



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315820-23

<b>Development</b>	Construction of 92 apartments, creche, and all associated ancillary site works. This application includes an NIS
<b>Location</b>	Bessborough, Ballinure, Blackrock, Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	2241568
<b>Applicant(s)</b>	MWB Two Ltd.
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	MWB Two Ltd.
<b>Observer(s)</b>	Donnachadh O' Laoghaire T.D. Cork Survivors & Supporters Alliance Sen. Erin Mc Greehan Councillor Lorna Bogue Carmel Cantwell

Barbara Hegarty  
Gerard O'Mahony  
Oliver Moran  
PFS Private  
Bessborough Mother & Baby Home  
Support Group

**Date of Site Inspection**

4<sup>th</sup> May 2024

**Inspector**

Mary Kennelly

# Contents

1.0 Introduction .....	5
2.0 Site Location and Description.....	5
3.0 Proposed Development .....	7
4.0 Planning Authority Decision .....	10
4.1. Decision .....	10
4.2. Planning Authority Reports.....	10
4.3. Prescribed Bodies.....	20
4.4. Third Party Observations.....	21
5.0 Planning History.....	21
6.0 Policy Context .....	24
6.1. National and Regional Policy Context.....	24
6.2. Cork City Development Plan 2022-2028.....	26
6.3. Natural Heritage Designations .....	31
6.4. EIA Screening .....	32
7.0 The Appeal.....	35
7.1. Grounds of Appeal.....	35
7.2. Planning Authority Response .....	39
7.3. Third Party Observations to Grounds of Appeal.....	39
8.0 Assessment.....	46
8.1. Introduction .....	46
8.2. Principle of Development and Legacy Issues.....	47
8.3. Density and Building Height of Proposed Development.....	52
8.4. Impact of Development on Protected Structure, Historic Landscape and Area of High Landscape Value.....	60

8.5. Visual impact.....	66
8.6. Need for EIA .....	67
9.0 AA Screening .....	70
10.0 Recommendation .....	107
11.0 Reasons and Considerations .....	107
Appendix 1 – Form 1: EIA Pre-Screening	
Appendix 2 – EIA Screening Determination	

## 1.0 Introduction

- 1.1. The Board is advised of the previous applications/appeals and the current SHD applications on this and adjoining sites within the former Bessborough Estate as follows:

ABP.308790-20	SHD application for 179 apartments	Refused
ABP.309560-21	First party appeal against refusal of 67 apartments	Refused
ABP.313216-22	SHD for 280 apartments	Board Decision pending
ABP.313206-22	SHD for 140 apartments	Board Decision pending

- 1.2. The Board should note that the applicant for 308790 and 309560 is the same applicant as for the current scheme, TWB Two Ltd. It should also be noted that the current application/appeal relates to part of the site that was the subject of 308790. Furthermore, the current SHD applications are located on lands to the north/northwest of the site and to the north/northwest of the sites which were the subject of 308790 and 309560.

## 2.0 Site Location and Description

- 2.1. The site is located at Bessborough, Ballinure, Blackrock, in the south-eastern suburbs of Cork City. It is approx. 5km from the city centre and is adjacent to Mahon. The site forms part of the former Bessborough Estate which incorporates Bessborough House (a Protected Structure RPS 004090) and its associated grounds which included pleasure gardens, a 19<sup>th</sup> Century Folly (NIAH Ref. 20873007), agricultural lands and a farm complex. Bessborough House forms part of a cluster of buildings including a modern convent building, a residential centre and a day care centre which are centrally located within the overall grounds and overlook parkland to the south and west. These buildings are accessed from the northwest along a long driveway which terminates in front of the protected structure and associated buildings. To the rear of these buildings lies the farm complex and to the east lies lands which are undeveloped, formerly part of the pleasure gardens and/or agricultural lands. A new internal access road was constructed in c.2000 to the east of Bessborough House to access these lands. The appeal site is located to the east of this road, in the south-eastern section of the overall Bessborough grounds.

- 2.2. The former Bessborough Estate is bounded to the East and South by the former Passage West railway line, which has been redeveloped as a greenway. The N40 South Ring Road runs parallel with and to the south of the greenway and Mahon Point Retail Park and City Gate Business Park are located on the eastern side of the greenway, beyond which is Mahon Point Shopping Centre. To the south of the N40 lies the Douglas River Estuary/ Lough Mahon Waterbody. Access to the former Bessborough Estate grounds is gained from the north-west, via Skehard Road and Bessboro Road. There are residential estates and commercial developments along Bessboro Road to the north and west, respectively, of the original estate.
- 2.3. To the south (front) of Bessborough House, a gated access leads to a tree-lined avenue which terminates at the Folly, which is situated within a wooded area. The modern internal access road travels south along the eastern side of the complex of buildings with undeveloped lands, in an overgrown state, lying to the east of this road. The road swings sharply eastwards just to the north of the Folly before turning south again and terminating just beyond the Folly. The lands sit in a prominent position overlooking the Douglas Estuary with a Protected Structure sitting within a parkland landscape with mature trees and open spaces. It is identified as a historic landscape with parts of the lands zoned as Landscape Preservation Zone and an Area of High Landscape Value.
- 2.4. The SHD application for 179 apartments, (308790) which was refused by the Board on 21<sup>st</sup> May 2021, lies immediately to the north and north-east of the Folly, and the internal road transects that site. The First Party Appeal site (309560), which was refused by the Board on the 15<sup>th</sup> July 2021, lies immediately to the south of the site of 308790, and immediately to the east of both the internal access road and the Folly. The site of the current appeal occupies much of the eastern section of the site of 308790, is to the north of (and slightly overlaps) the site of 309560. It incorporates a section of the internal access road and is sited to the north-east of the Folly.
- 2.5. The site area is given as 0.513ha. It includes a narrow, elongated section of land which runs through the parkland to the front of Bessborough House, which is intended for wastewater services infrastructure upgrades. The inclusion of this element brings the total site area to 1.01ha. Otherwise, it is a roughly rectangular shaped site which is bounded to the west by the internal access road adjacent to the Folly and to the east by a line of mature trees bounding the greenway. The lands to

the north are vacant (site of proposed SHD 313216-22) and to the south are also vacant (site of refused 309560).

### **Legacy issue**

- 2.6. The Bessborough Estate has been used in the past as a Mother And Baby Home and has been the subject of a Commission of Investigation into Mother and Baby Homes, which issued its Fifth Interim Report in 2019 and its Final Report in 2020. Arising from the findings of these reports, wherein it was highlighted that there was the potential for the presence of an unrecorded children's burial ground within the overall lands, the Board held an oral hearing in April 2021 (ABP.308790-20), with a view to providing greater clarity on this issue. However, the Board was not satisfied that the site of 308790 (which includes part of the current appeal site) had not been previously used as, or does not contain, a children's burial ground. As such, the Board decided to refuse permission on the 24<sup>th</sup> May 2021 on the grounds of prematurity prior to the establishment of whether there is a children's burial ground located within the site and the extent of any such burial ground. This issue will be discussed further in my report.

## **3.0 Proposed Development**

- 3.1. Permission is sought for 92 apartments, a creche and associated works in two blocks ranging from 5 to 8 storeys. It is situated on a site which largely aligns with the eastern portion of the SHD application for 179 units (308790), which had formed three blocks (A, B and C) and was refused by the Board. It also lies immediately to the north of the site of the previous proposal for 67 apartments, which formed 'Block D', which was the subject of a first party appeal against refusal and was refused by the Board on the 15<sup>th</sup> July 2021.
- 3.2. The proposed development comprises a residential development of 92 apartments, which are contained in two apartment blocks, together with a creche and a substation, and a wayleave for wastewater services upgrade. The apartment blocks front onto the internal access road and overlook the 19<sup>th</sup> Century Folly to the west/southwest. It is proposed to provide a ramped pedestrian/cyclist access to the adjoining greenway. The development is served by an underground car park which would be accessed from the internal access road immediately adjacent to the site,

and from Bessboro Road. It is proposed to upgrade the wastewater infrastructure with a wayleave across the parkland to the front of Bessborough House.

3.3. The following tables set out the key details of the proposed development:

No. Residential Units	92 apartments
Creche	213.4m <sup>2</sup> (25 child spaces) and 226m <sup>2</sup> outdoor space
Height	Block 1 - 5 storeys, Block 2 - 8 storeys
Site Area	0.513ha (developable area) 1.016ha (with wastewater wayleave)
Density	179dw/ha (developable land)
Plot ratio	
Site coverage	31%
Dual Aspect	
Open Space	Public open space – 1,110m <sup>2</sup> (21.6% developable area) Communal open space – 1,035m <sup>2</sup>
Car parking	28 spaces (including 4 creche drop off spaces)
Bicycle Parking	158 resident spaces, 48 visitor spaces

<b>Housing Mix</b>	
Studio	1 no. studio (1%)
1 bed	43 no. 1-beds (46.5%)
2 bed (3 person)	30 no. 2-beds (32.5%)
2 bed (4 person)	None
3 bed	18 no. 3-beds (20%)

3.4. The site is located within the curtilage of Bessborough House (Protected Structure), and a NIS has been submitted with the application. The documentation that accompanies the application largely relates to the overall development of the lands, including specific reference to the previous refused schemes and to the current SHD applications on the lands to the north (313216) and northwest (313206), and includes the following:

- Planning Statement
- EIA Screening Report
- Natura Impact Statement
- Bat Impact Assessment
- Part V Proposal
- Architect's Design Statement
- Housing Quality Assessment and Schedule of Accommodation
- Noise Impact Assessment
- Archaeological Impact Assessment and Assessment of Cultural Heritage Legacy Report
- Engineering Services Report
- Flood Risk Assessment
- Construction Management Plan
- External Lighting Report
- Daylight Reception Analysis reports, Sunlight and Shadow Analysis report and Energy Statement
- Landscaping Masterplan. Landscape Report and associated drawings.
- Arboriculture Survey and Impact Assessment
- LVIA and Photomontages

## 4.0 Planning Authority Decision

### 4.1. Decision

The Planning Authority decided to refuse permission for one reason as follows:

The proposed development due to its height, scale, design and relationship to the historic landscape in which it sits, would result in isolated residential blocks in a protected landscape within the curtilage of a protected structure, and would comprise haphazard development which would detract from the character of the area which is designated as an Area of High Landscape Value in the Cork City Development Plan. The development as proposed, would, therefore be contrary to objectives 6.13, 8.19 and 8.20 in the Cork City Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

##### **Executive Planner, Community, Culture and Placemaking (19/01/23)**

- An **EIA Screening Determination** was carried out (section 13) as the project is of a class listed in Schedule 5 Part 2 Class 10(b), but is subthreshold, and as Schedule 7A Information was submitted with the application. It was concluded that the development would not be likely to have significant effects on the environment and that the preparation and submission of an EIAR is not therefore required.
- An **Appropriate Assessment** was carried out (section 14). This included Appropriate Assessment Screening, Stage 1 which established that the site is not located within any Natura sites and that the development is not necessary for the management of a European site. It was established that there are two sites where the potential for a hydrological pathway is relevant, Great Island Channel SAC (001058) and Cork Harbour SPA (004030). A direct source-pathway-receptor was identified in respect of the stormwater outfall to the Douglas Estuary which is connected to the European sites. The potential for water pollution/degradation could not be ruled out and Appropriate

Assessment Stage 2 was required. The submitted NIS had concluded that in the absence of mitigation measures, potential effects could occur on surface water during construction/operational phases and potential impacts on waterbirds during construction. It was concluded that on the basis of the information provided, that the proposed development, either individually or in combination with other plans/projects, and subject to the implementation of best practice methodologies and the proposed mitigation measures, the proposed development would not adversely affect the integrity of these European sites in view of their Conservation Objectives.

- **Zoning/principle of development** – the site is primarily zoned ZO 01 – Sustainable Residential Neighbourhoods, but a small section in the south-western corner of the site falls within the ZO 17 Landscape Preservation Zone. It was concluded that the proposed development is acceptable in terms of the zoning and strategic policy in terms of the core strategy, the NPF and the RSES, which set ambitious population growth targets for Cork City and suburbs. However, the site is also designated as ‘Area of High Landscape Value’ which requires development to be ‘landscape-led and to safeguard the value and sensitivity of the particular landscape. Reference is also made to Obj. 6.13 where significant harm or injury to the intrinsic character of the landscape is caused.
- **Density** – 179dw/ha (developable area) is excessive having regard to site’s location within city suburbs. The site is within ‘Primary Urban Corridors & Principal Towns’ in respect of the Density & Building Heights Strategy (CDP), which has a target density for Mahon of 50-120dph. Densities of 179 dph are normally considered in city centre locations where services and public transport are readily available. The nearest Neighbourhood Centre was noted as 1.2km away via the Greenway for pedestrians and cyclists and bus services are limited to Nos. 202, 215 and 219. In the absence of concrete proposals for rapid transit public transport, this density would be inappropriate and contrary to the CDP.
- **Design, Scale and Height** – the height at 5-7 stories for Block 1 and 5-8 stories for Block 2 are considered to be excessive and exceed the targets for building heights for this area in the CDP of 4-6 stories (Table 11.2). It was

noted in accordance with the Building Height Guidelines, the proposed heights would be open to consideration in such locations. However, having regard to the scale and massing, the key concerns were noted as the impacts on the historic landscape associated with Bessborough House (Protected Structure) and would not result in a neutral/positive impact or respect the primacy/dominance of the AHLV, and would result in an isolated and piecemeal development which would detract from the character of the landscape.

In response to the references to the larger SHD proposal to the north (313216 – ‘The Meadows’), it was considered that the current application had to be assessed on its own merits as the SHD application was still pending. It was further considered that the proposed development had been designed as an extension to the said SHD proposal, which was inappropriate as it must be assessed as a standalone development which would not adequately address the landscape and historical setting of the site in architectural or urban design terms. It was noted that the City Architect and Conservation Officer had raised concerns in this regard and in relation to the height of the southern block and the failure to relate to the context of the leafy and open character of the folly.

- **Visual Impact** – it was noted that the highest point is 26.45m, which was considered to have impacts at short, medium and long-range views. Concern was expressed regarding the limited number of viewpoints chosen and their locations. VP1 (from Mahon Point) and VP3 (from the Greenway pedestrian bridge) were singled out as representing an inappropriate impact. Having regard to the relative scale of the blocks above existing buildings in VP1, it was considered that views from within the estate at closer proximity would be even more dominant and incongruous to the existing landscape. VP3 was considered to be less representative than a viewpoint further to the west which would have been within the Landscape Preservation Zone, and is likely to be over scaled and dominant, thereby detracting from the historic landscape.
- **Conservation Heritage** – Concern was expressed regarding the overbearing and negative impact, particularly of the southern block, on the Folly and on the setting of the former pleasure gardens, which form part of the protected

landscape, and the Landscape Preservation Zone. It was noted that the development would be 200m east of Bessborough House (PS) and 54m east of the Folly (NIAH), and as such, should have regard to the Architectural Heritage Protection Guidelines for Planning Authorities 2011 and to Strategic Objective 7 of the Cork CDP which require developments to respect the rich, historic built heritage of the city. Serious concerns were raised regarding the impact on the character of the historic landscape and architectural heritage of the lands, and it was considered that it would fail to comply with objectives 6.12, 6.13 and 8.20 of the CDP.

- **Residential amenity** – It was noted that the site is not proximate to any established residential sites and as such, the development is unlikely to result in any undue loss of privacy or access to sunlight/daylight. It was further noted that the proposed development was accompanied by a daylight/sunlight analysis which did not raise any concerns.
- **Residential Development Standards** – It was noted that the HQA that had been submitted with the application was in accordance with the standards in the Apartment Guidelines, including the 10% safeguard for developments of 10 or more apartments set out in section 3.8. The only exception was the aggregate living areas in respect of 9 of the apartments. Otherwise, the scheme met or exceeded the requirements in terms of the percentage of units exceeding the minimum standards and of dual aspect apartments (SPPR 4). The mix of units was generally acceptable in terms of SPPR 8, but the requirement in the CDP, (which post-dated the Apartment Guidelines), was for an increased supply of 3-4 bedroom units at this location, as identified in the HNDA. It was considered that FI may be required to address this issue.
- **Public open space/landscaping** – 1,110m<sup>2</sup> of POS is proposed representing approx. 21.6% of the developable area, which was considered acceptable. The location of the POS and the communal open space areas were considered to be acceptable, appropriately overlooked and well located. The pedestrian/cycle ramp onto the Greenway was also considered to be acceptable and in accordance with the overall objectives for the promotion of amenity areas and sustainable travel modes. However, the Parks & Landscape Officer was concerned about individual access points to the

Greenway, which cumulatively would damage the Greenway environment. It was suggested that the optimum access point for the Bessboro lands was from the proposed development to the north ('The Meadows'). In the event that this development does not proceed, alternative access arrangements will be required.

