity and Environment

- 5.1.10. Objective BE-15-2 seeks to protect sites, habitats and species. This includes objectives including: *c) Protect and where possible enhance areas of local biodiversity value, ecological corridors and habitats that are features of the County's ecological network. This includes rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and semi-natural grasslands as well as coastal and marine habitats. It particularly includes habitats of special conservation significance in Cork as listed in Volume 2 of the Plan.*

Chapter 18: Zoning and Land Use.

- 5.1.11. The appeal site is zoned for Green Infrastructure purposes within Map 4.1.9 of the Cork County Development Plan 2022-2028. The CCDP outlines that there are 3 categories of Green Infrastructure, namely GR (Green Recreational), GC (Green Conservation) and GA (Green Active). The following Objective is of relevance:

County Development Plan Objective ZU 18-13: Green Infrastructure Three subcategories of Green Infrastructure zonings have been identified to

(a) Retain and provide for open space and recreational amenities within Green Recreational (Open Spaces/ Park) areas;

(b) Retain and generally protect appropriate areas for their landscape, amenity or nature conservation value or their current or future flood management role, within Green Conservation (Landscape amenity/ nature conservation) area; and

(c) Retain and provide for active recreational facilities within Green Active (Active Open Space) areas.

No development other than development which supports Green Infrastructure will be considered in these areas. Any proposals in Green Infrastructure areas will need to ensure the protection and enhancement of the integrity of biodiversity and to recognise the importance of wildlife corridors and sites of nature conservation and be in accordance with Article 10 of the Habitats Directive.

Appendix F – Landscape Character Assessment of County Cork

5.1.12. Passage West is located within Landscape Character Type 1 – City Harbour and Estuary – This has a very high landscape value and very high landscape sensitivity. The landscape is identified as National Importance.

Volume 4 – South Cork

5.1.13. Volume 4 of the Cork County Development Plan relates to South Cork. Section 1.5 relates to Passage West/Glenbrook/Monkstown.

5.1.14. Section 1.5.16 of the Plan outlines that over the past few decades the residential function of the settlement has expanded westwards up the undeveloped, steep hillsides in the areas closest to Douglas and Cork City.

5.1.15. Table 4.1.12 of the Plan sets out General Objectives for Passage West/ Monkstown/ Glenbrook. The following objectives are of note:

- PW-GO-01: Population and Housing: Secure the development of 379 new dwellings in Passage West/Glenbrook/Monkstown between 2022 and 2028 in order to facilitate the sustainable growth of the town's population from 5,843 to 6,835 people over the same period.

5.1.16. Map 4.1.9 illustrates the Map of Passage West/Glenbrook/Monkstown. The appeal site is zoned for Green Infrastructure purposes. Specific Objective PW GC-02 relates to the site.

Objective PW-GC-02: Open Space with views overlooking Cork Harbour. Provision for landscape protection. The following habitat of county importance can be found within this site: Scrub/ Transitional Woodland, Dense Bracken and an Ecological Corridor.

Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities

5.1.17. Section 3.3.1 of the Sustainable Residential Development and Compact Settlement Guidelines relates to Settlement, Area Types and Density Ranges for Cities and Metropolitan Areas. Table 3.3 relates to Areas and Density Ranges for Metropolitan Towns and Villages and identifies that densities in the range of 35 dph to 50 dph (net) shall generally be applied at suburban and edge locations of Metropolitan Towns (>1,500).

5.1.18. The Guidelines outline that while densities should generally be within the ranges set out in Section 3.3 it may be necessary and appropriate in some exceptional

circumstances to permit densities that are above or below the ranges set out in Section 3.3. In such circumstances, the planning authority (or An Bord Pleanála) should clearly detail the reason(s) for the deviation in the relevant statutory development plan.

Southern Region - Regional Spatial and Economic Strategy (RSES) 2020

- 5.1.19. The 'Southern Region - Regional Spatial and Economic Strategy (RSES) 2020' supports the implementation of Project Ireland 2040, as well as the economic and climate policies of the Government, by providing a long-term strategic planning and economic framework for the region. Regional policy objective (RPO) 10 supports compact growth in metropolitan areas. Volume 2 of the RSES comprises a metropolitan area strategic plan (MASP) for Cork and other city regions, including the requirement to integrate land use and transport planning with an objective to prepare the Cork Metropolitan Area Transport Strategy (CMATS).
- 5.1.20. Passage West is recognised as an important residential area in the Metropolitan area, based around excellent recreational facilities, a harbour setting and a greenway, with potential to yield 890 residential units.

5.2. Natural Heritage Designations

The nearest designated European sites to the appeal site, including SAC's and Special Protection Areas (SPA's) include the following:

- Cork Harbour SPA (004030)- 1.2km northwest
- Great Island Channel SAC (001058) – 1.9kmwest
- Great Island Channel p NHA (001058) – 1.9km northwest
- Douglas River Estuary p NHA (001046) – 1.1km northwest
- Monkstown Creek p NHA (001979) – 3.2km to the south

5.3. EIA Screening

- 5.3.1. This proposed development, is of a class of development included in Schedule 5 to the Regulations. Class 10(b) of Schedule 5 to Part 2 of the Regulations provides that mandatory EIA is required for the following classes of development:

- (i) construction of more than 500 dwelling units,

(iv) 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.

*a 'business district' means a district within a city or town in which the predominant land use is retail or commercial use.

5.3.2. The proposal comprises the construction of 49 no. residential units on a 3.193ha site. The site area is therefore well below the applicable threshold for urban development. The proposed development falls below the development threshold and mandatory EIA is therefore not required. The site is located within the environs of Passage West. The nature of development within the vicinity of the site is defined by a residential land uses. The development will not have an adverse impact in environmental terms on surrounding land uses.

5.3.3. I have given consideration to whether sub-threshold EIA is required. The introduction of a residential development on a serviced site within the development boundary of Passage West will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of natural or cultural heritage and the proposed development and in my view is not likely to have a significant effect on any designated Natura 2000 site as detailed further in Section 7 of this report. I note the requirements of Objective PW-GC-02 of the Cork County Development Plan 2022 – 2028 which relates to the appeal site which relates to "landscape protection" and designation of a habitat of County importance on the site. This is addressed within the Ecological Impact Assessment submitted in conjunction with the application.