- **Archaeology** – The presence of the Protected Structure (Bessborough House) and structures listed on the Record of Monuments and Places (Icehouse) and the folly (on the NIAH) were noted. Reference was made to the City Archaeologist's Report which noted that the lands were operated as a Mother and Baby Home from 1922-1990s and that during this time it is estimated that up to 900 infants and children died at the home, and that the location of the remains of all but 64 of those children was not known, but presumed to be within the estate grounds. However, it was stated that this matter is beyond the scope of statutory archaeological planning guidance. The contents of the Archaeological Impact Assessment and the Assessment of Cultural Heritage submitted with the application were both referenced. It was noted that the City Archaeologist's report had concurred with the conclusions of these reports that the impact of the proposed development on sub-surface archaeology was low, and there was no objection to a grant of permission subject to appropriate mitigation.
- **Mother and Baby Home Legacy** – reference is made to the oral hearing (SHD - 308790) and the decision arising from that, the Circular NRUP 05/2022 issued by the Dept. of Housing, Local Government and Heritage and to the Institutional Burials Act 2022. In addition, it was noted that the applicant had submitted a 'proposal and methodology for forensically monitoring all ground works', which was acceptable to the City Archaeologist as the most appropriate forensic process to identify human remains located at the site, and a condition requiring this process to be undertaken was recommended.

**Infrastructure Traffic and Transportation issues** – it was noted that 28 residential parking spaces (as proposed) represented 0.3 spaces per unit, which although below the recommended standards in the CDP, was considered acceptable in principle at this location however, the Executive Engineer had expressed concerns that under-provision at locations where

public transport are insufficient, could lead to over-spill parking on local roads and suggested that if such an under-provision was to be accepted, it should be on the basis of a Mobility Management Plan. This would be required as FI. It was further noted that 206 bike parking spaces were provided which is just below the required 207 spaces. No Road Safety Audit was submitted, which was considered to be unacceptable and would be required as FI. Road design issues were raised in respect of pedestrian connectivity within the site and between the site and local facilities. FI was also required in respect of the Bus Connects connectivity and public lighting.

- **Services** – The Drainage Engineer raised some concerns regarding stormwater, flooding and wastewater, and sought FI in respect of the methodology and drainage strategy. The Environment Section was satisfied with the Waste and Environmental management proposals. The proposed childcare provisions were considered acceptable.
- **Part V** – the proposal is to offer 10% (9 units) as Part V. This was considered acceptable as it had been stated that the lands were purchased during the Transition Arrangement Period. However, documentary proof to this effect would be required.
- **Conclusion** – It was recommended that permission be refused as the proposal would fail to protect and reinforce the unique character of the site and would have a detrimental impact on several heritage assets, namely the historic landscape and folly, and would not be in accordance with Objectives 6.13, 8.19 and 8.20 of the Cork City Development Plan 2022-2028.

#### **Senior Executive Planner, Community, Culture and Placemaking (19/01/23)**

- The principle of residential development at this location was considered to be in accordance with the zoning objective, ZO 01 Sustainable Residential Neighbourhoods, in the Cork City Development Plan 2022-2028.
- The site is within an area designated as Area of High Landscape Value (AHLV) with Objective 6.13 of the CDP seeking to conserve and enhance the character and visual amenity of AHLV with a presumption against development where it causes significant harm or injury to the intrinsic character of the AHLV.

- It is considered that the proposed development, due to its height, scale, design and relationship to the historic landscape in which it sits, would result in isolated residential blocks in a protected landscape within the curtilage of a protected structure, and would comprise haphazard development which would detract from the character of the area and the protected landscape.
- As such, it is considered that the proposed development would fail to protect and reinforce the unique character of the site and would have a detrimental impact on several heritage assets, namely the historic landscape and folly. Therefore, the proposed development would not be in accordance with Objectives 6.13, 8.19 and 8.20 of the Development Plan as it would fail to protect the historic landscape from inappropriate development. Having regard to same, a refusal of planning permission is recommended.

#### **Senior Planner, Community, Culture and Placemaking (19/01/23)**

- The Senior Planner concurred with the recommendation of both the SEP and the Acting EP to refuse permission.

#### **4.2.2. Other Technical Reports**

**City Architect (18/01/23)** – the sensitivity of the site, in respect of the natural and architectural elements, together with the social legacy, make it an extremely delicate one in terms of development. The current proposal is not designed as a standalone project, but as an extension to the proposed SHD development to the north (313216). The P.A. has sought amendments to that application in respect of building heights. Whilst the proposed development aligns with the height strategy, design and layout of the SHD development to the north, and may be acceptable in the context of a more comprehensive scheme for the overall development of the lands, a standalone development would not adequately address the landscape and historical setting of this site, particularly the folly, in architectural and urban design terms.

**City Archaeologist (13/01/23)** – The proposed development is located within the Bessborough House Demesne, which has a number of structures listed in the RMP including Bessborough House (CO074-077), the Icehouse (CO074-051), Bessborough House is a Protected Structure (PS490), and the folly is listed on the NIAH (20872007). The use of Bessborough House and a Mother & Baby Home has been associated with the recording that over 900 infants died at the home, the

remains of at least 64 of which are buried in a recorded location and the location of the remains of the remainder are unknown. It was acknowledged that the Board had refused permission for 308790 stating that it would be premature to grant permission prior to establishing if there were unrecorded burials within the site. However, the City Archaeologist believed that the proposed development site lies outside the area that formed the basis of the oral hearing.

In archaeological terms, the AIA report submitted with the application indicated that the site has been heavily disturbed and that the archaeological potential is very low. However, the line of the proposed sewer upgrade runs through the Zone of Notification for the Icehouse. The CA concurred with the findings and had no archaeological objection to the proposal subject to mitigation.

In terms of cultural heritage, reference was made to the 'Assessment of Cultural Heritage Legacy Report' (John Cronin) submitted on behalf of the applicant, which had concluded that on the basis of the cartographic evidence, the author believed that the site was outside of the area of concern. Reference was also made to the 'Proposed Forensic Archaeological Methodology' (prepared by Dr. Niamh McCullagh), which was also submitted by the applicant, which proposed a methodology on how to deal with the possibility of unrecorded burials at the site. It was noted that the conclusion of that report was that it was not possible to rule out the potential for burials at the site and a programme of forensic monitoring was therefore proposed, which would identify any human remains that may be present. The City Archaeologist concurred with the conclusions of this report and stated that 'given the proximity to the Congregational Burial Ground and the area north of the folly, the methodology proposed would ensure that should human remains be present, they would be identified and dealt with in an appropriate manner.

The City Archaeologist acknowledged the need to treat all human skeletal remains with 'residual rights and innate dignity' and the symbolic relationship between burial grounds and people still living. The sensitivities associated with the former use of the site for this particular Mother and Baby Home were also highlighted in the context that 'many people feel that there are unresolved questions in relation to the location of a children's burial ground' at Bessborough. The City Archaeologist considers that the monitoring of ground works by a forensic archaeologist is the appropriate response. It was pointed out that the conditioning of a forensic strategy does not equate to a condition requiring forensic investigation and excavation. It was further

pointed out that this issue is beyond the scope of planning archaeology and that the City Archaeologist does not have the authority to recommend archaeological investigation under the National Monuments Act.

No objection was made subject to two conditions, one standard one relating to archaeological monitoring and the other a bespoke one relating to forensic archaeological monitoring.

**Conservation Officer (12/01/23)** – Reference is made to the protected structures and recorded monuments on the site and their importance as heritage assets, as well as to the legislative provisions in the PDA and the relevant objectives of the Cork CDP. These include Strategic Obj. 7 and Objectives 8.17, 8.19, 8.20, 6.12 and 6.13, in relation to conservation of the built heritage of the city and in particular, protected structures and historic landscapes, Landscape Preservation Zones and Areas of High Landscape Value. The CO advised that the proposal must take account of this historic character and must mitigate any potential negative visual impacts on the protected structure, its setting, the folly and the historic landscape. The CO raised concerns about the design strategy which appeared to be based on the SHD proposal to the north but has not been determined. Without this context, it was considered that the proposed blocks would appear over scaled and dominant in the landscape and would detract from the historic landscape and setting, including the folly, which form part of the curtilage of the PS. It was considered that the proposal would be contrary to SO 7 as it would fail to protect and reinforce the unique character of the site and would have a detrimental impact on several heritage assets, and would, therefore, be contrary to Obj. 8.19 and would not accord with the Architectural Heritage Guidelines. It would also be contrary to Obj. 8.20, 6.12 and 6.13 as it would fail to protect the historic landscape from inappropriate development.

**Environment Report (18/01/23)** – No objection to layout, open space distribution and protection of the boundaries. However, the individual access to the Greenway is problematic as it would result in a series of such access points which would be damaging to the Greenway environment. The preferred access point is from the proposed SHD case (313216 – ‘The Meadows’) to the north as this caters for a greater catchment area. Failing this, the existing access point from the Bessboro lands to the south should be utilised and a pathway constructed from the development to connect with this.

**Environment Report Waste Management & Control (12/01/23)** – No objection subject to conditions regarding construction waste, construction noise, other construction impacts and waste management.

**Drainage Section (12/01/23)** – concern was raised regarding the lack of adequate information in terms of the methodology and/or justification for the drainage strategy proposed or for the selection of key design criteria, factors and parameters in the design. FI was requested in respect of these matters.

**Infrastructure Development Report (15/12/22)** – CMATS identified the Passage Railway Greenway as the indicative route for the future light rail corridor. TII is currently carrying out a route selection study to identify the preferred route. The proposed development includes a proposed ramped access to the greenway which would need to be assessed in terms of the safety of the integration with the greenway and to ensure that the stability of the railway cutting slope is not compromised. The proposed bus connects network shows Route 20 (Bessboro to City) serving the area at 60 min daily (midday) frequency and Route 20 is currently shown as terminating just north of the proposed development site. There is a need to ensure that the proposed development allows for bus turning movements associated with route 20. No objections subject to conditions to this effect.

**Housing Section (14/12/22)** – It is proposed to transfer 9 units in Block B to satisfy Part V requirements. These include 4 no. 1-bed, 4 no. 2-bed and 1 no. 3-bed apartments. The number and unit mix are considered acceptable as the land purchase was during the transition phase. However, documentary evidence will be required to verify this. No objection subject to condition.

**Traffic Regulation and Safety (07/12/22)** – maximum car parking requirement (CDP) is 92 residential and 4 for creche, and it is proposed to provide 28 spaces (29% provision). Adequate disabled spaces proposed but shortfall in EV spaces (3 additional) and motorcycle parking spaces (2 additional) and 4 drop off spaces required for creche. Although reduced parking provision is normally supported, it is recognised that in areas where public transport services are deficient, this can give rise to undesirable over-spill parking. Hence a Full Mobility Management Plan is required to assess the adequacy of the proposed parking provision. Cycle parking 158 permanent secure spaces required and 46 visitor spaces (total 207). It is proposed to provide 206, which is deemed to be sufficient. Public lighting – need FI.

Road Safety – no Road Safety Audit submitted – FI required. Clarity on pedestrian and cyclist connectivity and effective widths of footpaths is required. Construction Traffic Management Plan also required.

**Urban Roads and Street Design (Planning) Report (28/11/22)** – Clarification is required of the effective width of the public footpath on the eastern side of the Bessborough Road between the proposed car parking bays and the proposed structures. This should adhere to DMURS guidance. Clarification is also required of the width of the pedestrian public route to the south of the structures to access/egress the Greenway. Details are required of the proposed pedestrian and cyclist crossing facility of the Bessborough Internal road for users to access/egress the route to the Greenway. It is further required that details be submitted of appropriate pedestrian connectivity via continuous footpath provision and appropriate crossing facilities where necessary for residents to access the services on Skehard Road (R852).

**Contributions Report (16/01/23)** – A development contribution of €262,187.18 is required under the General Development Contribution Scheme 2020-2022, dated 14<sup>th</sup> September 2020. No other contributions are required.

#### 4.3. Prescribed Bodies

**Irish Aviation Authority (14/12/22)** – The Safety Regulation Division, Aerodromes, considers that in the event that planning permission is granted, a condition should be attached requiring notification of the authority of intention to commence crane operations with at least 30 days prior to notification of their erection.

**Uisce Eireann (10/01/23)** – no objection subject to connection agreements.

**Transport Infrastructure Ireland (14/12/22)** – no observations.

**Cork Airport (02/12/22)** – no specific comments other than to consult with the IAA and the IAA-ANSP.

**Inland Fisheries Ireland (01/12/22)** - It appears it is proposed to dispose of effluent from the development to the public sewer. IFI would ask that Irish water/cork County Council signifies there is sufficient capacity in existence so that it does not a) overload either hydraulically or organically existing treatment facilities, b) result in polluting matter entering waters or c) cause or contribute to non-compliance with

existing legislative requirements. FI is required and IFI has requested to be informed when this information is submitted.

#### 4.4. **Third Party Observations**

Gerard O'Mahony (19/12/22)

Cllr. Lorna Bogue (20/12/22)

PFS Private (21/12/22)

Oliver Moran (21/12/22)

Cork Survivors and Supporters Alliance (21/12/22)

Cllr. Ted Tynan (21/12/22)

Civil Engagement Group Seanad Eireann (21/12/22)

Donnchadh O Laoghaire TD, Cllrs Mick Nugent, Eolan Ryng (21/12/22)

Brian O'Flynn (21/12/22)

Emma O'Neill (21/12/22)

Deborah Burrows (21/12/22)

Mary Slattery (21/12/22)

- 4.4.1. The submissions received by the planning authority are on file for the Board's information. The issues raised are similar to those raised in the observations on the grounds of appeal. They include issues relating to legacy, potential for the site to have been used as a burial ground, project splitting, excessive density and height, adverse impact on historic landscape and visual impact.

## 5.0 **Planning History**

### 5.1. **Subject site**

- 5.1.1. **ABP.308790-20** – Permission **Refused (May 2021)** by the Board for SHD application for 179 apartments, creche and all associated site works. The site incorporated the site of the current application/appeal but also extended further to the west, to the north of the folly. Prior to determination of the application, the Board directed that an Oral Hearing be conducted, which was held in April 2021. The OH

was on the basis of a limited agenda relating to the legacy issue associated with the site. The terms of the limited agenda may be summarised as follows:

1. Further clarification was sought in respect of the areas identified as potential children's burial grounds.
2. Further clarification was required in respect of the appropriateness of excavation, surveying and monitoring during construction as opposed to prior to construction or prior to a grant of permission, as well as the viability/feasibility of the development were remains to be found.
3. Address detailed proposals as to how remains would be dealt with were they to be found on site, including the potential scenario that development could not proceed and as such, the legality/enforceability of any permission on the site.

5.1.2. **The reason for refusal is as follows:**

Having regard to the Fifth Interim Report (2019) and the final Report (2020) of the Commission of Investigation into Mother and Baby Homes, and on the basis of the information submitted in the course of the application and Oral Hearing, the Board is not satisfied that the site was not previously used as, and does not contain, a children's burial ground and considers that there are reasonable concerns in relation to the potential for a children's burial ground within the site associated with the former use of the lands as a Mother and Baby Home over the period 1922 to 1998. In this context, the Board considers that it would be premature to grant permission for the proposed development prior to establishing if there is children's burial ground located within the site and the extent of any such burial ground. It also considered that it would be premature to grant permission given the implications of such for the delivery of the development as proposed. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- 5.1.3. **ABP.28.203096 (TP03/27028)** – Permission **granted** for provision of an access road and associated site services for the development of lands at Bessborough Estate.

5.2. **Adjacent sites**

- 5.2.1. **ABP.309560-21 (TP 20/39705)** – Permission **Refused (July 2021)** for a residential development comprising 67 apartments in an 8-storey apartment building including a pedestrian/cyclist access to the Greenway. The reason for refusal reads as follows –

The majority of the site is located within an area zoned ZO12 Landscape Preservation Zone in the current Cork City Development Plan, the objective for which is to preserve and enhance the special landscape and visual character of the area. There is a presumption against development within this zone, with development only open for consideration where it achieves the site-specific objectives as set out in Chapter 10, Table 10.2. The proposed development comprising an eight-storey apartment block (Block D) has been designed as part of a larger residential development of 246 apartments and a creche in four blocks. Having regard to the refusal of permission by An Bord Pleanála under Reference ABP.308790-20 on the 25<sup>th</sup> day of May, 2021, for the three number apartment blocks comprising 179 number apartments, creche and all associated site works which form part of the said larger development, it is considered that a grant of permission for the proposed development on its own by reason of its location, height and scale would result in a haphazard form of development that would result in an isolated apartment block in a protected landscape. The proposed development would, therefore, materially contravene the ZO12 Landscape Preservation zoning objective and the related SE4 site specific objectives for the site as set out in Table 10.2 and would be contrary to the proper planning and sustainable development of the area.

- 5.2.2. There is a range of other previous planning decisions relating to the overall Bessborough grounds which are set out in the Area Planner's Report (pages 2-5).
- 5.2.3. There are two current SHD applications which are pending a decision with the Board on lands to the north and to the northwest of the site, which are also within the grounds of the Bessborough Estate as follows:

**ABP.313216 – SHD application** for a residential development and associated infrastructure comprising the construction of **280 apartments over 4 blocks** ranging in height from 1 to 10 stories, consisting of 6 no. studio apartments, 112 no. 1-bedroom apartments, 150 no. 2-bedroom apartments and 12 no. 3-bedroom apartments, a creche, a café and residential amenity facilities, a new pedestrian/cycle bridge over the adjacent Greenway including a connection to the

down ramp from Mahon to the Greenway and all associated works. This site is located immediately to the north of the subject site and extends northwestwards towards the Bessborough Centre. Decision pending.

**ABP313206 – SHD application** for a residential development and associated supporting infrastructure comprising the demolition of c. 10 no. existing farm buildings, the retention and re-purposing of 2 no. farm buildings and the construction of **140 apartments over 3 blocks** ranging in height from 1 to 5 storeys consisting of 70 no. 1-bed apartments, 69 no. 2-bed apartments and 1 no. 3-bed apartments, a creche and residential amenity facilities, a new pedestrian/cycle bridge over the Greenway including a connection to the down ramp from Mahon to the Greenway, ancillary and associated works. This site is located on the far side of the Bessborough Centre to the northwest of the site. It is physically and visually separated from the subject site by the cluster of buildings which make up the Bessborough Centre and the internal access road. Decision pending.

## 6.0 Policy Context

### 6.1. National and Regional Policy Context

- 6.1.1. **National Planning Framework (2018)** sets out the national planning objectives including National Strategic Outcomes for achieving compact growth and a strong economy. It includes an ambitious vision for Cork including the growing and diversification of the city's employment base and creating an enhanced urban environment. The target population is 314,000 for Cork City and suburbs by 2040.

#### 6.1.2. Section 28 Ministerial Guidelines

The following are of relevance to the appeal:

- **Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities (2024)**. This replaces the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas including the associated Urban Design Manual (2009).
- **Sustainable Urban Housing: Design Standards for New Apartments Guidelines for P.A.s, (as amended 2020)**

- **Urban Development and Building Heights Guidelines for Planning Authorities (2018)**
- **The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)**
- **Architectural Heritage Protection Guidelines for Planning Authorities (2011)**
- **Framework and Principles for the Protection of Archaeological Heritage**
- **Design Manual for Urban Roads and Streets (2013)**

6.1.3. **Circular NRUP 05/2022** – Appropriate measures to ensure the protection of unrecorded burials associated with institutions operated by or on behalf of the State (or in respect of which the State had clear regulatory or supervisory responsibilities) in Development Plans, in circumstances where there is a possibility of the final report of the Commission of Investigation into Mother and Baby Homes. Issued by the Department of Housing, Local Government and Heritage on 17<sup>th</sup> November 2022.

6.1.4. **Southern Region's Regional Spatial and Economic Strategy (RSES)**

The Southern Region's Regional Spatial and Economic Strategy provides a long-term regional level strategic planning and economic framework, in support of the implementation of the National Planning Framework and the related Government policies and objectives, for the future physical, economic and social developments for the Southern Region. It supports the NPF population target for the metropolitan area.

In addition, **Cork Metropolitan Area Transport Plan** supports the delivery of the 2040 population growth for the Cork Metropolitan Areas. It will provide the opportunity to integrate new development at appropriate densities with high-capacity public transport infrastructure in conjunction with more attractive walking and cycling networks and associated public realm improvements.

6.1.5. **Metropolitan Area Strategic Plan (MASP)**

As part of the RSES, the Southern Regional Assembly has prepared a Metropolitan Area Strategic Plan for the Cork area. The Cork Metropolitan Area Strategic Plan (CMASP) is a high level and long-term strategic vision, to identify critical priorities for the sequencing and delivery of growth that supports the core city area. CMASP

identifies Mahon as a potential location for a light rail corridor. Investment priorities identified for the area include:

- New public transport bridge and route linking via Bessboro to Mahon.
- Expansion and upgrading of amenity areas and walking/cycling routes.
- Investment in retrofitting infrastructure and services (physical, social and recreational) to improve quality of life for communities.

## 6.2. Cork City Development Plan 2022-2028

- 6.2.1. **Zoning** – the majority of the site is zoned **ZO 01 Sustainable Residential Neighbourhoods** with the objective to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses. A small portion of the site is zoned **ZO 17 Landscape Preservation Zone** the objective for which is to preserve and enhance the special landscape and visual character of the Landscape Preservation Zones. The lands to the west of the site are also zoned Landscape Preservation Zone.
- 6.2.2. The **Core Strategy (Chapter 2)** seeks to deliver compact growth that achieves a sustainable 15-minute city of scale with densities that create liveable, walkable and integrated communities linked to active travel and public transport. The core strategy also seeks to protect and enhance the unique character and built fabric of the city by caring for the Protected Structures, Recorded Monuments and heritage assets and to ensure that the development of the city is based on attractive, diverse and accessible urban spaces and places where placemaking is at the heart.
- 6.2.3. **Chapter 10 – Key Growth Areas** (and the Core Strategy) identifies **Mahon** as an area for growth consolidation and enhancement by providing a mix of new neighbourhood uses in suitable and underutilised locations. Mahon includes a zoning designation as a District Centre, which includes Mahon Point Shopping Centre and an established area of Retail Warehousing. Mahon is also earmarked for significant transport upgrades with the CMATS outlining plans for high-frequency bus routes, an upgraded greenway and a future light rail linking Mahon with Ballincollig via the City Centre. Mahon is located within the City Fringe, Primary Urban Corridors & Major Urban Centres (Map 6 Vol 2, Fig 11.1, Vol. 1) which is an intermediary zone in density terms between the city centre and the inner/outer suburbs where the

objective is to seek the best use of land in the form of dense development that responds to planned mass transit provision (11.52).

**Obj. 10.89 – Mahon** – includes seeking to support its development as an area for growth consolidation and enhancement by providing a mix of new neighbourhood uses and to support the sustainable development of the District Centre as a mixed-use centre.

6.2.4. **Chapter 3 – Delivering Homes and Communities** – relevant objectives include -

**Obj. 3.1 Planning for Sustainable Neighbourhoods** – ensure that placemaking is at the heart of the design concept with neighbourhood integration, health and wellbeing enhancement at the centre of the development.

**Obj. 3.5 Residential Density** – Promote compact growth by encouraging higher densities, ensuring high quality sustainable residential development and a balance between the protection of the surrounding area and existing residential amenities.

**Obj. 3.6 Housing Mix** – implement the provisions of the Joint Housing Strategy and HNDA for Cork City.

6.2.5. **Chapter 11 Placemaking and Urban Design** – includes fostering socially and economically viable communities and creating a distinctive sense of place, taking into account the context, character and setting of a place and ensuring that the layouts of proposed developments are designed to create areas that are permeable, pleasant, legible and safe.

6.2.6. This chapter sets out the appropriate densities for each area of the city. Mahon is located within the Fringe/Corridor/Centre zone (Table 11.2) which provides a target density for Mahon of 50dph (lower) and 120 dph (upper), with a target building height range of 4-6 storeys. The prevailing density is stated as 10-40 dph with a prevailing height of 2-5 storeys.

6.2.7. Other relevant objectives include -

**Obj. 11.1 Sustainable Residential Development** – including contribution to the 15-minute city, creation of high quality, walkable neighbourhoods with easy access to facilities, vibrant communities with active streets, prioritising walking, cycling and public transport, attractive and high-quality public realms and enhancing and protecting the natural and built heritage.

**Obj. 11.2 Dwelling size and mix** – target dwelling sizes for schemes of more than 50 dwellings set out in Tables 11.3-11.9.

**Obj. 11.3 Housing Quality Standards** – key qualitative aspects set out in Table 11.10 including maximising dual aspect, provision of sufficient daylight and sunlight, waste management and minimum spatial standards. Reference is also made to the need to comply with the Apartment Guidelines.

**Obj. 11.4 Daylight, Sunlight and Overshadowing (DSO)**

**Obj. 11.5 Private amenity space**

**Table 11.11 Residential Public Open space** - 105 generally but 15% for greenfield sites for which a local area plan is appropriate.

## **Chapter 6 – Green and Blue Infrastructure, Open Space and Biodiversity**

- 6.2.8. Includes Landscape Protection policies and sets out the Landscape Preservation Zones. At para 6.19 it is stated that these LPZ's are zoned ZO 17 in order to protect their character and amenity value. These areas are considered to be highly sensitive to development and as such have limited or no development potential.
- 6.2.9. At 6.20 it is stated that the objective of the LPZ's is to preserve and enhance the landscape character and assets of the site

**Obj. 6.12 Landscape Preservation Zones** - To preserve and enhance the character and visual amenity of landscape preservation zones through the careful management of development. Development will be considered only where it safeguards the value and sensitivity of the particular landscape and achieves the respective site-specific objectives, as set out in Tables 6.6-6.10.

- 6.2.10. **Table 6.5** outlines the **Landscape Preservation Zone Landscape Assets Categories** (which are listed and annotated with a letter A – S inclusive), and Table 6.9 sets out the Site-Specific Landscape Preservation Zone Objectives in the South-east of the city. Bessboro House is listed as a location where a Landscape Preservation Zone (SE4) applies and the assets which apply are J, G, C, B and I, respectively. These assets are listed in Table 6.5 as follows:

**J** Historic Landscapes (including monuments/historic routes)

- G** Landmarks/Natural Features/ cultural Landscapes – land forming the setting to existing landmark buildings and/or protected structures/buildings of significance.
- C** Tree Canopy – Areas with existing woodlands or significant tree groups, or areas with potential for new woodlands.
- B** Water/River Corridors – rivers, estuary, harbour, The Lough, Atlantic Pond, Docklands, Port of Cork
- I** Institutional open space.

6.2.11. The **Site-Specific Objectives** for Bessboro House **SE4** (Table 6.9) are

- To reinstate Historic Landscape
- To seek use of grounds as a Neighbourhood Park in context of local area plan
- To allow development within the immediate environs to the north of Bessboro House consistent with the landscape and protected structure significance of the site.

6.2.12. The open space and recreational ambitions for the city include making sure that public open space is available to meet the needs and demands of the city, which will include a combination of protecting, enhancing and providing new spaces to meet recreational and amenity needs (6.43). It is stated that CCC will seek to advance the provision of new parks in partnership with developers and the upgrading of existing parks and open spaces during the life of Plan as set out in Table 6.12 (6.47). **Table 6.12 ‘Other Park Open Space Projects’** designates Bessboro as a proposed **Neighbourhood Park** project for the South-East of the city. **Objective 6.19** also seeks to achieve the aim of creating a hierarchy and network of city parks close to people’s homes.

**Obj. 6.9 Landscape** – To preserve and enhance Cork’s landscape character, key landscape assets and views and prospects of special amenity value, to ensure that new development meets the highest standards of placemaking, siting and design.

6.2.13. Areas of **High Landscape Value** combine one or more of the Landscape assets listed in Table 6.5. this is an additional objective overlaying the land-use objective. The site lies within the **Douglas Estuary/Lough Mahon AHLV**.

**Obj. 6.13 Areas of High Landscape Value** – to conserve and enhance the character and visual amenity of Areas of High Landscape Value through the appropriate management of development in order to retain the existing characteristics of the landscape, and its primary landscape assets. Development will be considered only where it safeguards the value and sensitivity of the particular landscape. There will be a presumption against development where it causes significant harm or injury to the intrinsic character of the AHLV and its primary landscape assets, the visual amenity of the landscape, protected views, breaks the existing Ridge silhouette, the character and setting of buildings, structures and landmarks, and the ecological and habitat value of the landscape.

## **Chapter 8 – Heritage, Arts and Culture**

6.2.14. The vision for this chapter includes objectives which seek to promote the protection of the heritage of the city and to encourage development which is sensitive to the historical importance and improves access to and understanding of the architectural heritage. It sets out the policies and guidance on issues relating to archaeology, architectural heritage, cultural heritage, the arts and natural heritage. Relevant objectives may be summarised as follows:

6.2.15. **Strategic Obj. 7** – to identify, protect, enhance and promote Cork’s unique cultural heritage and expression in an authentic and meaningful way; To ensure that heritage elements of archaeological, architectural and cultural significance are retained and interpreted wherever possible, and the knowledge placed in the public domain. Proposals for new development must have regard to the historic built heritage of the city, particularly Protected Structures, archaeological monuments and archaeological heritage and ACAs, and any development that has a detrimental impact on these assets will not normally be acceptable.

**Obj. 8.2 Protection of the Archaeological Resource** – will protect and enhance the archaeological value of the sites and their settings listed in the RMP and the Historic Environment viewer.

**Obj. 8.6 Protection of Burial Grounds** – seek to preserve and enhance burial grounds and their settings. Development in and adjacent to these areas

will be limited. Where former burial grounds are in use as amenity spaces, then their retention for passive recreational use will be required.

**Obj.8.9 Preservation of Archaeology within Open Space Developments** – where archaeological remains are to be retained in-situ, they will be protected, safeguarded and where suitable, interpreted in an accessible manner. If located within open space, this will be in addition to the overall open space provisions.

**Obj. 8.17 Conservation of the City's Built Heritage** – ensure the conservation of the City's built heritage and that it contributes fully to the social and economic life of the city.

**Obj. 8.18 Re-use and Refurbishment of Historic buildings**

**Obj. 8.20 Historic Landscapes** - CCC will ensure that the designated and undesignated historic landscapes and gardens throughout the city are protected from inappropriate development and enhanced where possible.

**Obj. 8.22 National Inventory of Architectural Heritage** – CCC will have regard to Ministerial recommendations to consider the designation of such buildings and gardens as Protected structures and these ministerial Recommendations will be taken into account in considering development which might affect these structures. CCC will also engage with stakeholders including public representatives, building owners and the public to develop the most appropriate response for the protection of such buildings, groups of buildings and historic areas.

### 6.3. Natural Heritage Designations

6.3.1. The relevant Natura sites in the vicinity of the site are

Cork Harbour SPA (004030)

Great Island Channel cSAC (001058)

6.3.2. An Appropriate Assessment Screening Report and a NIS were submitted with the application. The planning authority has carried out an AA screening and an Appropriate Assessment (page 41-46 of the Area Planner's report). It was noted that the submitted AA Screening Report had concluded that the potential for water quality

degradation as a result of the proposed works could not be ruled out and a Stage 2 Appropriate Assessment was required.

- 6.3.3. It was noted that the submitted NIS had concluded that subject to implementation of best practice and the detailed mitigation measures, the proposed development would not have a significant effect either individually or in combination with other plans or projects on the conservation objectives of the Great Island Channel SAC or the Cork Harbour SPA.
- 6.3.4. The Area Planner advised that adequate information had been provided in the submitted documents to reach considered conclusions on the matter. It was agreed that it was in order to carry out a Stage 2 Appropriate Assessment and the Area Planner agreed with the conclusions of the Natura Impact Statement.

#### **6.4. EIA Screening**

##### **Introduction**

- 6.4.1. The applicant submitted an EIA Screening Report prepared by HW Planning, which constitutes Schedule 7A information. The EIA Screening Report concluded that the proposed development was sub-threshold, and that EIA would not be required. It is confirmed that the report had regard to the criteria set out in Schedule 7 and the requirements under Schedule 7A of the 2001 Regulations (as amended). It was also confirmed that the assessment had regard to Annex IIA and Annex III of the Environmental Impact Assessment Directive.
- 6.4.2. The planning authority has carried out an EIA Screening (page 33-41 of Planner's report). The P.A. considered that the application is sub-threshold development and as Schedule 7A information was submitted, a Screening Determination would be carried out. It was concluded that, having regard to the criteria in Schedule 7, the information provided in accordance with Schedule 7A of the Planning and Development Regulations 2001 (as amended), the proposed development would not be likely to have significant effects on the environment and that an EIAR would not be required to be submitted.
- 6.4.3. In accordance with Article 109(2B)(a) of the Planning and Development Regulations 2001 (as amended), where an application is made for sub-threshold development and where Schedule 7A information is submitted, the Board cannot screen out the

need for EIA at preliminary examination stage, and an EIA Screening Determination must be carried out.

### **EIA Screening Determination**

- 6.4.4. I have carried out a Preliminary Examination (See Form 1 appended to this report). It was concluded that the proposed development is of a class of development included in Schedule 5, Part 2 of the Planning Regulations as follows:

#### **Class 10(b)**

- (i) Construction of more than 500 dwelling units
- (ii) Construction of a carpark providing more than 400 spaces, other than a car park provided as part of, and incidental to the primary purpose of, a development
- (iii) Construction of a shopping centre with a gross floor area exceeding 10,000 square metres
- (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.

(In this paragraph, “business district” mean a district within a city or town in which the predominant land use is retail or commercial use).

It was considered that the number of units at 92 apartments falls well below the threshold of 500 dwelling units and the site area, at 1.01ha falls well below the 10 or 20 hectare threshold and is not in a business district. As such, it was concluded that the proposed development is sub-threshold and does not require a mandatory EIA. However, it is still necessary to consider whether the project is likely to have a significant effect on the environment in terms of the criteria set down in Schedule 7 of the P&D Regulations (2001).