5.3.4. 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 Uisce Eireann and Cork County Council, upon which its effects would be marginal.

5.3.5. 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 within the development boundary of Passage West, which is served by public infrastructure, and the existing pattern of 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),
- 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),

5.3.6. 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 a sub-threshold environmental impact assessment report for the proposed development was not necessary.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first party appeal was submitted on behalf of the applicant in respect of Cork County Council’s notification of decision to refuse permission for the development.
- 6.1.2. The following provides a summary of the grounds of appeal:

Introduction

- The scheme is a modest development of 49 no. residential units relative to the size of the entire site and there is scope to increase or reduce the scale of the development proposed.
- The site is currently disused and not serving any amenity value. The site is not an overly visible part of the Passage West Ridge.
- Development of a high-density development at this location, within the established residential area would represent an appropriate response to the

need to densify urban areas and provide a modest number of residential units where a current underutilised and vacant use is present.

- Although the scheme is providing a densification of the site, the location, footprint and principle of the development is in line with specific planning policy aspirations associated with the development of this area and allows objectives for ecological amenity to be achieved whilst also providing much needed housing.

Grounds of Appeal

Under the heading of “Grounds of Appeal” the appeal outlines the following:

1. The development is in compliance with the fulfilment of National and Regional Policy aspirations. The appeal refers to the policies of the National Planning Framework and the Southern Regional Spatial and Economic Strategy which support compact growth. Passage West is located within the Cork MASP area, is connected by green cycle infrastructure and is excellently positioned to align population growth with sustainable infrastructural capacity and employment growth.
2. The development is in compliance with local policy objectives. It was zoned for residential development in successive development plans. There is unfounded logic for Green Infrastructure designation. The appeal outlines that the area of the appeal site proposed for development is 1.761 ha which constitutes 24% of the entire site deemed green infrastructure.
3. Restrictive approach to development of scrubland/vacant greenfield sites within key Metropolitan towns. The site is currently inaccessible and not visually prominent from the town centre or harbour area. The appeal questions the designation of the site as being of County importance and cross refers to the Ecologists report attached to the appeal which outlines that this designation is without substantive context. It is stated that the site is not comparable to other designated sites of County importance.
4. In keeping with other developments permitted on ridge locations of similar characteristics there is no logic for the designation of the site as County importance. The principal reason for refusal is without substantive justification.

It is stated that the need for housing in the current challenging environment can co-exist with a significant area preserved for biodiversity on the site. The development of 25% of the site would allow public access to the site allowing people to re-establish a connection with nature. The appeal refers to the objectives of the Biodiversity Plan for Passage West in this regard. The development retains a focus on delivering a strategic biodiverse corridor between the east and west of the site.

5. The applicant is willing to make alternations to the scheme to address the concerns of the planning authority but maintains that the optimum design, siting and minimal visual impact has been proposed. The appeal outlines that the suggestion by CCC that the residential and visual amenities of this area would be threatened by the development is inaccurate and misrepresentative of the design of the scheme. The appeal refers to CGI's submitted which illustrates the visual integration of the development into the site in accordance with historic lines which are prevalent in other areas including Sundays Well, Passage West, Montenotte and along Cork Harbour (as illustrated in Figures 11-13 of the appeal). The appeal refers to the reason for refusal which refers to the prominent hillside location of the site but outlines that the design uses the lower section of the hillside and does not seek to develop the upper and prominent parts of the site. The appeal refers to 3D views which illustrate that the development does not unduly impact or dominate the site or the wider setting (Figure 14 -20). The appeal outlines measures which have been adopted within the design of the development to negate against overlooking.
6. The Green Infrastructure designation is overly prohibitive. The site has no protection status and has been designed to a very high standard of design principles.

Conclusion

- The applicant's consider that a request for further information was warranted to clarify certain aspects of the scheme rather than an outright refusal.
- Successive development plans have zoned the site as being within the established built-up area of the settlement of Passage West. It is because the

landowner has allowed the site to become overgrown that it is considered as an area of County importance.

- The Local Authority have failed to have sufficient regard for national level housing objectives for infill and greenfield sites within development boundaries of key metropolitan towns.
- The appeal refers to the guidance set out within the Development Plan Guidelines for Planning Authorities which outlines that: *“It is a policy and objective of these Guidelines that zoned housing land in an existing development plan, that is serviced and can be developed for housing within the life of the new development plan under preparation, should not be subject to de-zoning”*.
- The site is ideally located to accommodate a residential development close to employment, retail, education, leisure and public transport services.
- The Board is requested to grant permission for the development in the interest of the proper planning and sustainable development of the area.

6.1.3. The appeal is accompanied by the following documentation:

- Statement from Unique Fitout Unlimited
- Report from Ecological Consultant
- Biodiversity Action Plan for Passage West

Statement from Applicant - Unique Fitout Unlimited

6.1.4. The statement attached to the appeal from the applicant raises concern in relation to the anti-development movement in the Passage West area. The applicant is of the opinion that the rezoning of the site was intended to prevent future development. The rezoning is considered unwarranted on ecological/environmental grounds.

6.1.5. The correspondence questions the designation of the site of County Importance which it is stated is highly questionable and drastically overstates the site's ecological importance. Other sites designated of County Importance within the Plan include bogs and woodlands. In terms of the second reason for refusal it is stated that the development would not impact on the residential and visual impact of the area.