- 6.4.5. I am satisfied that the EIA Screening Report submitted with the application, together with the other information submitted with the application and appeal, provides sufficient information to enable a screening determination to be carried out and includes the necessary information required under Schedule 7A. I have completed an EIA Screening Assessment, as appended to this report, and have considered all relevant considerations including the characteristics of the proposed development,

the location of the proposed development and the type and characteristics of the potential impacts. Having regard to:

- The nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i) and 10(b)(iv) of Schedule 5, Part 2 of the Planning and Development Regulations 2001(as amended);
- The location of the proposed residential development on zoned lands where the proposed uses are either permitted in principle or open for consideration, within the Cork City Development Plan 2022-2028 as 'ZO 01 - Sustainable Residential Neighbourhoods' with a stated objective 'to protect and provide for residential uses and amenities, local services, community, institutional, educational and civic uses', and the results of the Strategic Environmental Assessment of the Development Plan;
- The nature of the existing site and the pattern of development in the surrounding area;
- The availability of mains water and wastewater services to serve the proposed development;
- The location of the development outside of any sensitive location specified in Article 109(4)(a)(v) of the Planning and Development Regulations 2001, as revised;
- 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);
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised; and
- The features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project Construction and Demolition Waste Management Plan, the Outline Construction Management Plan, the Outline Construction and Environmental Management Plan, the Archaeological and Architectural Heritage Impact Statement and the Engineering Services Report.

6.4.6. It is considered that proposed development would not be likely to have significant effects on the environment and I am satisfied that the preparation and submission of an Environmental Impact Assessment Report would not, therefore, be required.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- 7.1.1. This is a first party appeal against the refusal of planning permission. The appellant's agent makes reference to the SHD proposal on the lands for 179 units, which was refused by the Board in May 2021 (308790), to the development of 67 units on the lands to the south (309560), which was also refused by the Board (July 2021) and states that these sites form the overall masterplan for the development of the lands within the applicant's ownership. It was pointed out that the southern block (309560) did not come within the remit of the SHD legislation and as such, was submitted to the planning authority. However, it was considered that the Board had not raised an objection to the principle of the development of these lands, and as such it was assumed that it retains development potential.
- 7.1.2. Reference was also made to the current SHD applications on the lands to the immediate north and to the northwest, 'The Meadows' (313216) and 'The Farm' (313206), respectively, which are outside of the applicant's ownership. It is stated that there is no interdependencies between the current application and these development proposals, but that the application has been designed having regard to these schemes.
- 7.1.3. In respect of the legacy issue relating to the former use of the lands as a Mother and Baby Home, it is submitted that the P.A.'s Reason for Refusal is based on a chronology matter rather than the principle, and that the position of the City Archaeologist on this matter is welcomed. It is further submitted that the applicants have 'adopted a robust approach to the consideration of the findings of the Commission of Investigation into Mother and Baby Homes with regard to the potential for unrecorded burial sites within the wider Bessborough Estate lands'. It is stated that the application has comprehensively addressed the previous reason for refusal and notes that the P.A. has recently rezoned one part of the site, (that area immediately north of the folly), which it is submitted was "the focus of the oral hearing and Cork Survivors & Support Alliance's concerns", and it is believed that the P.A.'s decision supports the applicant's approach to this issue.
- 7.1.4. It is proposed by the first party appellant, therefore, to deal with the legacy issue by means of a proposed condition and as such, it is not proposed to raise the matter in

the appeal. However, notwithstanding this, the applicant's approach to the legacy issue and its response to this matter are set out in Section 4.2 of the document entitled 'Planning Statement', which accompanied the planning application.

7.1.5. **The grounds of appeal may be summarised as follows:**

- **The proposal is not an isolated or haphazard development –**
  - **Not haphazard development** - The proposed development has had full regard to the planning history of the site and the evolving character of development in the area. It does not, therefore, constitute haphazard development and will not result in isolated residential blocks in a protected landscape.
  - **No requirement for sequencing of development** – it is acknowledged that the decision by the Board to refuse 309560 was the right one as the related SHD development had been refused two months previously and it would have resulted in an isolated development. However, this rationale does not apply here as the proposal has been designed to integrate with the SHD proposal to the north, which has not been refused, and a decision for which is still pending. The proposal cannot be considered haphazard simply because the decision on the SHD proposal has been delayed, particularly as the reason for the delay is outside of the applicant's control.
  - **Revised masterplan approach** - The Board will note that the previous Masterplan prepared by Wilson Architecture was based on a radial arrangement of buildings around the folly. However, the recent dezoning of lands immediately to the north of the folly has created uncertainty regarding this approach and a fresh approach has been set out in the Shipsey Barry Design Statement. This revised 'masterplan approach' is based on a geometric alignment of buildings forming an orthogonal relationship with the Greenway and has had full regard to the planning history of the site. It provides a rationale for the design approach which will ensure a coherent and integrated development.
- **The height, scale and design of the proposal are appropriate –**
  - **Appropriate location for density** - The site is located in an 'Accessible Urban Location' and in accordance with the 'Apartment Guidelines' (2022),

such locations are considered to be suitable for high density residential development in buildings of scale. It is noted that the density at 179dph is above the 120dph target for Mahon, but it is submitted that these are targets and not caps, and only one of a number of standards to be applied.

- **Area of High Landscape Value given undue weight** – this is not a new designation as the site was also so designated in the 2009 CDP. Development is not prohibited in AHLV areas and is permissible where it results in a neutral/positive impact on the landscape. It is submitted that the site itself is of low landscape sensitivity as it comprises disturbed grass and scrub, spoil and overgrown roadways and is poorly maintained, is not visually connected with Bessboro House and is outside of the historic parkland setting for the Protected Strcuture.
- **Principle of development established in 308790** – it was accepted by the Inspector and the P.A. Conservation Officer that the principle of development on these lands would be acceptable provided that ‘a new and respectful relationship between old and new’ could be created and ‘the centrality of the existing landscape features’ were strengthened. It is submitted that the design of the proposal achieves these aims and that it would result in a neutral/positive impact on the landscape.
- **No adverse impacts on residential or visual amenities** – The TVIA as well as the proposed provision of POS of 1,110m<sup>2</sup> (21.6% developable site area) and communal open space of 1,035m<sup>2</sup> demonstrates that the density and height can be achieved without adversely affecting the residential amenities of the future occupiers or the visual amenities of the area.
- **ABP Appeal Supplementary Document** - this document which was prepared by Shipsey Barry and was submitted with the appeal, assesses in detail the relationship between the proposed development and adjacent SHD proposed development, including suggested reductions in heights as proposed by the P.A. (313216). It also assesses how future development of the site to the south would also integrate with the overall development as proposed. It is submitted that the current proposal would integrate well with both proposed developments.

- **Option for Reduced Density included** – the Appeal Supplementary Document includes a reduced scale option, if deemed necessary by the Board, which reduces the height by one storey and the number of units to 76 with a density of 144dph (equivalent to SHD proposal to north as revised to incorporate P.A.’s comments re height).
- **No impact on Protected Landscape or Protected Structure –**  

The proposed development will not detract from the character of the area, the protected landscape or the Protected Structure.

  - **Issue not comprehensively addressed by PA** – the Inspector (308790) had comprehensively addressed this issue and had concluded that it would not contravene the CDP policies relating to Protected Structures, Historic Landscapes or the landscape designations pertaining to the site. It is noted that the Inspector had considered that

“the proposed height, scale and appearance of the development would not be out of character with the emerging pattern of development in the area and would be viewed as an extension of the baseline urban condition to the immediate east and the Mahon Key Development Area of which the site is part.”

It was further noted that the Inspector had considered that the proposed development would not have obstructed views of the PS and that the level of visual interaction between them was acceptable, given the intervening landscaping and distance, nor would it dominate the historic landscape. It is submitted that these views contained in the Inspector’s report represent a precedent which has not been taken into account by the P.A. in the assessment of the current application.
  - **Additional Viewpoints Prepared** – the 6no. additional viewpoints suggested by the Conservation Officer have been included with the grounds of appeal to demonstrate that the proposed development will not have an adverse impact on the Protected Structure, the historic landscape or the character of the area. It is further submitted that this demonstrates that the proposal would have a neutral/positive impact on the landscape and that it is not necessary to reduce the height of the blocks.

7.1.6. The Grounds of appeal were accompanied by the following documents which will be referred to in the assessment section of my report.

- Supplementary Appeal Document and Revised Site Section (Architect)
- Additional Viewpoints (Photomontages)
- Planning Statement with Method Statement by Forensic Archaeologist
- Design Statement
- Pre-planning Design Statement

## 7.2. Planning Authority Response

The planning authority has not responded to the grounds of appeal.

## 7.3. Third Party Observations to Grounds of Appeal

Observations were received from the following third parties -

- Cork Survivors and Supporters Alliance
- Gerard O'Mahony, 3 Castle Close, Ringmahon, Cork
- Carmel Cantwell
- Barbara Hegarty
- Minister Roderic O' Gorman TD
- Donnchadh O Laoghaire TD and Others
- Senator Erin McGreehan
- Councillor Lorna Bogue (Cork City Council)
- Oliver Moran (Green Party)
- PFS Private 24 Main Street, Ballincollig, Cork

7.3.1. The main **objections** may be summarised as follows:

### 1. **Legacy Issues**

- **Mother and Baby Home and associated unmarked graves** - Reference is made to the past history of the site as a Mother and Baby Home (1922-1998),

during which time it is stated that 19 mothers and 923 children died while resident there and have been buried within the grounds of Bessborough House. As the congregation (Sacred Heart of Jesus and Mary) did not record the location of the burials, and only 64 burials have been located, it is believed that up to 859 of the missing children are buried within the grounds of Bessborough, in unmarked graves, and this is supported by the findings of the Commission of Investigation into Mother and Baby Homes (2021) and by the developer's archaeological expert, Dr. Niamh McCullagh.

- **Site contiguous with Children's Burial Ground** - The site forms a continuum with the lands marked 'Children's Burial Ground' marked on 1949 OS Map and is only separated now by a modern road built in 2004/5.  
Reasons to doubt that infants buried in/adjacent to folly – Firstly, the evidence of a person responsible for significant excavation for a memorial garden in the vicinity of the folly in 1980s/90s presented to the Col stated that nothing was found during this excavation (sections 18.268 to 18.291 of Final Report). Secondly, the construction of the road around the folly enclosure was carried out on foot of a planning permission by the Congregation, which indicates that they did not believe that there were any remains in this area. This reinforces the idea that the remains are likely to be buried within the application site.
- **Planning history** - Evidence was presented to the oral hearing (308790) held in April 2021 regarding the likelihood of a children's burial ground immediately to the north of the folly. The Inspector recommended refusal, having regard to the serious concerns arising from the evidence presented at the hearing, but also having regard to the Final Report of the Commission of Investigation (M&BH) which had concluded that "the potential for unrecorded burials on other parts of the site cannot be excluded".
- **Applicant seeking to undermine evidence at Oral Hearing** – The Archaeological Report by John Cronin seeks to attack and undermine the evidence presented on behalf of the survivors and their families, which was subject to comprehensive expert scrutiny and detailed cross-examination during a 3-day hearing, and to ignore the previous decision of the Board. Furthermore, the developer did not challenge that decision by means of

Judicial Review. This is a transparent attempt to collaterally attack the ABP proceedings, as the opportunity to challenge the proceedings is out of time.

- **Necessity for full scale excavation** - To eliminate the uncertainty, the COIMBH Final Report stated that it would be necessary to excavate the entire Bessborough grounds, including lands that have been built on. To date, no such excavation has been carried out. Thus, the position since the Board's decision (308790) has not changed. The precise locations and extent of burials within the grounds of Bessborough House remains to be ascertained and, therefore, a grant permission would continue to be premature.
- **Legacy issues not archaeological in nature** – The approach of the developer to treat this issue as archaeological was correctly dismissed by the City Archaeologist. Development would risk further dispersal of human remains throughout the site, with potential for damage and degradation caused to human remains during the course of the works. This would have a devastating effect on the families and loved ones of the missing infants and would prejudice any future investigation into the circumstances of the deaths at Bessborough.
- **Likelihood of dispersed human remains throughout the site** – According to Dr. McCullagh's Report (Forensic Archaeologist for the applicant), the site is immediately adjacent to highly sensitive parts of the grounds and that there is a strong potential for dispersed infant remains to be located throughout the grounds, including the site of the proposed development. Yet the applicant, (incredibly), continues to suggest that the Children's Burial Ground is located in/or around the congregational burial ground, flying in the teeth of the findings of the Commission of Investigation, which had rejected this claim. In the absence of a comprehensive excavation, the possibility of human remains in any part of Bessborough cannot be discounted.
- **No development until a full forensic archaeological examination is completed** – Having regard to the Commission of Investigation's Final Report, which had concluded that the only way to establish whether and where burials have taken place within the grounds of Bessborough is by a full forensic archaeological excavation of the entire property. As this has not taken place, no development should be permitted on the site.

- **Inappropriate use of condition** - The proposed condition re forensic monitoring is inappropriate, is extraordinary in its scope and cannot adequately deal with the issues of unrecorded infant and adult burials. This issue was discussed at length at the oral hearing and the Inspector (308790) had concluded that the concerns regarding unrecorded burials could not be properly addressed by means of a condition.
- **Forensic monitoring condition would be inconsistent with the Institutional Burials Act 2022** which was signed into law on 13/07/22. This introduces a new regime for excavating 'manifestly inappropriate' unmarked and unrecorded burials within the grounds of former institutions having regard inter alia to the need to accord dignity to persons buried there and where appropriate establishing an identification programme, a DNA database and arrangements for appropriate burial of human remains. It also raises uncertainty regarding the capacity of the P.A. to enforce the condition as it would have to oversee excavation of the site in circumstances outside of the Institutional Burials Act 2022 and would be governed by domestic and international law regarding excavation of mass graves, the right to truth and the duty to carry out an effective investigation into the loss of life, which cannot be bypassed by a planning condition.
- **Memorialisation of the Children's Burial Ground**

The site at Bessborough is not just a burial site, it is a place with a living history for many people of Cork City and is a place to remember and mourn and is therefore part of the cultural heritage of the City. The sensitivity of the site includes the atrocities that occurred which should inform the education of future generations.

The children's burial ground must be memorialised, as discussed at the oral hearing. It must be protected from development in perpetuity, appropriately delineated and preserved in the form of a wildflower meadow. It should be identified through the erection of burial markers in consultation with the survivors and their families. Reasonable access for the families, together with seating areas around the memorial, must be provided. It became clear during the oral hearing that there are many reasons why an affected person visiting the site would not wish to be overlooked while doing so.

- **Circular NRUP 05/2022** - planning authorities must have regard to appropriate measures to ensure the protection of unrecorded burials associated with institutions. The Circular states that planning authorities must ensure that locations where there may be evidence of unrecorded burial sites are preserved and protected through the development plan review or variation process to both enable public consultation and to allow for further investigation and any subsequent action that may be required. In assessing applications at such locations, evidence of unrecorded burial sites should be treated as a material consideration.

## 2. **Contrary to Cork City Development Plan**

- **Core Strategy** - The CDP seeks to achieve development of a compact high-density urban core and to improve the green-blue infrastructure. This is a high value green space in a suburban area. As such, it is more in keeping with the CDP that such spaces are not developed as high-density contributors to urban sprawl and that such development is directed to inner city brownfield or infill sites.
- **Density, housing mix** - The design does not result in a sustainable local community as it is removed and isolated from the wider communities of Blackrock, Mahon and Ballinure. The proportion of one-bed apartments at 50% will not facilitate integration of the development and the housing mix is at odds with the Rental Stock Analysis for the area. Site is inaccessible, yet parking provision is limited, and the Greenway is not a secure alternative, particularly after dark.
- **Objective 8.6 ‘Protection of Burial Grounds’** seeks to preserve and enhance burial grounds and their settings. Development in and around these areas will be limited. Where former burial grounds are in use as amenity spaces then their retention for passive recreational use will be required.
- **Material contravention** – although not identified as such, the refusal by the P.A. is on the grounds of material contravention of the CDP, and as such, the Board can only grant permission on the basis of section 37(2)(b). As the development does not meet any of the exceptional criteria, and is a site of national importance, it must be refused.

### **3. Visual impact on Protected Landscape and Protected structures**

- **Landscape Preservation Zone** –Bessborough House and grounds are part of a LPZ which means that development must meet the site-specific objectives in Tables 6.6-6.10 of the CDP. The proposed development is contrary to Objectives 6.13, 6.20, 8.19 and 8.20. Part of the SHD site has been rezoned Landscape Preservation Zone, recognising that development on this site should only be granted where it is suitable and appropriate.
- **Inappropriate relationship with a protected landscape** – due to the height, scale, design and relationship to the historic landscape within which it sits, the proposed development would result in an isolated development of residential blocks in a protected landscape. Both buildings are too high, higher than recommended in the guidelines.
- **Area of High Landscape Value** – the proposed development is unacceptable in the AHLV, particularly as the previous justification for a radial development around the folly is no longer viable now that the lands to the north of the folly have been dezoned.
- **Haphazard development** – piecemeal development of the site in an attempt to circumvent the requirement to establish the location of the children's burial ground in advance of any further planning permissions, would result in development which is haphazard. The relationship to the historic landscape must take account of the location of the burial sites and the historic context of the national tragedy as well as the other elements of this historic landscape.