Ecological Response to Reasons for Refusal – Dixon Brosnan Environmental Consultants

6.1.6. The report specifically addresses the ecological reasons for refusal. The following provides a summary of the key points raised:

- The proposed development is located primarily in the northern section of the site which is dominated by scrub of recent origin and was historically used as agricultural grassland.
- It is highly improbable that rare species or flora will occur on the site and there is no evidence to suggest that the site is of national, regional, or even county significance as referenced in Objective PW-GC-02 of the Cork County Development Plan.
- The report outlines that there is no evidence to suggest that the site is of particular value for birds at regional or county level and the impact of the development will be insignificant. The site does not provide habitats suitable for the conservation interests of the Cork Harbour SPA.
- Impacts on species including red squirrel are identified as negative, moderate and short term. Impacts on pygmy shrew, hedgehog and Irish Stoat are identified as negative, slight and long – term.
- Bat surveys were precluded due to site access constraints. Surveys would be carried out prior to the commencement of development and appropriate mitigation measures implemented.
- The report outlines that the site is linear in nature but does not directly connect valuable areas of habitat as it is separated from the estuary by the existing road and housing infrastructure. It is stated that commuting routes and wildlife corridors are of more value when they connect higher value landscapes with the surrounding landscape.
- The design of the project and landscape plan specifically ensured that a high percentage of semi-natural vegetation would be retained, and this retains connectivity along the longer east to west axis. The development has been specifically designed to minimise impacts on older trees, maintain ecological connectivity and a high proportion of semi natural habitats and provides

enhancement measures that will be implemented as part of a site-specific management plan.

- Section 7.6 of the report questions the assignment of the site as County importance for ecology. The report outlines that the site does not accommodate species identified for conservation within the Cork County Biodiversity Action Plan 2009-2014. The report outlines that there is no ancient woodland on the site and while the Biodiversity Action Plan refers to the value of scrub and hedgerows as wildlife corridors the design of the development ensure connectivity along the east west access.
- The report outlines that the appeal site is not comparable, in terms of its ecological value with significant sites which are of particular value within the county, and which therefore could be considered of County importance including native woodlands, wetlands, peatland habitats etc.
- The report outlines that further surveys would be carried out prior to the commencement of development which will facilitate any required fine tuning of the specified mitigation measures.

6.2. Planning Authority Response

Cork County Council provided a response to the grounds of appeal dated (16/11/2022). The following provides a summary of the points raised:

- The Planning Authority considers that the CCDP 2022-2028 is in compliance with the National Planning Framework in terms of the extent of zoned land provided for population targets. The subject site was not required to be zoned for residential purposes and therefore has not been.
- It is considered that zoning objective PW-GC-02 is an open space zoning primarily. Therefore, proposals for residential development on same contravene the zoning objective.
- The Planning Authority does not agree within the contention of the first party appeal that it is not clear from the categories listed in ZU 18-13 which category zoning objective PW-GC-02 falls into. The zoning objective for the site is PW-GC-02, the GC referring to Green Conservation and therefore is subcategory

(b) which is to “retain and generally protect appropriate areas for landscape, amenity or nature conservation value or their current or future flood management role, within Green Conservation (Landscape/amenity / nature conservation) area and no development other than development which supports Green Infrastructure will be considered in these areas.

- In terms of biodiversity and ecology, it is noted that to facilitate this development approximately 50% of scrub/immature woodland habitat would have to be removed, significant extents of retaining walls and hard surfacing would have to be constructed and it is considered that these would fundamentally undermine the existing ecological function of the site.
- The agent’s willingness to alter the design of the dwellings to address overlooking is noted but this does not address the fundamental issue that it does not comply with the zoning objective.
- The Planning Authority requests that these comments be considered by An Bord Pleanála in the assessment of the appeal.

6.3. Observations

19 no. observations were submitted in respect of the appeal. The observations are primarily from residents within the immediate vicinity of the appeal site including Pembroke Wood, Pembroke Park Drive, Pembroke Heights, The Beeches, Hillcrest and Upper Ardmore. Similar concerns are raised within the observations and in order to avoid undue repetition within the report the following provides a summary of the key points raised within the observations:

- Contrary to Cork County Development Plan 2022-2028 – The observations outline that the development is contrary to the Green Infrastructure zoning objective pertaining to the site and Objectives PW-GC-02, GI-14-1, GI-14-2, GI-14-3 and BE 15-2 of the Cork County Development Plan 2022-2028.
- Impact on Visual Amenity -The observations raise concern in relation to the visual impact of the development on the area. Concerns in relation to the visual impact of the apartment blocks and gabion wall are raised.

- Scale of Development -The observations outline that the scale of development does not reflect the existing pattern on development in the area. It is stated that the proposed apartment blocks are visually overbearing.
- Impact on the Residential Amenity – The observations raise concern in relation to the impact of the proposal on the residential amenity of existing dwellings in the vicinity of the site. Concerns relating to overlooking, loss of privacy, overbearance and impact on sunlight and daylight are raised. The observations outline that there is insufficient distance provided between the proposed apartment blocks and existing dwellings to the north.
- Impact on Ecology and Biodiversity – The observations raise concern in relation to the impact of the development on the existing ecology and biodiversity of the site. The observers refer to the presence of Red Squirrel, Barn Owl, Falcons, Sparrows, Hawks, Foxes, Hares and Bats on site. Concerns are raised in relation to the scope and content of the EclA. A detailed site survey was not undertaken. The observations refer to the presence of Japanese Knotweed on the site and raise concern in relation to air pollution associated with loss of trees on site.
- Structural Stability – The observations raise concern in relation to landslides from the site and potential impact on the structural stability of existing dwellings.
- Infrastructural Capacity – The observations question the capacity of the WWTP to accommodate the development. The observations outline that the existing water and wastewater network in Pembroke Wood has not been taken in charge by Irish Water. The capacity of the existing network to accommodate the development has not been demonstrated.
- Access and Traffic Impact – The observations question the proposed access arrangements. Pembroke Wood is not Taken in Charge. The observations raise concern in relation to a construction entrance via a residential estate and the traffic impact of the development.
- Open Space – The observations outline that the development includes insufficient public open space. No play areas are proposed.

- Appropriate Assessment – The observation from Cllr. Marcia D’Alton refers to the lack of reference to hydrological connection to Cork Harbour and outlines that the Screening Report refers to the incorrect WWTP for foul sewer discharge for Passage West.
- Construction Phase – The observations raise concern in relation to construction phase impacts associated with the development including construction traffic, air pollution and noise.
- Information Deficiencies – The observations refer to information deficiencies within the application in relation to cross sections for the site (illustrating relationship with adjoining residential areas), details of the proposed gabion walls, lack of hydrological survey and geotechnical surveys which address the structural stability of the site and potential for landslides.
- Planning History – The observations refer to a planning history of refusals on the site.
- Flooding – Concerns relating to flood risk are raised within the observations associated with surface water run-off from the site. The observations refer to the occurrence of sinkholes within the Pembroke Wood Estate.
- Incomplete Developments – The observations refer to incomplete developments by the developer elsewhere within Passage West.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the observations received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development – Compliance with Policy
- Design and Layout – Impact on Visual and Residential Amenity
- Other Issues
- Appropriate Assessment

7.2. Principle of Development – Compliance with Policy – Reason for Refusal no. 1

- 7.2.1. Cork County Council's first reason for refusal outlines that the proposed residential development would be contrary to the Green Infrastructure zoning objective pertaining to the site and Objectives PW-GC-02 and ZU 18-13 of the Cork County Development Plan 2022-2028. The reason for refusal outlines that the proposed development would have a significant negative impact on this area and habitat which is deemed of county importance, would erode the nature conservation function of the site and be detrimental to the landscape character of same.
- 7.2.2. The appeal site is zoned for Green Infrastructure purposes within the Cork County Development Plan (CCDP) 2022-2028 and is subject to specific objective PW GC-02 which relates to "*Open Space with views overlooking Cork Harbour. Provision for landscape protection. The following habitat of county importance can be found within this site: Scrub/ Transitional Woodland, Dense Bracken and an Ecological Corridor.*"
- 7.2.3. The CCDP outlines that there are 3 categories of Green Infrastructure within the County, namely GR (Green Recreational), GC (Green Conservation) and GA (Green Active). County Development Plan Objective ZU 18-13 relates to Green Infrastructure and outlines the following:

Three subcategories of Green Infrastructure zonings have been identified to:

(a) Retain and provide for open space and recreational amenities within Green Recreational (Open Spaces/ Park) areas;

(b) Retain and generally protect appropriate areas for their landscape, amenity or nature conservation value or their current or future flood management role, within Green Conservation (Landscape amenity/ nature conservation) area; and

(c) Retain and provide for active recreational facilities within Green Active (Active Open Space) areas.

No development other than development which supports Green Infrastructure will be considered in these areas. Any proposals in Green Infrastructure areas will need to ensure the protection and enhancement of the integrity of biodiversity and to recognise the importance of wildlife corridors and sites of nature conservation and be in accordance with Article 10 of the Habitats Directive.

- 7.2.4. The observations on the appeal assert that the development is contrary to the zoning objective pertaining to the site and the provisions of the Cork County Development Plan 2022-2028 in accordance with Cork County Council's decision. The first party appeal outlines that the appeal site was previously zoned for residential development in successive plans for Passage West and asserts that the rationale for the zoning of the site for Green Infrastructure purposes within the Cork County Development Plan 2022-2028 is unfounded. The appeal questions the rationale underpinning the designation of the site for Green Infrastructure purposes within the adopted Cork County Development Plan 2022-2028 and the guidance set out within the Development Plan Guidelines for Planning Authorities which outlines that: *"It is a policy and objective of these Guidelines that zoned housing land in an existing development plan, that is serviced and can be developed for housing within the life of the new development plan under preparation, should not be subject to de-zoning"*.
- 7.2.5. The appeal outlines that it is not clear which subcategory of Green Infrastructure that the site is classified as. The planner's report which informs the decision of CCC to refuse permission for the development outlines that the site falls within the Landscape Amenity/Nature Conservation subcategory. The Planning Authority's response to the grounds of appeal furthermore confirms the site designation as subcategory (b). Having regard to the characteristics of the site and the specific PW GC-02 objective pertaining to the site, I am satisfied that the site falls within the Landscape Amenity/Nature Conservation subcategory of Green Infrastructure.
- 7.2.6. The appeal questions the designation of the high value landscape designation of the site of County Importance as detailed in PW GC 02 of the County Development Plan. The appeal cross refers to the EclA submitted in support of the application and the "Ecological Response to Reasons for Refusal" prepared by Dixon Brosnan Environmental which outlines that the proposed development is located primarily in the northern section of the site which is dominated by scrub of recent origin and was historically used as agricultural grassland. The report outlines that the appeal site is not comparable, in terms of its ecological value with significant sites which are of particular value within the county, and which therefore could be considered of County importance including native woodlands, wetlands, peatland habitats etc. The report outlines that it is highly improbable that rare species or flora will occur on the site and

outlines that impact on existing fauna occurring on site can be addressed by means of mitigation measures.

- 7.2.7. The appeal outlines that the proposal seeks to develop approximately 25% of overall site area and the development would allow public access to the site allowing people to re-establish a connection with nature. The appeal outlines that the design of the project and landscape plan specifically ensured that a high percentage of semi-natural vegetation would be retained, and this retains connectivity along the longer east to west axis.
- 7.2.8. In considering the grounds of appeal I refer to the report from the Ecologist in Cork County Council which recommends a refusal of permission for the development on grounds that the development is contrary to PW-GC-02 of the Development Plan. The report outlines that the habitats recorded on site can not only provide potential breeding, resting and foraging habitat for a range of species but also provide ecosystem services like migratory / commuting corridors for species which can be vital in maintaining gene pools.
- 7.2.9. The appeal site forms part of a larger area zoned for Green Infrastructure purposes within the development plan which is subject to specific objective PW-GC-02. Objective ZU-18 of the Plan which relates to Green Infrastructure seeks to *“retain and generally protect appropriate areas for their landscape, amenity or nature conservation value”* and outlines that *“No development other than development which supports Green Infrastructure will be considered in these areas. Any proposals in Green Infrastructure areas will need to ensure the protection and enhancement of the integrity of biodiversity and to recognise the importance of wildlife corridors and sites of nature conservation and be in accordance with Article 10 of the Habitats Directive”*.
- 7.2.10. Notwithstanding the detailed case made by the applicant within the appeal I consider that the proposed development of the site for residential purposes would materially contravene the Green Infrastructure zoning objective pertaining to the site and would be contrary to the provisions of the adopted Cork County Development Plan 2022-2028 (including Objectives PW-GC-02 and Objective ZU-18).
- 7.2.11. Section 37 (2) a of the Planning and Development Act 2000, as amended outlines that: *“Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially*

the development plan relating to the area of the planning authority to whose decision the appeal relates". The provisions cited under paragraph 37 (2) b include the following:

- (i) the proposed development is of strategic or national importance,*
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

7.2.12. I have considered these in turn as follows:

- (i) The first party appeal refers to the location of Passage West within the Cork MASP area, its designation as a metropolitan town and its strategic green infrastructure linkages. The appeal outlines that the development would be in accordance with National and Regional policy which supports compact growth. I note that Cork County Council's response to the grounds of appeal outlines that the Cork County Development Plan 2022-2028 is in compliance with the objectives of the NPF in terms of zoned land provided for population targets. I furthermore refer to the contents of the Appendix A of the Cork County Development Plan which sets out a statement of consistency of the development with Ministerial Guidelines. The proposed residential development would not in my view be considered of national or strategic importance.
- (ii) I do not consider that there are conflicting objectives within the adopted Cork County Development Plan as they relate to the provision of Green Infrastructure areas.