### **4. Contravenes the EIA Directive**

- **Historical and cultural significance** – the site and the landscape within which it sits are of historical and cultural significance, with the acknowledged potential for unrecorded infant burials within the site associated with the Mother and Baby Home. Thus, there are clearly likely significant effects on the landscape and cultural and historic factors requiring EIA.
- **Project splitting** – the proposed development of this site is stated to be part of a masterplan for the development of the Bessborough Complex as an integrated unit of land. As such, the submission of the current development in the absence of an EIAR amounts to project splitting. Reference is made to

Case C-142/07 which found that the EIA directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effects of several projects must not mean that they all escape the obligation to carry out an assessment.

- **AA Stage 2 triggers need for EIA** – the EIA procedure must be used in such instances as the procedural requirements under Article 6 of the Aarhus Convention are not implemented in Part XAB of the PDA 2000. Such requirements require consideration of alternatives and monitoring (Part X).

#### 7.3.2. **One observation in support**

- **PFS Private** believes that the site that was the subject of the oral hearing was that site to the north of the folly which was subsequently dezoned. It is submitted that the current application/appeal relates to a different site, which is zoned residential. It is adamant that the most likely location for the children's burial ground is to the north of the folly and disputes the evidence of the mapping expert (Mr Clarkin, on behalf of CSSA) presented at the OH.
- Reference is made to a letter from OSI CEO (17/12/21) which dismissed the significance of the locational significance of the blue markings on the trace map as presented by Mr Clarkin. It was further noted that on cross-examination, Mr. Clarkin had conceded that the markings were of no locational significance. Reference was also made to a further submission from the OSI CEO (3/3/22) which cast doubt on the interpretation of such markings.
- It is disputed that the proposed development involves project splitting. In these circumstances, it is questioned why Councillor Bogue and the CSSA have not objected to the SHD proposals on the sites to the north and northwest.

#### 7.3.3. **Roderick O'Gorman TD Dept. of Children, Equality, Disability, Integration and Youth (14/03/23) –**

- The Commission of Investigation into Mother and Baby Home's Fifth Interim Report noted that, despite extensive inquiries and searches, concluded that it is likely that some of the children who died at Bessborough are buried within the grounds, but was unable to find any documentary or physical evidence.

- In accordance with the Action Plan for Survivors and Former Residents (of such institutions), all planning authorities are to be advised of the precautionary approach to be taken in City/county Development Plans to the proper safeguarding of burial sites from potentially harmful development.
- On foot of this commitment, Circular NRUP 05/2022 was issued by the minister for housing, local government and Heritage on 17/11/22. This requires all development plans to give adequate consideration to incorporating measures to ensure protection and preservation of locations where there may be evidence of such unrecorded burials sites. It is further advised that planning authorities may attach conditions to potential development as appropriate.
- As previously advised, any development on the site of the former Mother and Baby Home should have due regard to the Commission's report and give adequate consideration to the views of survivors and family members and their request for appropriate access and respectful memorialisation in due course.

## **8.0 Assessment**

### **8.1. Introduction**

- 8.1.1. The first party appeal is against the decision of Cork City Council to refuse permission for the development for one reason, which relates principally to the height, scale and design of the development and its impact on the historic and protected landscape, which is designated as an Area of High Landscape Value, and on the heritage assets of the site. The grounds of appeal focus on the reason for refusal, but also make reference to the previous planning history of the site and of the overall lands associated with Bessborough House. The appellant does not wish to raise the legacy issues in the grounds of appeal. However, as the legacy issues formed the sole reason for refusal of the previous Board decision on this site (308790), and also constitutes the primary concerns raised in the third-party observations, it is considered necessary to address this issue in the first instance.

- 8.1.2. In addition, new guidelines – Sustainable Residential Development and Compact Settlement Guidelines (Jan 2024) - which the Board must have regard to, have been published since the planning authority's decision on this proposal.
- 8.1.3. The application was also accompanied by an Appropriate Assessment Screening Report, a Natura Impact Assessment and an EIA Screening Assessment Report.
- 8.1.4. The main issues arising from the appeal are therefore as follows:
- Principle of development and Legacy Issues
  - Density and building height of development
  - Impact on Protected Structure, Historic Landscape and AHLV
  - Visual Impact assessment
  - Environmental Impact Assessment
  - Appropriate Assessment

## **8.2. Principle of Development and Legacy Issues**

### **Zoning and Landscape Designation**

- 8.2.1. The site is primarily zoned ZO01 which is for the purpose of Sustainable Residential Neighbourhoods, although a small section of the site at the SW corner is zoned ZO17 Landscape Preservation Zone. As such, the proposed development comprising apartments and a creche, is considered to be in accordance with the zoning and is generally consistent with the core strategy to achieve ambitious growth targets for Cork City. However, there is a further designation overlying the zoning of the site, which is the 'Douglas Estuary/Lough Mahon Area of High Landscape Value'.
- 8.2.2. These AHLV designated landscapes combine one or more of the 'Landscape Assets' (Table 6.5). The assets relating to the site associated with Bessborough House and former demesne include Historic Landscapes, Landmark features and their settings, Tree canopies, Water/River Corridors and Institutional Open Space. The relevant policy objective is 6.13 which seeks to conserve and enhance the character and visual amenity of the AHLV through appropriate management of development in order to retain the existing characteristics of the landscape and its primary landscape assets. Development in these areas must demonstrate that they will not harm and will have a neutral or positive impact on the landscape. The degree to which the

proposed development, in terms of its design, height, scale and layout, complies with this objective, and would accord with the specific objectives of the designation will be discussed in a later section.

### **Legacy – Extent of areas of concern regarding potential for unrecorded burials**

- 8.2.3. The first party appellant acknowledges that there is potential for unrecorded burials within the Bessborough lands. However, it seeks to contain the focus of attention to the area to the north of the folly due to the attention this area received during the oral hearing (308790), to the Board's decision to refuse permission on these grounds and to the planning authority's subsequent decision to rezone this section of the lands from Residential to Landscape Preservation Zone. The Cultural Legacy Report by John Cronin was submitted with the application to support this view. As the area to the north of the folly, which, together with the majority of the current application site area, had formed the SHD application area (308790), is now excluded from the current application site, the appellant submits that the likelihood of unrecorded burials within the site area is limited.
- 8.2.4. I note that the applicant's Cultural Legacy Report (John Cronin) and the Forensic Archaeology Report (Dr. Niamh McCullagh) are based on essentially the same information and evidence that was presented to the oral hearing in April 2021, including the Final Report of the Commission of Investigation (CoI). John Cronin's report seeks to revisit the evidence presented at the OH and places emphasis on some further correspondence between the OSI and the applicant following the conclusion of the oral hearing. The only new information arising from this correspondence seems to be that doubt is now cast over the likelihood of the Children's Burial Ground being in the location suggested by the OSI maps, and that an alternative interpretation is that the label "Children's Burial Ground" may simply relate to the congregational burial ground. However, notwithstanding the conclusions of the Inspector and the board's decision, Mr. Cronin's report concluded "that there is no basis to suggest that the proposed development site contains a burial ground".
- 8.2.5. I note that Dr McCullagh, in her report, acknowledged that the absence of burial evidence to date does not consequently support the complete absence of burials or that of disturbed human remains at this location. She concluded that based on the

available evidence, the potential for the presence of highly disturbed human remains and/or burials exists at the proposed development site. She, therefore, recommended that a forensic archaeological monitoring programme be employed in advance of groundworks associated with the development of this site and that the entire site would be subject to a forensic standard of monitoring. Should any human remains be identified, it is further recommended that they be protected in situ to allow for the relevant authorities to conduct their investigation.

- 8.2.6. The third-party observers, however, point out that the Col findings were that the presence of unrecorded burials of the more than 859 infants likely to have been buried within the confines of the Bessborough site cannot be ruled out and that the location of these burials has not been established to date. The Col Final Report stated that “The only way that this can be established is by an excavation of the entire property including those areas now built on”.
- 8.2.7. The evidence presented at the oral hearing was subjected to rigorous and robust testing. The limited agenda hearing was held specifically in order to examine the issues that had led the Inspector in her initial report to conclude that “there is a reasonable concern in relation to the potential for unrecorded burials within the SHD site”. The Inspector’s Addendum Report (13<sup>th</sup> May 2021) considered all of the evidence presented in considerable detail, including the findings of the Final Report of the Commission of Investigation. It is quite clear that the Inspector, having regard to the considerable body of information before the Board, was not convinced that a definitive conclusion had been reached in relation to the matter of unrecorded burials following examination of this evidence. Whilst substantial concerns remained regarding the possibility of modern era burials in the western part of the SHD site (i.e. north of the folly), the Inspector considered that the potential for unrecorded burials on other parts of the site could not be excluded, having regard to the findings of the Col Final Report. The inspector stated (4.1.2)

“Given the level of uncertainty that pertains in relation to the potential for unrecorded burials within the site and in relation to the nature and extent of any such burials (including the possibility of disturbance), it remains my view that a full investigation of the site would be required prior to any works commencing on site. This is consistent with the view put forward by the Minister for Children, Equality, Disability, Integration and Youth at the oral hearing.”

8.2.8. The Inspector had also considered, in some detail, the question of whether the matter could satisfactorily be addressed by way of a planning condition, similar to that proposed by the applicant in the current application (forensic archaeological monitoring and methodology, as set out in Dr. McCullagh's report). However, having teased the matter out, the Inspector drew attention to the 'significant uncertainty regarding the potential for the presence of unrecorded burials, the nature and extent of such burials, the risk of previous disturbance and uncertainty in relation to the condition of remains and nature of evidence that might be found.' Furthermore, she considered that the need for a forensic standard of oversight of such investigations regarding the possibility of human remains being present and the complex nature of any points of detail arising, went beyond the scope of a normal planning condition under section 34 of the Act. She further expressed concern that the risk associated with the outcome of the forensic investigations could mean that any such condition might have the effect of 'nullifying or suspending the entire permission'.

8.2.9. On this basis, the Inspector considered that permission should be refused on the grounds of prematurity prior to establishing...

"if there are unrecorded burials within the site associated with the former use of the land as a Mother and Baby Home, what the nature and extent of any such burials is and what the implications of this would be for the future development of the lands".

8.2.10. The Board's decision to refuse permission included this element and was generally in accordance with the Inspectors recommendation. Thus, the Board considered a grant of permission to be premature prior to establishing whether a children's burial ground was located within the site, the extent of such a burial ground and it also stated that it would be "premature to grant permission given the implications of such for the delivery of the development as proposed".

8.2.11. In conclusion, no new or significant evidence has been presented since the Board's decision on 308790, which had been based on a considerable body of evidence that was robustly tested at the oral hearing, which would be sufficient to overcome the Board's reason for refusal. Furthermore, nothing has changed on the ground in respect of addressing the considerable uncertainty regarding the potential for unrecorded burials within the lands, including the site of the current proposal, that had given rise to this decision, i.e. no excavations have been carried out.

Notwithstanding the appellant's claims that the area of concern was largely confined to that section immediately north of the folly, it has been widely accepted by the Board, the Commission of Investigation and by the applicant's own experts, that the extent of the area to which the uncertainty persists regarding the potential for unrecorded burials is significantly greater than that section of the former SHD site.

#### **Appropriateness of Condition requiring forensic monitoring of groundworks**

- 8.2.12. The Board had also considered the question of granting planning permission subject to a condition requiring forensic excavations to be carried out prior to commencement of construction, as is currently proposed as a solution to the uncertainty, but had rejected this proposal on the basis of the significant degree of uncertainty on this matter, the need for a rigorous standard of oversight which would be beyond the scope of the planning authority, and the potential consequences for the development should human remains be discovered in situ.

#### **Memorialisation and access for survivors and families**

- 8.2.13. It is noted that the provision of appropriate measures to memorialise the infants who died at Bessborough and to provide permanent access to survivors and their families was raised by the Minister and by others at the oral hearing. However, these matters have not been addressed in the submissions by the first party. This issue has also been raised by several observers, as has the issue of whether it is appropriate to have blocks of apartments overlooking any graveyard that might be identified and marked as such in due course. It is considered that the extreme sensitivity of the tragic history of this site and its cultural significance to the people of Cork are such that these matters should be given due weight and consideration.
- 8.2.14. It is difficult, however, to incorporate such measures given the uncertainty regarding the location and extent of the unrecorded burials. It is not clear how the relationship between the proposed apartment blocks and any such graveyard could be addressed in any meaningful way in the absence of such information. It is considered, therefore, that the need to address these matters lends further weight to the conclusion that the development of this site, in the absence of firm conclusions regarding the presence and location of any unrecorded burials, is premature.
- 8.2.15. **In conclusion**, it is considered that the Board's reason for refusal for development at this location (308790), the site area of which includes the majority of the current appeal site, has not been addressed and there have been no material changes in

circumstances which would alter that decision. No additional information of any material significance has been presented to the Board in the intervening period. In light of the significant uncertainty regarding the location and extent of unrecorded burials on the site, as highlighted in the Fifth Interim Report (2019) and the Final Report (2020) of the Commission of Investigation into Mother and Baby Homes, and to the reasonable concerns raised by the Board in relation to the potential for a children's burial ground within the site, it would be premature to grant permission for the proposed development prior to establishing if there is a children's burial ground within the site, the extent of such a burial ground and the implications for the delivery of the development as proposed. For these reasons, the proposed development should, therefore, be refused.

### 8.3. Density and Building Height of Proposed Development

#### **Compliance with National Guidance**

- 8.3.1. The **National Planning Framework** seeks to achieve more compact growth and sustainable development in our cities and towns with a greater proportion of development at higher densities in central and highly accessible locations. The **Urban Development and Building Height Guidelines** (2018) and the **Design Standards for New Apartments Guidelines for Planning Authorities** (2018 as amended) have similar objectives and seek to reinforce the national policy objectives in the NPF. The recently published **Sustainable Residential Development and Compact Settlements Guidelines (2024)**, however, replace the 2009 Sustainable Residential Development Guidelines, which are now revoked. Furthermore, it is stated (2.1.1) that where there is conflicting advice, the Compact Settlement Guidelines supercede the guidance contained in other Section 28 Ministerial Guidelines, such as the Design Standards for New Apartments Guidelines for Planning Authorities (the Apartment Guidelines) and the Urban Development and Building Height Guidelines (Building Height Guidelines).
- 8.3.2. The **Compact Settlement Guidelines** re-emphasise the need to achieve compact growth including an increase in the scale of buildings, (as promoted in the Apartment Guidelines and the Building Height Guidelines), particularly sites in city centres and close to public transport nodes and interchanges (1.3.2). However, the new guidelines also emphasise that the scale and form of development will have to be

adapted to the receiving environment to ensure a more proportionate response by refining the density to the local context. This approach differs from the approach in the Apartment Guidelines, which identify locations suitable for apartment development based on key proximity and accessibility considerations, without any further density refinement. In addition, the accessibility criteria differ between the guidelines.

- 8.3.3. The emphasis in the Building Height Guidelines is to increase building height as part of the drive towards achieving more compact urban development. The increased heights proposed would be open for consideration in a location such as this, but the guidelines caution that historic environments can be sensitive to large scale and tall buildings and therefore require an examination of the existing character of the place to assess its capacity for change (2.8). These guidelines also seek to ensure that where increased building height and density is being pursued, the preferred locations are those with high frequency public transport accessibility and an appropriate mix of uses is encouraged with well-designed development which successfully integrate into the existing character of the area and positively contribute to place-making.
- 8.3.4. Thus, whilst the tiered approach of the S28 guidelines remains the primary factor in determining the appropriate residential densities, with the highest densities in central cores/highly accessible locations, the new Compact Settlement Guidelines seek to tailor the policy approach to local circumstances. Broad density ranges are set out in Section 3.3 of the guidelines, with advice on how to further refine the density in Section 3.4. This refinement is based on a two-step approach, firstly, an assessment of the proximity/accessibility of a site to services and public transport nodes, and secondly, consideration of the character, amenity and natural environment of the local receiving environment under specific headings.
- 8.3.5. The submissions contained in the application and appeal are, however, based on the accessibility criteria in the Apartment Guidelines and the guidance within the now revoked Sustainable Residential Development in Urban Areas Guidelines (2009). The first party's position is that the site is one which falls within the most accessible location, thereby justifying the highest densities. The 'Central and/or Accessible Urban Location' criteria under the **Apartment Guidelines** are defined as
- Location within 1,000-1,500m of a centrally located employment area.

- Location within easy walking distance (5 minutes or 400-500m) of a high frequency urban bus service.

The first party has justified the density of the proposed development (4.3 of Planning Statement) on the basis of the proximity of the site to the Mahon 'Strategic Employment Location', as identified in the RSES for the Southern Region and in the Cork Metropolitan Areas Strategic Plan, which highlights Mahon as a leading FDI and indigenous employment location. It is pointed out that the site is surrounded by several business parks and/or industrial parks and that the overall neighbourhood is second only to the city in terms of job and office floorspace availability.

8.3.6. The proposed density is further justified by the first party on the degree of accessibility to public transport. Information is provided regarding the 'high frequency bus routes' and it is pointed out that Mahon is earmarked for an LRT route (between Mahon and Ballincollig) with a tram stop at Mahon Point and that the CMATS proposes that the LRT will be preceded by a High Frequency Bus Service between Mahon and Ballincollig. It is stated that higher densities are justified on 'lands within existing or planned transport corridors' and that the site is located within a 5-minute (400-500m) walking distance of such a service. However, the Board should note that this level of accessibility is based on access via the Greenway with a proposed ramped access from the site and an existing ramped access to the Mahon Link road.