- (iii) Appendix A of the Cork County Development includes a statement of consistency of the CDP with Ministerial Guidelines. I do not consider that this provision applies in the context of the recently adopted Cork County Development Plan 2022-2028.
- (iv) The pattern of development and permissions granted in Passage West since the making of the Cork County Development Plan 2022-2028 do not suggest a predisposition to granting residential development on lands zoned for Green Infrastructure purposes.

7.2.13. In conclusion, I recommend that permission is refused for the proposed development on grounds that the development of the site for residential purposes would materially contravene the Green Infrastructure zoning objective pertaining to the site and would be contrary to specific objective PW GC-02 which relates to *“Open Space with views overlooking Cork Harbour. Provision for landscape protection. The following habitat of county importance can be found within this site: Scrub/ Transitional Woodland, Dense Bracken and an Ecological Corridor”* and Objective ZU 18-13 which seeks to *“Retain and generally protect appropriate areas for their landscape, amenity or nature conservation value or their current or future flood management role, within Green Conservation (Landscape amenity/ nature conservation) area”*.

7.3. Design and Layout – Impact on Visual and Residential Amenity – Reason for Refusal no. 2

7.3.1. Cork County Council’s second reason for refusal raises concern in relation to the elevated topography of the site and the overall design, scale, siting and massing, and the associated ground works/excavation/retaining walls required for the proposed development. The reason for refusal outlines that the development would be visually discordant and incongruous in the streetscape/landscape, would be out of character with the existing residential estate to the north of the site, would fail to be adequately integrated into this prominent hillside landscape and would therefore seriously injure the residential and visual amenities of the area.

7.3.2. The planning authority’s second reason for refusal furthermore raises concern in relation to the impact of the development on existing residential dwellings to the north by reason of overlooking, loss of privacy, overbearance and undue disturbance. The

observations on the appeal raise concern in relation to the impact of the proposal on the visual and residential amenities of the area.

- 7.3.3. The first party appeal outlines that the suggestion by CCC that the residential and visual amenities of this area would be threatened by the development is misrepresentative of the design of the scheme and that the concerns raised by the planning authority could have been addressed by means of a request for further information. I consider the points raised as follows.

Layout, Design and Impact on Visual Amenity

- 7.3.4. The first party appeal outlines that the siting of the development, the natural topography of the site, and the characteristics of the site were the fundamental elements in designing a scheme for the site. The appeal refers to the design statement and landscape strategy for the site and submitted views and CGI's which illustrate how the development integrates into the landscape of the area.
- 7.3.5. Passage West is located within an area designated as a High Value Landscape as illustrated in Figure 14.2 of the County Development Plan. The subject site forms part of a hillside in Passage West and forms a prominent feature in the landscape. Views of Cork Harbour are afforded from within the site. The appeal site occupies an elevated position, with significant changes in levels on site ranging from + 31.2m to +41.8m along the northern boundary and +58m to +65m along the southern boundary.
- 7.3.6. The appeal site has an overall area of 3.193 ha, of which the area proposed for development is 1.761 ha. The proposed development comprises the construction of 49 no. residential units on site including 20 no. houses (identified as Block A) and 29 no. apartments (arranged in 3 blocks (Blocks B, C and D) accessed via Pembroke Wood. The proposed houses range in height from 9.7m to 11.5m and the apartment blocks range in height from 12.6m – 16.1m. The residential units and blocks are arranged in a linear format on site. Parking for the proposed housing units is proposed to the front of the units and the apartment blocks are served by basement parking.
- 7.3.7. The Architectural Design Statement submitted in conjunction with the application outlines that the remainder of the lands outside of the proposed development area would form part of the extended PW-GC-02 landscape zone and maintain an unbroken ecological corridor between the east and west of the site.

- 7.3.8. Cork County Council's 2nd reason for refusal raises concern in relation to the topography of the site and associated groundworks /excavation/retaining walls required to facilitate the development. On review of the proposed layout, I have concerns in relation the integration of the development with the topography of the site. The proposed development would require significant cut and fill across the and the provision of large retaining wall/gabion wall along the southern site boundary. I am not satisfied that the layout as proposed provides an appropriate design solution to the locational context and topography of the site.
- 7.3.9. I consider that on an overall basis there are information deficiencies in relation to the details of the proposed gabion wall/retaining walls required to facilitate the development. I note that this is raised within the observations on the appeal and within the Area Planner's report which informs the decision of CCC to refuse permission for the development. However, on the basis of the details set out within Section A-A (Drawing no. 004) this ranges in height from 7m in the vicinity of the proposed houses to 15m in the vicinity of the proposed apartment blocks. I consider that this element of the scheme would be visually overbearing and dominant on a hillside location and would detract from the visual amenities of the area. I furthermore note that the proposed apartments and residential units are arranged in a linear configuration and have a south facing outlook which front this retaining wall. The apartment blocks are located approximately 8m from the gabion wall and the residential units are located between 10-13m from the wall. I consider that this design feature would significantly impact on the residential amenity of future occupants of the scheme.
- 7.3.10. On an overall basis, I am not satisfied that that the layout as proposed provides an appropriate design solution to the locational context and elevated topography of the site and consider the proposed gabion/retaining walls would form a prominent feature on the landscape and would detract from the visual and residential amenity of the area.
- 7.3.11. I note the concerns raised within Cork County Council's decision in relation to the design, scale and massing of the development and the particular concerns raised within the planner's report in respect of the apartment blocks. However, I consider that the proposed apartment blocks and residential units are contemporary in appearance and do not consider that they would have a negative impact on the character of the area.

7.3.12. I note that the observations on the appeal raise concern in relation to the overall quantum of public open space within the development and I furthermore note that the planner's report which informs the decision of CCC to refuse permission for the development outlines that the overall quantum and function of the spaces provided is unclear. I am unclear in relation to the overall quantum of public open space within the development and compliance with the relevance standards set out within GI-14-6 of the Cork County Development Plan. However, having regard to other substantive reasons for refusal relating to the principle of development, I do not intend to pursue this matter.

Impact on Residential Amenity of Existing Dwellings

7.3.13. Cork County Council's second reason for refusal raises concern in relation to the impact of the development on existing residential dwellings to the north by reason of overlooking, loss of privacy, overbearance and undue disturbance. Such concerns are raised within the observations on the appeal. I consider the concerns raised in turn as follows.

- Overlooking/ Loss of Privacy

7.3.14. The first party appeal outlines that the proposal has been designated to negate against impact on the residential amenity of existing residents of the area. Section 2.4 of the Architectural Design Statement submitted in support of the application outlines the following measures which have been incorporated to negate against overlooking:

- Maximum separation distances are provided from the proposed dwellings and apartments from the existing dwellings to the north at Pembroke Heights, Foxwood and Hillcrest in order to mitigate against visual dominance and overshadowing.
- The report outlines that the proposed house units 1-10 face the side elevation of houses in Foxwood and are over 35m away. The remaining 10 houses are located at a distance of over 80m from the rear building line of houses in Pembroke Heights.
- To minimise the possibility for overlooking the number of northern facing habitable spaces are limited in dwellings and apartments which are closest to existing residential areas to the north. In the proposed houses the floorplan

accommodates the dining room and a bedroom which have north facing windows.

- Privacy is furthermore reinstated by means of maintaining existing boundary treatment and planting additional trees. Balconies on the proposed apartment block face south.

7.3.15. In terms of overlooking/loss of privacy, I note that the proposed apartment blocks are located over 28m from the northern site boundary and over 40m from the dwellings at Hillcrest to the north. Units 1-5, which are the closest houses to existing dwellings to the north, are located over 22m from the northern site boundary and over 26m from the nearest dwelling at Foxwood. The proposed separation distances are in excess of the standards set out within SPPR 1 of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities which outlines that *“When considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms¹⁶ at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained”*.

7.3.16. I furthermore note that the proposed houses and apartment units with associated balconies are south facing to reduce instances of overlooking/loss of privacy of existing dwellings to the north. Having regard to the proposed layout and proposed boundary treatment, I consider that appropriate separation distances have been provided between the development and existing residential dwellings to the north to negate against overlooking.

- *Overbearing*

7.3.17. As earlier noted, in design terms, I consider that the proposed houses and apartment blocks are contemporary in appearance and would not be visually overbearing or detract from the residential amenities of the area.

- *Undue Disturbance*

7.3.18. In terms of undue disturbance cited within the planning authority’s reason for refusal I note that the observations on the appeal raise concern in relation to the proposed construction access, surface water run-off from the site and the lack of geotechnical survey for the site. I consider that there are information deficiencies within the

application in this regard. However, I am satisfied that such measures could be resolved by means of further information, adherence to measures set out within a Construction Management Plan in the instance that the principle of the development was deemed acceptable.

Conclusion

7.3.19. On the basis of the information submitted in support of the application and appeal, I am not satisfied that the layout as proposed provides an appropriate design solution to the locational context and elevated topography of the site. The site is located on a prominent hillside location, with significant level changes. The proposal includes significant ground works/excavation/retaining walls to accommodate the development of the site and there are information deficiencies within the application in relation to the scale and nature of works required. I consider the proposed gabion and retaining walls, in particular, would form a prominent feature in the landscape and would detract from the visual amenities of the area and residential amenities of future occupants of the development. The proposed development, would therefore, be contrary to the proper planning and sustainable development of the area.

7.4. Other Issues

Information Deficiencies (New Issue)

- 7.4.1. I consider that there are other significant deficiencies in information within the application which would require clarification in the instance that the principle of the development was deemed acceptable. These are outlined in brief as follows.
- 7.4.2. The observations on the appeal raise concern in relation to the impact of ground/works/ excavation in the absence of any geotechnical survey. I refer to the recommended request for further information from the Environmental Section of CCC which requested the submission of a Construction Management Plan which detailed the quantum of cut and fill from the site.
- 7.4.3. Access to the site is proposed via Pembroke Wood. I note that the public notices refer to a right of way from Pembroke Wood. The submissions on the application outline that the right of way is for ESB/Irish Water only and the area planner's report recommends clarification of same. The Estates Report in Cork County Council furthermore outlines that Pembroke Wood is not in charge and recommends a refusal

of permission in the instance that an alternative construction access can be provided. This is not addressed within the appeal.

- 7.4.4. The proposed development seeks to connect to the existing water and wastewater infrastructure in Pembroke Wood. The observations on the appeal outline that the existing infrastructure has not been taken in charge by Uisce Eireann. The correspondence from Uisce Eireann attached to the applicant's Engineering Infrastructure Report dated the 5th of April 2022 outlines that the existing infrastructure to which the development proposes to connect to has not been taken in charge by Uisce Eireann and the applicant shall demonstrate that Third Party Infrastructure is in compliance with IW Code of Practice and Standards details. The applicant has not demonstrated necessary consent to connect to same or demonstrated the capacity of the infrastructure to accommodate the development.
- 7.4.5. On the basis of the observations made in connection with the application and appeal, I am not satisfied that the applicant has demonstrated necessary consent to provide access and safe construction access to the site or connect to existing water and wastewater infrastructure. This is a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.

7.5. **Appropriate Assessment**

7.5.1. Screening Compliance with Article 6(3) of the Habitats Directive

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

7.5.2. Background on the Application

A screening report for Appropriate Assessment prepared by Dixon Brosnan Environmental Consultants was submitted in conjunction with the application. The Screening Report was prepared in line with current best practice guidance. It provides a description of the proposed development and identifies European Sites within a possible zone of influence of it.