8.3.7. In terms of the **Compact Settlement Guidelines**, the site is located within the City-Suburban/Urban Extension category of Cork (Table 3.1), where the recommended density range is 40dph to 80dph (net), with densities of up to 150dph open for consideration at 'accessible' locations. Refinement of density in accordance with 'accessibility of the location' is set out in Table 3.8 of the Guidelines. These locations include the following -

- **High-Capacity Public Transport Node/Interchange** - Lands within 1km walking distance of an existing or planned high-capacity urban transport node or interchange (includes Light Rail), or within 500m walking distance of an existing or planned Bus Connects/Core Bus Corridor. Highest densities should be applied at the node/interchange and decrease with distance. 'Planned public transport' means where a public authority has published the preferred route option and stop locations for the planned public transport route.

- **Accessible location** – Lands within 500m, (5–6-minute walk) of a planned high frequency, (10-minute peak hour frequency) urban bus service.
- **Intermediate location** – Lands within 500-1000m of existing or planned high frequency urban bus services.
- **Peripheral** – Lands that do not meet the proximity or accessibility criteria detailed above.

8.3.8. Based on the information on the file, it is considered that the site is located in an 'Intermediate Location' as it is estimated to be c.1000m of a high frequency (minimum 10-minute peak hour frequency) urban bus service. The recommended density range for 'Intermediate' locations is 40-80dph, but it is noted that densities of up to 150dph shall be open for consideration at 'accessible' suburban locations (Table 3.8). The first party's submissions claim that the site is much more accessible than this. It is submitted that it is within an 'easy walking distance' (5 minutes or 400-500m) of an existing high frequency bus service (10-minute frequency) and that a high frequency LRT is planned with a stop at Mahon Point. However, as stated previously, this is dependent of use of the Greenway, which in my view does not provide for a universally accessible safe pedestrian route, particularly after dark. The estimated walking distance to the nearest bus stop on Skehard Road (via Bessborough Estate and Bessborough Road) is 12-13 minutes (1km).

8.3.9. I would agree that the Cork Metropolitan Transport Strategy includes a proposal to provide a mass transit public transport route by means of Light Rail from Ballincollig to Mahon via the City Centre. This planned mass transit infrastructure would significantly increase the accessibility of the Mahon area. However, I am not aware that the preferred route option with stop locations has been published, as required by the Compact Settlement Guidelines. As it is not known how close or accessible the nodes/interchanges are likely to be, it is difficult to judge, at this point in time, to what extent this planned infrastructure will improve the accessibility of this particular site.

8.3.10. Refinement of density (3.4) can also be achieved by means of accessibility to services and facilities. It is considered that the accessibility to local services of the appeal site, which is located deep within the grounds of Bessborough, and remote from any public roads, is quite limited. I note that the closest convenience outlets are located at 1.1km/15 minutes (Maxol), 1.2km/16 minutes (Supervalu) and 2.5m/35 minutes (Mahon Point Shopping Centre, or 1.1km via the Greenway) walking

distance from the site. Although the Greenway would provide for a short-cut to Mahon Point Road, it is considered that its accessibility is limited in terms of a safe and secure route, particularly after dark.

- 8.3.11. The second part of refining density in the Compact Settlement Guidelines relates to ensuring that the quantum and scale of development can integrate successfully into the receiving environment without any significant negative impact on character (including historic character), amenity and natural environment. The guidelines state that in order to achieve compact growth, higher densities and taller buildings that exceed the traditional scale are encouraged in the most central and accessible parts of the city while mid-rise medium density housing has a critical role to play in areas outside urban cores and in intermediate areas (1.3.2). It is important to have regard to the prevailing scale and mass of buildings, urban grain, architectural language and any particular sensitivities and the capacity of the area for change. Development must, therefore, respond in a proportionate way to the receiving local context through site responsive design (3.4.2).
- 8.3.12. The site forms part of a historic demesne, which includes a Protected Structure, landscaped gardens and extensive parkland. The location of the site at the eastern extremity adjacent to the Greenway, is physically and visually separated from the PS, and is screened from the Greenway by the mature line of trees to the east. The lands to the east comprise modern larger scale and mainly commercial development. However, to the west, the site is very close to and visually connected with the folly, which forms an integral part of the historic landscape and the curtilage of the Protected Structure and is designated as a Landscape Preservation Zone. The site and grounds are also designated as an Area of High Landscape Value. These heritage assets, as well as the historical and cultural sensitivity of the site, will influence the capacity of the site for change. The degree to which the design, height and scale of the proposed development successfully responds to this local context will be discussed in subsequent sections of this report.

### **Compliance with Cork City Development Plan 2022-2028**

- 8.3.13. Chapter 11 – Placemaking and Managing Development of the **Cork City Development Plan 2022-2028** sets out the appropriate densities and building heights for different areas of the city. Mahon is located within the

Fringe/Corridor/Centre zone (Table 11.2). This provides a target density for Mahon of 50dph (lower) and 120 dph (upper), with a target building height range of 4-6 storeys. The prevailing density is stated as 10-40 dph with a prevailing height of 2-5 storeys. It is stated at 11.37 that in order to ensure the best use of land is achieved in City Fringe and Primary Corridors, new development should respond to and respect this local context. Density targets and prevailing character will be the key measures in determining site-specific density (11.72).

8.3.14. The area of the site is stated as 1.01ha, but the developable area is stated as 0.51ha. This is stated as excluding the existing roadway and the additional areas where only underground services are proposed. The proposed density is therefore 179dph, which is significantly higher than the target density for Mahon in the City Development Plan of 50-120dph. The building heights of the proposed apartment blocks ranging from 5-8 storeys also exceeds the upper target limit for Mahon. Thus, it is considered that the density of the proposed development materially contravenes the density standards of the statutory Development Plan for the area and the height of the blocks exceeds the target building heights as set out in Table 11.2 of the Plan. The Board should note, however, that although the P.A. reports considered that the density did not align with the policies of the Development Plan (15.2 of Area Planner's Report), no conclusions were drawn that the proposal would materially contravene the Plan in this regard, and the reason for refusal did not rely on this matter.

8.3.15. The site is located in Mahon, which is singled out in the CDP as an area within the outer suburbs that could accommodate higher densities due to its 'accessible location' based on planned infrastructure. However, the site is currently quite remote and isolated from established residential development, neighbourhood facilities and amenities. It's location deep within the extensive former Bessborough demesne, means that pedestrian/cyclist access to services and facilities in the local area are quite restricted. The route through the estate grounds, Sharman Avenue, Bessborough Road (Mahon Industrial Park), to Skehard Road is a long and winding one (almost 1km) with intermittent footpath accessibility. Once Skehard Road is reached, it is a further c.200m in either direction to the petrol station/Supervalu, respectively, and a further 1.9km to Mahon Point Shopping Centre (which is setback c.500m from the main road). This circuitous route between the site and adjacent

facilities is unlikely to discourage car-dependency and is inconsistent with the aspirations for the creation of 15-minute sustainable, walkable neighbourhoods.

- 8.3.16. The proposed development, however, incorporates a new ramped access to the Greenway, which is an established cycle and pedestrian route along the former Passage West railway line, which will provide an alternative non-motorised route. However, due to the somewhat secluded nature of this route and the absence of passive surveillance, it does not provide a universally accessible safe and secure alternative route for pedestrians. It is further noted that the Design Statement indicates that an alternative access is envisaged in the future by means of a pedestrian bridge adjoining the existing ramp from the proposed SHD development at 'The Meadows' to the north. However, no decision has been made on that application. Thus, it is considered that the wider objectives of the Development Plan and of national policy guidance to achieve sustainable, walkable 15-minute neighbourhoods would be difficult to achieve on this site.
- 8.3.17. It is acknowledged that in order to generate more compact growth, it is necessary to increase the density of new development to create a certain level of critical mass in order to generate the demand for additional services, and that this area is earmarked for significantly greater density than the prevailing and for substantially improved public transport networks. However, the site is relatively isolated at present and there is little certainty in terms of the development of the remainder of the lands within Bessborough at this point in time, for the reasons outlined above, and the planned infrastructural improvements are not at a sufficiently advanced level to provide certainty in terms of improved accessibility. Furthermore, the reliance on the bringing forward of the SHD proposals within the overall grounds, which are in separate ownership and decisions upon which are still pending, together with the poor level of accessibility at present, means that there is no justification for breaching the target density and building heights at this location as set down in the Cork City Development Plan.
- 8.3.18. It is further acknowledged that the first party grounds of appeal include a design option to reduce the height of the proposed blocks by one storey, the number of units to 76 and the density of the developable area to 144 units/ha. The 'ABP Appeal Supplementary Document' by Shipsey Barry Architects, includes a series of perspectives and 3D block diagrams of the proposed development together with the reduced scheme and in the context of the Meadows SHD site to the north for

comparison purposes. It is stated that if the Board considers that the building heights or density require alteration, this document demonstrates the impact of reducing the scale by one floor. It is further submitted that the first party does not consider this to be necessary on visual impact or residential amenity grounds, the document and revised Site Sections submitted with the appeal show how the reduction could be achieved which could be addressed by means of a condition.

- 8.3.19. It is noted that the suggested revisions would result in a scheme that would range in height from 4-6 and 4-7 storeys, but it would be predominantly 6-7 storeys in height and would still have a density of 144dph. The proposed development would continue, therefore, to exceed the target densities (50-120dph) and target heights (4-6 stories) as set out in the Development Plan for Mahon. The justification that the resulting density would be similar to that of the Meadows SHD development to the north, and lower in height, is not considered to be material as this development proposal (313216) has not been determined.
- 8.3.20. **In conclusion**, it is considered that the density and building heights proposed are excessive and that having regard to the standards set out in Table 11.2 of the Cork City Development Plan 2022-2028, the proposed development would materially contravene the provisions of this statutory Plan for the area and would be inconsistent with the advice contained in the Sustainable Residential Development and Compact Settlement Guidelines (2024). The proposed development should therefore be refused on these grounds. The Board should note, however, that the Planning Authority did not refuse permission on the grounds of material contravention of the Development Plan, and as such the provisions of section 37(2)(b) do not arise. However, given the substantive reasons for refusal of the proposed development set out elsewhere in this report, it is considered that there is no need to pursue this matter any further.
- 8.3.21. Should the Board decide to refuse permission and to rely on this matter as a reason for refusal, it is considered that in the interests of natural justice, the parties should be consulted for their views on the level of compliance with the new Sustainable Residential Development and Compact Settlement Guidelines (2024).

#### 8.4. **Impact of Development on Protected Structure, Historic Landscape and Area of High Landscape Value**

- 8.4.1. The Board will note that the reason for refusal by the P.A. was in relation to this issue and reads as follows:

The proposed development due to its height, scale, design and relationship to the historic landscape in which it sits, would result in isolated residential blocks in a protected landscape within the curtilage of a protected structure, and would comprise haphazard development which would detract from the character of the area which is designated as an area of High Landscape Value in the Cork City Development Plan. The development as proposed, would therefore be contrary to Objectives 6.13, 8.19 and 8.20 in the Cork City Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

#### **Historical, Architectural, Cultural and Landscape Significance of the Site**

- 8.4.2. The site is located within the original Georgian demesne of Bessborough House, an 18<sup>th</sup> Century country house which is an historic landmark feature within a designed landscape in a prominent location overlooking the Douglas Estuary. The house is a Protected Structure (RPS 490) and is on the NIAH (20872005). The original demesne is believed to have comprised c200 acres and the 1840 OS map shows the centrally located and imposing Pike family home surrounded by landscaped parkland to the north, west and south. The estate was further developed during the 18<sup>th</sup> and 19<sup>th</sup> Centuries with extensions to the main house, farm buildings to the north and the creation of a pleasure garden to the south of the house, which included a tree-lined avenue leading to a Folly to the south-east of the house. The folly is enveloped in a copse of mature trees. The Folly and Farmyard complex are both listed on the NIAH, (20872007 and 20872006, respectively). An Icehouse was also constructed at the south-western extremity of the sweeping parkland to the west of the house, which is a Recorded Monument (RMP CO074-051).
- 8.4.3. The ownership of the lands changed during the early part of the 20<sup>th</sup> Century and the house became a convent with the associated grounds. A Mother and Baby Home was established on the site in 1922 which operated until 1999. The lands to the east/south-east appear to have been used for agricultural purposes during the 20<sup>th</sup> Century at least. A modern internal roadway was constructed in c.2000 in the

eastern part of the site which linked the area to the northeast of the house and farm buildings with the south-eastern part of the site. There are formal and informal burial grounds within the site. The formal graveyard is a small, marked plot immediately to the north of the folly. The location of the unknown burial grounds (said to contain up to 900 human remains) is of a highly sensitive and contentious nature, and forms part of the social legacy and cultural history of the site, as discussed above.

- 8.4.4. The site is located on part of the former agricultural lands, approx. 200m to the east of the Georgian house, and approx. 54m to the north-east of the Folly. These lands are separated from the more formally landscaped grounds by the modern road, which travels southward before kinking to the east around the lands to the north of the folly (which formed part of the SHD 308790) and terminating just to the south of the folly. These former agricultural lands (including the sites immediately to the south and to the north) are zoned residential, but most of the remainder of the site is zoned Landscape Preservation Zone in recognition of the sensitivity and value of the site from a historical, cultural, landscape and visual amenity point of view. There is a further designation of Area of High Landscape Value, which overlays the entire lands outside of the LPZ and include the appeal site and the site to the north of the folly. Thus, the sensitivity of the site, in respect of the historical and architectural elements, the natural and landscape features, together with the social legacy, make it an extremely delicate one in terms of development.
- 8.4.5. The site is first and foremost part of the curtilage of a **Protected Structure**, which includes its landscape, any specified features within the attendant grounds and associated structures, including the folly. This means that any development must have regard to Part IV of the P&D Act 2000 (as amended) as well as the Architectural Heritage Protection Guidelines for P.A.s (2011). Section 57(10)(a)(i) requires the Board, in considering any application for permission in relation to a protected structure, to have regard to the protected status of the structure, the definition of which includes the land within the curtilage and any other structures lying within that curtilage. The AHP guidelines do not propose that protected structures, or their associated curtilages and attendant grounds, are frozen in time, but require that change is managed in such a way that the character and special interest of the historic building are retained.
- 8.4.6. Relevant CDP policies (Chapter 8) include Strategic Objective 7 which seeks to identify, protect, enhance and promote Cork's unique cultural heritage and

expression in an authentic and meaningful way. New development must have regard to the historic built heritage and any detrimental impact of these heritage assets will not normally be acceptable. Obj. 8.19 and 8.20 include provisions which relate to the maintenance of the RPS record, require that regard must be had to the Architectural Heritage Protection Guidelines and seek to ensure that designated (and undesignated) historic landscapes and gardens are protected from inappropriate development and enhanced where possible. Obj. 8.6 also seeks the preservation and enhancement of burial grounds and their settings with restrictions on development within and adjacent to these areas.

- 8.4.7. The site also forms part of a highly valued landscape and historical setting, being part of the designed landscape associated with Bessborough House. The principal elevation of the PS faces south over a parkland setting which sweeps around from south to west, with views to the southwest towards the woodland and tree-lined walk leading to the folly. The 'Area of High Landscape Value' (AHLV) designation over the entire site and the 'Landscape Preservation Zone' (LPZ) on the adjoining lands are considered to be of particular significance.
- 8.4.8. **Objective 6.13 Area of High Landscape Value** of the Cork City Development Plan seeks to conserve and enhance the character and visual amenity of such AHLVs through appropriate management of development with a view to retaining the existing characteristics of the landscape and its primary landscape assets. These are identified in respect of Bessborough (Specific Objective SE4) as including the historic landscape (including monuments/historic routes), the setting of buildings of significance and tree canopies. Obj. 6.13 further states that there will be a presumption against development in such landscapes where it would cause significant harm or injury to inter alia, the intrinsic character of the AHLV and its primary landscape assets, the visual amenity of the landscape or the character and setting of buildings, structures and landmarks.
- 8.4.9. Although the site is situated outside of the LPZ, it is immediately adjoining and visually contiguous with this extensive landscape zone, and as such, any development would also have to have regard to the policy objectives relating to this zone. **Objective 6.12 Landscape Protection Zone** seeks to preserve and enhance the visual amenity of LPZs through careful management of development, which needs to safeguard the value and sensitivity of the particular landscape and comply with the specific objectives in Tables 6.6-6.10. The site-specific objectives for

Bessborough House (SE4 – Table 6.9) seek to reinstate the historic landscape, seek use of grounds as a neighbourhood park and to allow development within the immediate environs to the north of the house, consistent with the landscape and protected structure significance of the site.