The applicant's AA Screening report concludes that the proposed development "*either alone or in combination with other plans and/or projects, does not have the potential*

to significantly affect any European site, in light of their conservation objectives. A Stage 2 Appropriate Assessment is deemed not to be required”.

Having reviewed the documents, and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

7.5.3. Screening for Appropriate Assessment- Test of likely significant effects

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.5.4. Brief description of Development

The development is described at Section 2 of this Report. In summary, permission is sought for construction of 49 no. residential units, access via Pembroke Wood and all associated site development works. The development comprises connection to the public sewer. The storm water from the development will be gathered in a dedicated system and discharge to an existing storm sewer.

Section 7 of the applicant’s AA Screening Report refers to existing habitats on site. Table 9 outlines that existing habitats on the site include scrub WS1/Immature Woodland WS2, dense bracken HD1 and Treelines WL2.

7.5.5. European Sites

The nearest European sites to the application site, including Special Areas of Conservation (SACs) and SPAs, comprise the following:

European Site (Code)	Qualifying Interests	Distance	Connections	Considered further in Screening
Cork Harbour SPA (004030)	Little Grebe, Great Crested Grebe, Cormorant, Grey Heron, Shelduck, Wigeon, Teal, Pintail, Shoveler, Red-breasted Merganser,	1.2km north west	Yes Stormwater ultimately discharging to Cork harbour	Yes

	Oystercatcher, Golden Plover, Grey Plover, Lapwing, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank Black-headed Gull, Common Gull, Lesser Black-backed Gull, Common Tern, Wetland and Waterbirds		Wastewater from the site passes and would be treated in Cork Lower Harbour WWTP, which also discharges to Cork harbour.	
Great Island Channel SAC (001058)	<ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide [1140] • Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] 	1.9km north east	<p>Stormwater ultimately discharging to Cork harbour</p> <p>Wastewater from the site passes and would be treated in Cork Lower Harbour WWTP, which also discharges to Cork harbour.</p>	Yes

The applicant's Screening Report outlines that there are no hydrological or other connections between the appeal site and any other Natura 2000 site. I do not consider that any other European Sites other than those identified in the table above potentially fall within the zone of influence of the project, having regard to the nature and scale of the development, the distance from the development site to same, and the lack of an obvious pathway to same from the development site.

7.5.6. Submissions and Observations

The observation from Marcia D'Alton questions the assumptions within the applicant's AA Screening. The observation refers to the lack of reference a hydrological connection to Cork Harbour and outlines that the Screening Report refers to the incorrect WWTP for foul sewer discharge for Passage West (discharge is to Shanbally rather than Carrigrenan).

The submission from Inland Fisheries Ireland refers to the proposed wastewater connection to the public sewer. The submission recommends that Irish Water (Uisce Eireann) signifies that there is sufficient capacity in existence so that it does not overload either hydraulically or organically existing treatment facilities or result in polluting matter entering waters.

Uisce Eireann raised no objection to the proposed wastewater connection.

7.5.7. Potential Effects

Section 8 of the applicant's Appropriate Assessment Screening addresses potential impacts associated with the development. These are identified as follows:

- Potential impacts from loss of habitat;
- Potential impacts from noise and disturbance;
- Potential impacts on water quality during construction;
- Potential impacts on water quality during operation.
- Potential impacts from spread of invasive species;
- In-combination impacts;

Habitat Loss

Habitat loss and fragmentation would not arise given the location and nature of the site.

Potential Impacts from noise and disturbance

Noise and disturbance impacts during the construction phase of the development are not envisaged to impact on the qualifying interests of the Cork Harbour SPA due to the distance from the SPA to the site and lack of suitable habitat on site.

Potential impacts on water quality during construction

The applicant's Screening Report outlines that potential impacts on aquatic habitats which can arise from surface water emissions during the construction phase of the development include increased silt levels in surface water run-off, inadvertent spillages of hydrocarbons from fuel and hydraulic fluid.

The applicants Screening Report outlines that given the distance of the site from aquatic receptors, the existing surface water network and the short-term nature of construction work, no significant impact on local surface water is predicted to occur and subsequently there will be no impact on local water quality.

An observation on the appeal raises concern in relation to run off from the site during the construction and operational phase of the development. I am satisfied that the potential for likely significant effects on the qualifying interests of Natura 2000 sites in Cork Harbour from surface water run-off can be excluded given the distant and interrupted hydrological connection, the nature and scale of the development and the distance and volume of water separating the application site from Natura 2000 sites in Cork Harbour (dilution factor).

Potential impacts on water quality during operation.

Under this heading the applicant's Screening Assessment assesses the potential operational impact on wastewater discharges from the site. The Screening report outlines that wastewater from the development will be treated at the Carrigrenan WWTP. It is stated that the effluent discharge from the development is well within design capacity and will not compromise the operational capacity of the WWTP to treat effluent to comply with emission limit values. The Screening Assessment outlines that impacts from the proposed development will be negligible given the current operating conditions at the WWTP. The report outlines that there will be no significant impact on water quality or the conservation objective of Cork Harbour SPA or the Great Island SAC as a result of operational discharges. As detailed within the observation on the appeal by Cllr. Marcia D'Alton wastewater associated with the development would discharge to the treatment plant at Shanbally.

The discharge of wastewater to the municipal wastewater treatment plant at Shanbally provides a pathway for potential impacts to the European sites. Cork Lower Harbour WWTP is understood to currently serve a population equivalent of approximately

20,000 persons, it has a population equivalent capacity for approximately 65,000 persons and is subject to licensing from the EPA, a process that is itself subject to AA. I refer to Table 11.3 of the Cork County Development Plan 2022-2028 which outlines that wastewater capacity is in place to serve Passage West.

I note that Uisce Eireann have indicated that capacity for the proposed development to connect to mains services is available. I also consider that the scale of the development would be insignificant in the context of the available capacity. It is considered that the additional loading to the Cork Lower Harbour WWTP arising from the proposed development is not likely to give rise to significant indirect impacts on European sites.