- 8.4.10. The AHP Guidelines (Chapter 13) states that designed landscapes can form part of a unified design concept with structures designed and arranged solely for the purposes of pleasure, including important elements such as follies. It is stated that the setting of follies, and the views to and from them, may be essential components of their special interest. It is necessary to ensure that protected structures and/or their special features should remain the focus of its setting and that the relationship between the protected structure and its attendant grounds would not be permanently damaged. Views to and from the Protected Structure and any woodland, parkland or landscape features, including distant views, should not be interrupted or significantly changed by new development, such as tall and bulky buildings.

**Impact of the proposed development on the Protected Structure and historic landscape**

- 8.4.11. The first party refutes the reason that the proposed residential blocks would result in either an isolated or haphazard development, given that it has been designed to integrate with the proposed SHD development at 'The Meadows', (313216, also known as 'Eve'), to the immediate north, and given that the applicant has proposed a revised 'masterplan approach' which no longer results in a radial development of blocks fanning out from the folly (as in 308790 and 309560). The alternative masterplan design approach is stated to involve an 'Orthogonal relationship with the Greenway'. The 'masterplan' includes a further L-shaped block (Phase 2 of a two-phase development, the current application being Phase 1) to the immediate south, with a height range of 6-8 storeys. Although the Meadows SHD proposal is not in the applicant's ownership, the design approach is based on the two phases of MWB development integrating with the 4 blocks of that development proposal, with heights ranging from 1-10 storeys.
- 8.4.12. I note that the City Architect (18/01/23) and the City Conservation Officer (12/01/23), in their respective reports, considered that the current proposal is not designed as a stand-alone development, but one which is an extension to the proposed SHD development to the north (313216), which was considered to be inappropriate and

which critically, has not yet been determined, and is outside of the control of the applicant. The CO was of the view that without the context of the wider development to the north, the proposed blocks 'would appear overly scaled and dominant in the landscape and would detract from the historic landscape and setting which form part of the curtilage of the PS, including the folly.' As such, it was considered that the proposal would fail to protect and reinforce the unique character of the site, would detrimentally affect the heritage assets and fail to protect the historic landscape from inappropriate development. Thus, it was considered that the proposal contravened the objectives of the Development Plan and was inconsistent with the Architectural Heritage Protection Guidelines. Concern was also expressed regarding the information provided relating to Phase 2 (block to south), which due to its height and scale, would fail to relate to the context of the leafy and open character of the folly.

- 8.4.13. The Area Planner generally concurred with these views and considered that the proposal had to be considered on its own merits. It was further considered that the proposal would give rise to isolated residential blocks which would not relate to the historic landscape within which they would sit, would not result in a neutral or positive impact on the Protected Structure and its associated historic landscape, would not respect the primacy/dominance of the AHLV and would result in piecemeal and haphazard development which would detract from the character of the landscape.
- 8.4.14. The first party appellant considered that the AHLV was given 'undue weight' given the low sensitivity of the landscape, which is poorly maintained, and that it would not be visually connected with the Protected Structure and would be outside of the 'parkland setting' of the PS. It was considered that it would not obstruct any views of the Protected Structure or dominate the historic landscape. As such, it would result in a 'neutral or positive impact' on the AHLV. In terms of the height and scale of the development, the revised option submitted with the grounds of appeal, which would reduce the overall height by one storey, although not considered necessary, would be sufficient to overcome any concerns regarding the impact on the character of the PS and its associated landscape setting.
- 8.4.15. Having regard to the information on the file and to an inspection of the site and surroundings, it is considered that Bessborough House and gardens constitute a landmark Georgian house within a designed historic landscape which represents an important historical, architectural, landscape and cultural heritage asset, which is

duly recognised in the landscape designations and the policies and objectives of the current Cork City Development Plan. The Protected Structure has a special and unique relationship with the historic landscape in that it forms part of a unified design concept complete with a sweeping parkland setting to the west and south of the house, together with a farm complex, walled gardens and formal gardens, including a pleasure garden. The focal setting of the pleasure garden is the folly, which is embedded in a leafy woodland setting at the end of a tree-lined walk leading from the area to the front of the house. It is considered that the setting of the folly, and the views to and from it, as well as the views to and from the PS form an integral part of the special interest of the protected structure and landscape.

- 8.4.16. It is considered that by reason of the height, scale and design of the proposed residential blocks, the proposed development would result in an overly scaled development which would dominate the landscaped setting of the Protected Structure, the landscaped grounds and the folly. I would refer the Board to the drawings, section, and perspectives submitted with the application and appeal, and also to the photomontages, Views 3 and 7, respectively submitted with the application, and Views A, B and C, respectively submitted with the appeal.
- 8.4.17. The height of the blocks at 5-8 storeys would exceed that of the tall, mature trees along the eastern boundary of the estate, and would be excessively tall in views to and from the folly. Thus, the apartment blocks would be the dominant features rather than the mature treelines, tree canopies and historic buildings and planting. Although the woodland around the folly would screen views of the buildings to a certain extent from the front of the Protected Structure, they would be visible through the tree canopy, particularly in winter. This woodland has a special significance within the designed landscape as it provides for the tree-lined walkway, pleasure gardens and leafy canopy around the folly. It is considered that the Protected Structure and the folly would no longer be the focus of the setting and the relationship with the curtilage and attendant grounds would be interrupted and harmed.
- 8.4.18. In conclusion, it is considered that the proposed development, by reason of its height, scale and design and the poor relationship with the protected historic landscape, which form the setting of Bessborough House and the folly, would fail to protect the character and special interests of the Protected Structure and its curtilage. It would also have an overly dominant effect on the historic designed landscape and heritage assets of the site, would result in a negative impact on the

designated Area of High Landscape Value and would fail to safeguard the value and sensitivity of the Landscape Protection Zone immediately adjoining the site and within which the folly sits. The proposed development would, therefore, be contrary to Objectives 6.12, 6.13, 8.19 and 8.20 of the Cork City Development Plan 2022-2028.

- 8.4.19. The revisions submitted with the appeal would have little material effect on mitigating the impact, as it would merely result in a reduction of one storey in height. I would also agree with the P.A. that the proposed development must be considered on its own merits, as there is much uncertainty regarding the future development of the lands to the north and south. As such, it would result in isolated residential blocks which would give rise to piecemeal and haphazard development which would detract from the character of the historic landscape. It is considered, therefore, that permission should be refused on these grounds.

## **8.5. Visual impact**

- 8.5.1. The application was accompanied by a Landscape/Townscape Visual Impact Assessment which includes a detailed assessment from a total of 8 no. viewpoints. The Area Planner raised concerns regarding VP1 and VP3 due to the relative scale of the buildings which it was considered would appear dominant and incongruous in the landscape.
- 8.5.2. The P.A. planner's report was satisfied with the methodology and approach but raised concerns regarding the limited number of viewpoints chosen and their locations. For instance, VP3 (from the pedestrian bridge along the Greenway) was considered less representative than one which could have been taken further to the west (closer to the folly). The Conservation Officer also sought additional views to enable a full assessment of the impact on the character of the historic landscape, which forms part of the curtilage of Bessborough House. It was stated that additional views would have been useful from the north of the house and views relating to the folly, particularly from the north side of the folly and the axial pathway leading to the folly. Furthermore, the CO considered that additional viewpoints would have been useful from the parkland to the south and a winter-view from the front of the house. Additional Viewpoints A-F inclusive were provided with the grounds of appeal.

8.5.3. VP3 shows how well the folly sits within the landscape in this iconic view from the Greenway, yet how relatively diminutive the folly is compared with the height, scale and bulk of the proposed apartment buildings. VPA is from just to the north of the folly towards the development and VPB is from the axial walkway leading to the folly. It is considered that these viewpoints confirm that the proposed development would have a significant and detrimental impact on such views from within the historic landscape and would adversely affect the visual amenity of the area. VP7 from the area to the front of the house is supplemented by VPC (winter-view), and they confirm that the buildings would be visible through the woodland which would detract from the character of the historic landscape and have a significant and adverse impact on the visual amenity of the area. Additional VPs were also provided from the parkland to the south which showed that the buildings would not be visible from this location.

8.5.4. The first party appellant considers that the sensitivity of the site is low given the distance from the protected structure, the intervening natural screening and the poor quality and level of maintenance of the site, which comprises overgrown and disturbed lands. I would agree that the site and the area to the north of the folly have become very poorly maintained and are in a relatively poor state at present. However, it is noted that the lands in question are largely owned by the applicant/first party appellant. The issues of distance from and capacity of the landscape to screen/absorb the development has been discussed in detail above, when it was concluded that the proposed development, due to its height, scale and design and relationship with the historic landscape, would have a significant and adverse impact on the visual and landscape amenities of the area. It is further considered that the proposed reduction in height by one storey, as proposed in the grounds of appeal, would not be sufficient to adequately mitigate these impacts.

## **8.6. Need for EIA**

8.6.1. I have carried out EIA screening of the proposed development which is set out in 6.4 above and in Appendix 2 of this report. However, some of the third-party observers have also raised the issue of the inadequacy of the Environmental Impact Assessment screening process and stated their disagreement with the P.A. decision to screen out the need for EIA in relation to this project. The reasons for these

objections are summarised in 7.3.1 above. I would also refer the Board to section 6.4 of this report and to Appendix 2.

8.6.2. The principal third-party objections relate to the following:

- Legacy issues – the historical and cultural significance of the site, in terms of the potential for unrecorded burials, are factors which should trigger the need for EIA.
- Project splitting – the submission of the current proposal, given the existence of a masterplan for the development of lands at Bessborough, amounts to project splitting and an attempt to circumvent the requirements of the EIA Directive.
- The Need for AA – the requirement for a Stage 2 Appropriate Assessment should trigger the need for EIA.

8.6.3. **Legacy issues** - The historical and cultural significance of the site in terms of the legacy issues were discussed in detail at section 8.2 above. It was concluded that as no material changes in circumstances had occurred since the Board's previous decision at this location to refuse permission on the grounds of premature development, having regard to the findings and conclusions of the Commission of Investigation into Mother and Baby Homes, it would be premature to grant permission prior to establishing if there is a children's burial ground within the site, the extent of such a burial ground and the implications for the delivery of the development as proposed. Thus, the cultural and historical significance and sensitivity of the site is without question, but it is considered that the impacts would not be so significant as to affect the wider receiving environment, thereby warranting an Environment Impact Assessment.

8.6.4. **Project splitting** - The third-parties believe that the proposed development amounts to 'project splitting' as there are several separate concurrent projects for residential development of the lands at Bessborough, and as the applicant has referred to the proposed development being part of a 'masterplan' and has also referred to the height, scale and design of the proposed development to the north as part justification for the design concept for the current case. 'Project splitting' is an attempt by a developer to deliberately frame development as a series of projects,

each of which would fall below the relevant threshold for EIA, thus evading the obligations pursuant to the EIA Directive altogether.

- 8.6.5. I would agree that considerable weight has been given by the applicant/first party to the design and scale of the proposed development to the north, which is under consideration by the Board as a SHD development (313216). There is also a further SHD development to the north-west (313206). However, it should be noted that these two schemes are being proposed independently by a separate developer and that the lands are in separate ownership (Estuary View Developments). The scheme to the north (313216) is for the construction of 280 apartments and a creche and the scheme to the northwest (313206) is for the construction of 140 apartments and a creche. I note from the Board's website that each of these applications was accompanied by an EIAR and a NIS. I cannot agree, in these circumstances, that the failure to include an EIAR with the current sub-threshold development for 92 apartments, together with these two developments by separate developers amounts to project splitting, particularly as the neighbouring projects include EIARs.
- 8.6.6. Reference was also made to a proposed development on the lands immediately to the south, (Phase 2) for a further apartment block on lands in the ownership of the current applicant, which would form part of the masterplan. However, not much detail has been provided at this stage regarding Phase 2, apart from the likely footprint and height of the apartment buildings. Phase 1 is not reliant, however, on the completion of Phase 2 of the 'masterplan'. Should the current proposal, (Phase 1), successfully gain permission, and a second proposal (Phase 2) be the subject of a future application, then that development would also have to be screened for EIA, which would include the cumulative impacts with any permitted developments. I do not accept, therefore, that the current development proposal represents an attempt to 'project split' the development of the lands, as should further projects come forward, they will also have to comply with the requirements of the EIA Directive.
- 8.6.7. **Need for AA** - The site is not located within or immediately adjoining a European site. It does not contain habitats or species of conservation significance. A ground/surface water pathway has been identified, however, to the Cork Harbour SPA, which in turn is connected to the Great Island Channel SAC. A Stage 1 Appropriate Assessment Screening Report and a Stage 2 Appropriate Assessment (NIS) have therefore been submitted and are examined in detail in the following

section. It was concluded that the potential for adverse impacts on Natura 2000 sites can be excluded. It is considered, therefore, that there is no requirement for EIA.

- 8.6.8. **In conclusion**, by reason of the nature, scale and location of the subject site, it is considered that the proposed development would not be likely to have significant effects on the environment and that an EIAR is not required.

## 9.0 AA Screening

### 9.1. Introduction

- 9.1.1. I have considered the proposed development in light of the requirements of S177U of the planning and development Act 2000 as amended. My assessment below relates to the NIS submitted with the application.

### 9.2. Description of the site

- 9.2.1. The subject site is located to the southeast of the Bessborough Centre and was formerly part of the large Bessborough estate which is located in the suburban area of Mahon/Blackrock to the southeast of Cork City, just north of the M40 Cork South Ring Road and the Douglas River Estuary/Lough Mahon transitional water body. The overall site area is 1.016ha, incorporating a developable area of 0.516ha and a long narrow section required for the provision of new services. The subject site is located at the eastern section of the estate and is served by an existing internal access road. It is greenfield in nature and has been subject to disturbance associated with the construction of an access road and drainage infrastructure.
- 9.2.2. The site is dominated by scrub and rough grassland and does not support habitats of ex-situ value for relevant qualifying interests of nearby Natura sites. There is a mature treeline along the eastern boundary of the site with the Passage West Greenway. Sites visits by the ecology team for the applicant established that there are two non-native invasive species present on the site, Japanese Knotweed and Buddleia, and a further one, Winter Heliotrope, on the surrounding lands. Avian surveys established that several Qualifying Interests of the Cork SPA were noted flying over the site. There are no overground drains or watercourses within the site.
- 9.2.3. Lands immediately adjoining the site are undeveloped. An area of mixed woodland, including mature oak specimens, is associated with the folly to the south-west. Lands to the north, east and west of the Bessborough estate are in residential and

commercial use. The site is serviced by private water and drainage networks which are connected to the public networks. Surface water from the site will drain (via existing infrastructure) to a public storm sewer network that discharges to the Douglas River Estuary/Lough Mahon c.60m to the south-west of the site. The N40 is located between the estate lands and the estuary.

9.2.4. A full description of the site is provided in sections 2.1 and 2.2 of the NIS and in section 2.0 of my report. The Screening Report identified the following designated sites located within the zone of influence of the appeal site:

- Cork Harbour SPA (004030) located c.60m-170m from appeal site.
- Great Island Channel SAC (001058) located c. 5.3km from the appeal site.

### **9.3. Description of the project**

9.3.1. A description of the project is summarised in section 2.3 of the NIS and in section 3.0 of my report. In summary, the proposed development comprises the construction of a residential development of 92 apartments, a creche and an ESB substation and all ancillary works. The proposed development would be provided in two apartment buildings ranging in height from 5 to 8 storeys. It also includes a proposed ramped access to the Greenway for pedestrians and cyclists and an upgrade of the existing sewer line. Vehicular access is via Bessborough Road.

9.3.2. A site-specific flood risk assessment concluded that the site is not at risk of flooding. A lighting scheme has been devised for the proposed development which focuses on areas such as roads, footpaths and parking and will aim to avoid excessive spillage on the surrounding area. A landscape plan has been proposed which focuses on enhancing biodiversity with a high percentage of native trees to be planted. The existing treeline on the eastern boundary will be retained, apart from the felling of two oaks, to facilitate the ramped access to the Greenway.

9.3.3. No concerns were raised by third parties, prescribed bodies or the planning authority with regard to appropriate assessment.

### **9.4. European Sites at Risk**

9.4.1. The site is not located within or immediately adjacent to a European site. A summary of the European Sites in the vicinity of the site are presented below. Where a possible connection between the development and a European site has been identified, these sites will be examined in more detail.