During the operational stage stormwater from the site would be discharged after passing through sedimentation and fuel interceptor traps, while surface waters from roofs would infiltrate to ground within individual soakaways. In the event that the SUDS, pollution control and stormwater treatment measures were not implemented or failed, I am satisfied that the potential for likely significant effects on the conservation objectives of European sites in Cork harbour can be excluded given the distant and interrupted hydrological connection, the nature and scale of the development featuring a piped stormwater network and the distance and volume of water separating the application site from European sites in Cork harbour. Therefore, surface waters and stormwaters arising from the proposed development would not be likely to give rise to significant indirect impacts on European sites connected with the site.

On the basis of the foregoing, I conclude that the proposed development would not impact the overall water quality status of Cork harbour and that there is no possibility of the proposed development undermining the conservation objectives of any of the qualifying interests or special conservation interests of European sites in or associated with Cork harbour via surface water or stormwater runoff, and emissions to water.

Spread of Invasive Species

The applicant's Screening Report outlines that no third schedule invasive species were recorded within the proposed development site. There is no pathway for impact for the spread of invasive species to the SAC or SPA.

7.5.8. In-combination Impacts

Section 8.6 of the applicant's Screening Report refers to in-combination impacts. Table 13 of the report lists plans and projects which are considered in combination with the proposal and concludes that *"given the nature and scale of the proposed project, it is not anticipated that it will act in-combination with the plans or projects outlined, as other plans or projects, to give rise to cumulative impacts on the Great Island Channel SAC and Cork Harbour SPA"*.

The expansion of Cork City and Metropolitan Area is catered for through land-use planning by the Planning Authorities in the Cork area, including the Cork County Development Plan 2022-2028. The Development Plan has been subject to AA by the Planning Authority, who concluded that their implementation would not result in significant adverse effects on the integrity of any European sites. The proposal would not generate significant demands on the existing municipal sewers for foul water. While this project would marginally add to the loadings to the municipal sewer, the Cork Lower harbour WWTP has substantial operational capacity to serve the proposed development and this facility is currently operating under the EPA licencing regime that was subject to AA Screening.

The development is not associated with any loss of semi-natural habitat or pollution that could act in a cumulative manner to result in significant negative effects to any European site. I am satisfied that there are no projects which can act in combination with the development that could give rise to significant effects to European sites within the zone of influence.

7.5.9. Conclusion

The applicant's AA Screening report concludes that the proposed development *"either alone or in combination with other plans and/or projects, does not have the potential to significantly affect any European site, in light of their conservation objectives. A Stage 2 Appropriate Assessment is deemed not to be required"*.

The proposed development was considered in light of the requirements of Section 177U of the Act of 2000. Having carried out screening for AA of the project, it has been concluded that the project individually or in combination with other plans or projects, would not have a significant effect on European sites, including European Site No. 001058 (Great Island Channel SAC) and European Site No. 004030 (Cork Harbour

SPA), in view of the sites' Conservation Objectives, and Appropriate Assessment is not, therefore, required.

8.0 Recommendation

I recommend the permission is refused for the development in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. The appeal site forms part of a larger area zoned for 'Green Infrastructure' purposes within the Cork County Development Plan 2022-2028 and is subject to specific objective PW GC-02 which relates to *“Open Space with views overlooking Cork Harbour. Provision for landscape protection. The following habitat of county importance can be found within this site: Scrub/ Transitional Woodland, Dense Bracken and an Ecological Corridor”*. Objective ZU 18-13 of the Cork County Development Plan seeks to *“Retain and generally protect appropriate areas for their landscape, amenity or nature conservation value or their current or future flood management role, within Green Conservation (Landscape amenity/ nature conservation) area”* and outlines that *“No development other than development which supports Green Infrastructure will be considered in these areas”*. The proposed residential development would contravene materially the “Green Infrastructure” zoning objective pertaining to the site as set out within the Cork County Development Plan 2022-2028 and be contrary to objectives PW- PC-02 and ZU 18-13 of the Plan. The development is therefore considered contrary to the provisions of the Cork County Development Plan 2022-2028 and the proper planning and sustainable development of the area.
2. The appeal site forms part of a hillside in Passage West and the topography of the site steeply slopes from the north to the south. The proposal includes significant ground works/excavation/retaining walls to accommodate the development of the site and there are information deficiencies within the application in relation to the scale and nature of works required. On the basis of the information submitted in support of the application and appeal, the Board

is not satisfied that the layout as proposed provides an appropriate design solution to the locational context and elevated topography of the site. It is considered that the proposed gabion/ retaining walls, in particular, would form a prominent feature in the landscape and would detract from the visual amenities of the area and residential amenities of future occupants of the development. The proposed development, would therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Stephanie Farrington
Senior Planning Inspector

6th of March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	314946-22		
Proposed Development Summary	Construction of 49 residential units (houses and apartments) including soft landscaped play spaces, an east-west ecological wing, strengthening of existing pathways, drainage works, boundary treatments, bin storage, surface treatments and all ancillary site development works		
Development Address	Site to South of Pembroke Wood, Pembroke, Passage West, Co. Cork		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes	X	Screening Determination required

Inspector: _____

Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	314946-22
Proposed Development Summary	Construction of 49 residential units (houses and apartments) including soft landscaped play spaces, an east-west ecological wing, strengthening of existing pathways, drainage works, boundary treatments, bin storage, surface treatments and all ancillary site development works
Development Address	Site to South of Pembroke Wood, Pembroke, Passage West, Co. Cork

The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.

	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment?	No. The development is located within an existing residential context.	No
Will the development result in the production of any significant waste, emissions or pollutants?	No significant waste, emissions or pollutants are envisaged.	No
Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having		No No

<p>regard to other existing and/or permitted projects?</p>		
<p>Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans and projects would not be likely to give rise to significant effects on European sites, including European Site No. 001058 (Great Island Channel SAC) and European Site No. 004030 (Cork Harbour SPA), in view of the sites' Conservation Objectives, and Appropriate Assessment is not, therefore, required.</p>	<p>No</p> <p>No</p>
<p>• Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p> <p>X</p>	<p>• There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p>

Inspector: _____

Date: _____