9.4.2. **Table 1 European Sites at risk**

European Site	Qualifying interests	Conservation Objectives	Distance from proposed development (km)	Connections (source-pathway-receptor)
<b>Cork Harbour SPA (004030)</b>	<b>Wintering Bird Species:</b> Little Grebe ( <i>Tachybaptus ruficollis</i> ) [A004] Great Crested Grebe ( <i>Podiceps cristatus</i> ) [A005] Cormorant ( <i>Phalacrocorax carbo</i> ) [A017] Grey Heron ( <i>Ardea cinerea</i> ) [A028] Shelduck ( <i>Tadorna tadorna</i> ) [A048] Wigeon ( <i>Anas Penelope</i> ) [A050] Teal ( <i>Anas crecca</i> ) [A052] Pintail ( <i>Anas acuta</i> ) [A054] Shoveler ( <i>Anas clypeata</i> ) [A056] Red Breasted Merganser ( <i>Mergus serrator</i> ) [A069] Oystercatcher ( <i>Haematopus ostralegus</i> ) [A130] Golden Plover ( <i>Pluvialis apricaria</i> ) [A140] Grey Plover ( <i>Pluvialis squatarola</i> ) [A141] Lapwing ( <i>Vanellus vanellus</i> ) [A142] Dunlin ( <i>Calidris alpina</i> ) [A149] Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156] Bar-tailed Godwit ( <i>Limosa lapponica</i> ) [A157] Curlew ( <i>Numenius Arquata</i> ) [A160] Redshank ( <i>Tringa tetanus</i> ) [A162] Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) [A179] Common Gull ( <i>Larus canus</i> ) [A182]	To maintain and/or restore the favourable conservation condition of the Annex I habitats and/or the annex II species for which the SPA has been selected which are defined by lists of attributes and targets	0.06km (overland to surface water discharge point)  4.0km (from WWTP discharge point)	Hydrological connection via stormwater outfall to Douglas River Estuary/Lough Mahon at point where it forms part of SPA  Hydrological connection from outfall to municipal WWTP

	<p>Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]  Greenshank (<i>Trianga nebularia</i>) [A164] and  Mallard (<i>Anas platyrhynchos</i>)</p> <p><b>Breeding bird species:</b>  Common Tern (<i>Sterna hirundo</i>) [A193]  Wetland and waterbirds [A999]</p> <p><b>Habitat:</b> Wetlands</p>			
<b>Great Island Channel SAC (001058)</b>	<p>Mudflats and sandflats not covered by seawater at low tide [1140].</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330].</p>	<p>To maintain and/or restore the favourable conservation condition of the Annex I habitats and/or the annex II species for which the SPA has been selected which are defined by lists of attributes and targets</p>	<p>4.5km (overland)</p> <p>5.3km (from surface water discharge point)</p> <p>Wastewater discharge point n/a</p>	<p>Hydrological connection via storm water outfall to Douglas Estuary at c.5.3km</p> <p>SAC is upstream of WWTP</p>

## 9.5. Consideration of Impacts

9.5.1. The main elements of the proposed development which could give rise to potential impacts on the European sites are as follows:

- Changes in water quality arising from surface water run-off
- Changes in water quality arising from wastewater discharges
- Disturbance/displacement of species and/or mortality due to collision
- Ex-situ habitat loss or damage due to spread of invasive plants

9.5.2. Water Quality impacts from Surface water run-off –

- There are no surface water features within the site.
- During construction phase, water from the proposed development will drain, via a private sewer serving Bessborough lands, to the public stormwater sewer and from there to the Douglas River Estuary/Lough Mahon. The

existing stormwater outfall is located within the designated area of Cork Harbour SPA. The Great Island Channel SAC is located c. 5.3km to the east of the outfall.

- The NIS concludes that there is a hydrological link between the development site and the Cork Harbour SPA via the surface water network. Thus, there is a possibility that surface water runoff containing silt, sediments or contaminants could reach the SPA and potentially impact water quality which could have effects on the qualifying interests of the European site. A precautionary approach is taken in relation to the potential for impacts on the Great Island Channel SAC due to its location within Cork Harbour and the occurrence of tidal inundation onto this site.
- There may also be potential for construction stage surface water run-off to reach the estuary (and associated Natura sites) due to the proximity of the site to the estuary (60-170m) and the gradient of the land which slopes downwards towards the waterbody.
- During the construction phase, environmental control measures will be implemented as part of the project to ensure appropriate management and control of surface water runoff arising from the development. The proposed mitigation measures, as outlined in the NIS (2.3.2.1), are intended to reduce or avoid significant effects on the qualifying interests of the European Sites. The potential effects on these Natura 2000 sites cannot, therefore, be screened out and a Stage 2 Appropriate Assessment is required in respect of the Cork Harbour SPA and, as a precaution, the more distant Great Island Channel SAC.
- Operational surface water run-off associated with the development will also discharge to the Douglas River Estuary via the same public storm-sewer network and stormwater outfall to the southwest. However, the surface water will be attenuated and discharged in small, controlled volumes, as set out in the applicant's Engineering Services Report). The pollution control measures to be undertaken during the operational phase (as outlined in section 2.3.2.2 of the NIS) are considered to be standard practices for urban sites and would be likely to be required for the development of any similar urban site in order

to protect receiving waters, irrespective of any potential connection to a European Site.

- In the event that the operational surface water treatment measures were not implemented or failed, I remain satisfied that the potential for likely significant effects on the qualifying interests of the Cork Harbour SPA and the Great Island Channel SAC can be excluded given the nature and scale of the development, the distant connection to the European sites, and the volume of the receiving waters within Cork Harbour (dilution factor).

#### 9.5.3. Water Quality Impacts from Wastewater/foul effluent –

- Construction stage wastewater will be collected and removed from site via a licensed operator and will not give rise to a source-pathway-receptor connection with the European sites.
- During the operational phase, the development will be connected to the public foul sewer which will discharge to the public foul sewer network for Cork City WWTP, which ultimately discharges to Cork Harbour at Lough Mahon. Cork Harbour SPA is located c. 4km downstream of the WWTP discharge point. The NIS has, therefore, identified a potential hydrological pathway to Cork Harbour SPA via the foul water network. It is noted that Great Island Channel SAC is located upstream of the WWTP discharge point.
- Although Uisce Eireann (formerly Irish Water) had reported some non-compliance issues at the WWTP in relation to total nitrogen and phosphorous emissions in 2020, the NIS notes that improvements involving ferric dosing have occurred in the meantime and this has resulted in full compliance. In addition, ambient monitoring of the transitional and coastal receiving waters indicates that discharge from the WWTP do not have an observable negative impact on water quality or WFD status of the receiving waters (Irish Water 2021a). The NIS also notes that the WWTP has sufficient capacity to accept the additional organic loading of 280 PE from the proposed development (where remaining organic capacity is > 170k PE, Irish Water 2021a).
- The foul water discharge from the proposed development is negligible in the context of the overall license discharge at Cork WWTP and, as such, it is considered that its impact on the overall discharge would be negligible. On

this basis, I am satisfied that the potential for significant impacts on the Cork Harbour SPA and the Great Island Channel SAC due to impacts arising from foul discharges from the proposed development can be screened out and this issue does not need to be carried forward for further consideration.

#### 9.5.4. Species Disturbance/Displacement or Mortality from Collision –

- Cork Harbour SPA is located c.170m from the developable area of the appeal site and is located c.60m from the proposed sewer upgrade. The European site is designated for the protection of a range of waterbird species that typically roost and forage along intertidal mudflats and coastal wetlands or fields. Disturbance during the construction and operational phases of the development on the waterbird species due to noise, visual cues etc. or from ex-situ impacts where the QI species may occur outside the SPA, (e.g. Foraging or commuting), or arising from potential collision with tall structures, are considered in the NIS.
- The study site does not overlook Great Island Channel SAC due to the distance (c.5.3km) and the existing screening associated with the environment. Given these factors, together with the nature of the qualifying Interests, which are habitats rather than species, the NIS did not identify any impact receptor pathway for the SAC in terms of disturbance/displacement impacts.
- During the construction phase of the development, the NIS identified the potential for direct disturbance and/or displacement of the Qualifying Interests of Cork Harbour SPA as a result of noise or visual cues, such as, artificial lighting and the movement of machinery or people. The closest area of water bird habitat associated with Cork Harbour SPA are mudflats, which are c.60m from the SPA sewer upgrade and 170m from the development. The N40 Cork South Ring Road, a busy multi-lane arterial road, is located between the Bessborough lands and these mudflats and there is a mature treeline which screens the SPA from the site. It is considered, however, that the background noise levels associated with the N40 and other existing urban activities in the general area are likely to be outweighed by noise from the construction works during the anticipated 18-24 months construction period, particular in respect of waterbirds/receptors located on the mudflats adjacent to the public road.

Artificial lighting during the construction phase will largely be confined to daylight hours with only limited occasions where construction works may occur during darkness. No impacts area envisaged.

- During the operational phase, potential impacts involving light spillage into the SPA were excluded in the NIS due to the proposed lighting plans submitted with the application. It is further noted in the NIS that there will be no aviation warning lights fitted to apartment blocks or any other bright lights that might distract or disorientate waterbirds. The screening effect of the mature trees was also taken into account as was the presence of artificial lighting along the route of the intervening N40.
- The potential for ex-situ impacts outside of the boundary of the SPA, including disturbance, displacement and collision risk, were also considered in the NIS. Avian surveys were carried out in 2022 and also in respect of previous developments on the site and adjoining site in 2020, in order to determine the potential for waterbirds from the SPA to utilise the site or to fly over it. The results of these surveys are appended to the NIS. The site comprises rough grassland and scrub and is surrounded by a mature treeline which screens it from the estuary. The site does not, therefore, support habitats of ex-situ ecological value for qualifying interest species of the Cork Harbour SPA. The avian surveys of 2022 and 2020 support this conclusion as it was found that the site is not used by any QIs of the SPA or any other waterbirds for foraging or roosting. Furthermore, the site is not of any known historical importance for waterbirds.
- The only breeding Qualifying Interest of the SPA is Common Tern. However, the NIS states that none of the nesting locations associated with this species are located in close proximity to the appeal site, being over 5km to the east/southeast.
- With regard to collision risk with tall buildings, the avian surveys found that seven waterbird QIs of the Cork Harbour SPA were noted as flying over the site and surrounding areas. The species noted were -
  - Lesser Black-headed Gull (*Larus Fuscus*)
  - Black-headed Gull (*Chroicocephalus Ridibundus*)

- Common Gull (*Larus Canus*)
  - Black-tailed Godwit (*Limosa Limosa*)
  - Curlew (*Numenius Arquata*)
  - Cormorant (*Phalacrocorax Carbo*)
  - Golden Plover (*Pluvialis Apricaria*)
- The majority of sightings (70%) were of Lesser Black-headed Gull or Black-headed Gull. In general, the surveys established that sightings largely comprised local movements of low numbers of waterbirds with most observations involving less than 5 individuals. However, a couple of larger flocks were sighted, including c.100 gulls and 200-500 golden Plover on a couple of occasions.
  - Approx. half of the sightings were 5-25m above ground with approx. half occurring within 25-100m above ground level. The height of the proposed apartment buildings is given as c.26m above ground level. The NIS states that Gulls and other waterbirds are adept at navigating around urban environments (being commonly associated with the River Lee within Cork City Centre) and will quickly habituate to the presence of new structures and react accordingly. It is noted that the proposed development will not have aviation lights or other bright lights that might attract or disorientate water birds.
  - Given the absence of local waterbird usage of the study site for foraging/roosting combined with the relatively low level of flyovers of the site by local water birds, and the absence of aviation lighting, the potential for significant collision impacts as a result of the proposed development are excluded.
  - On the basis of the foregoing, the potential for significant impacts on waterbirds that are qualifying interests of the Cork Harbour SPA due to disturbance/displacement/collision effects can be screened out. I consider that the survey methodology and timing of bird surveys are adequate to support the conclusions of the NIS.

#### 9.5.5. Invasive plants –

- The spread of invasive species arising from site activities via a water feature could give rise to indirect habitat loss in downstream locations, including

European sites. The NIS notes that there are two known invasive species recorded on the site, Japanese Knotweed and Buddleia, and a further invasive species is present in adjoining lands, Winter Heliotrope.

- There are no water features or drains on the site that could act as a conduit for the spread of these species into the Cork Harbour SPA. Thus, the risk from these plants is a local one whereby a detailed survey will be required prior to commencement of works together with a detailed invasive species management plan. The potential for habitat loss or damage within the SPA by reason of indirect impacts from the spread of invasive species can, therefore, be screened out.

## **9.6. Screening Statement and Conclusions**

- 9.6.1. Having carried out screening for Appropriate Assessment of the project, the NIS concluded that the potential for significant effects on two European sites within the Cork Harbour area as a result of the project individually, or in combination with other plans or projects, cannot be excluded in view of the Conservation Objectives of those sites and that Appropriate Assessment is therefore required for the following:

- Cork Harbour SPA (004030)
- Great Island Channel SAC (001058)

- 9.6.2. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, (as amended). Having regard to the foregoing, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, significant effects cannot be ruled out and a Stage 2 Appropriate Assessment is, therefore, required.

## **9.7. Stage 2 – Appropriate Assessment**

- 9.7.1. I propose to consider the requirements of Article 6(3) with regards to appropriate assessment of a project under part XAB, Sections 177U and 177V of the Planning and Development Act, 2000, as amended, in this section of my report.
- 9.7.2. The relevant European sites for Stage 2 AA are the Cork Harbour SPA (004030) and Great Island Channel SAC (001058). This Stage 2 Assessment will consider whether or not the project would adversely affect the integrity of these European sites, either

individually or in combination with other plans and projects, in view of the Conservation Objectives for each site.

- 9.7.3. The Qualifying Interests and Conservation Objectives for each of these European sites, together with the identified source-pathway-receptor connections, are set out in Table 1 above and in the NIS. The site-specific Conservation Objectives and any relevant attributes and targets for each of the Qualifying Interests of these European sites are summarised below in Table 2. I have also examined the Natura 2000 data forms as relevant and the conservation Objectives supporting documents for these sites available through the NPWS website ([www.npws.ie](http://www.npws.ie)).

**9.8. Potential for direct and indirect effects on the Cork Harbour SPA and Great Island Channel SAC**

- 9.8.1. There would be no direct effects on the Cork Harbour SPA (004030) and Great Island Channel SAC (001058) due to the distances involved and as there would be no direct habitat loss or fragmentation as a result of the proposed development. Furthermore, there are no watercourses or drainage channels within the site but a hydrological link to Cork Harbour exists via the stormwater drainage network. This provides a potential pathway to Cork Harbour SPA, which is located c.60m from the site of the proposed sewer upgrade, and to a lesser extent to Great Island Channel, which is located c.5.3km downstream.
- 9.8.2. There is potential for indirect effects on the Cork Harbour SPA and on the Great Island Channel SAC via this connection. The NIS identified that the proposed development may, in the absence of mitigation, result in construction related and operational surface water run-off drainage impacts in relation to Cork Harbour SPA and Great Island Channel SAC. However, the potential impacts from operational surface water run-off were screened out above on the basis of the nature and scale of the development which will include attenuation and slow release of surface water, the distant connection to the European sites, and the volume of the receiving waters within Cork Harbour (dilution factor).
- 9.8.3. Potential for indirect effects for wastewater discharge arise as the proposed development will increase the loading to the Cork City WWTP which discharges to Cork Harbour at Lough Mahon. Cork Harbour SPA is located c. 4km downstream of the WWTP discharge point. The NIS has, therefore, identified a potential hydrological pathway to Cork Harbour SPA via the foul water network. It is noted that

Great Island Channel SAC is located upstream of the WWTP discharge point. However, the potential for significant indirect effects was screened out above on the basis of a combination of the negligible contribution from the development, the distances involved and the dilution factor of the receiving waters.

- 9.8.4. Potential for indirect effects from disturbance and/or displacement of species and from collision were also screened out above. Great Island Channel SAC, due to the nature of the Qualifying Interests (habitats, not species) together with the distance (c.5.3km), was unlikely to be the affected. Potential indirect impacts on Cork Harbour SPA relating to noise, visual cues and collision were excluded on the basis of a combination of an absence of local waterbird usage for foraging/commuting and low levels of flyovers, (as established by avian surveys), the screening effects of mature treelines and the busy N40 in the intervening space, the use of standard work practices and the absence of proposed aviation lighting. Potential indirect impacts from invasive species were excluded on the basis of a lack of any watercourses/drains to act as a conduit to the European sites.
- 9.8.5. Potential **cumulative effects** could arise in respect of construction/operational related surface-water run-off and operational related waste-water effluent inputs to water features. Where qualifying interests associated with Cork Harbour SPA and Great Island Channel SAC are present, cumulative impacts could result from hydrological or water quality impacts such as increased siltation, nutrient release and contaminated run-off arising from the proposed development in combination with other relevant developments.

**Table 2 Qualifying Interests, Conservation Objectives and Potential for impacts**

Cork Harbour SPA (004030)					
Qualifying Interest	Conservation Objectives Targets and attributes	Potential adverse effects	Mitigation measures	In-combination effects	Can adverse effects on integrity be excluded?
Little Grebe <i>Tachybaptus ruficollis</i>	Maintain long term population	<u>Direct effects</u>  No Direct Effects due	Yes  Mitigation measures	Yes	Yes

[A004]	<p>trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation</p>	<p>to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures</p>	<p>required and detailed in full in section 4.2 of NIS</p>		
<p>Great Crested Grebe</p> <p><i>Podiceps cristatus</i></p> <p>[A005]</p>	<p>Maintain long term population trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from</p>	<p><u>Direct effects</u></p> <p>No Direct Effects due to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River</p>	<p>Yes</p> <p>Mitigation measures required and detailed in full in section 4.2 of NIS</p>	Yes	Yes

	natural patterns of variation	Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures			
Cormorant <i>Phalacrocorax carbo</i> [A017]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

		mitigation measures			
<p>Grey Heron</p> <p><i>Ardea cinerea</i></p> <p>[A028]</p>	<p>Maintain long term population trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation</p>	<p><u>Direct effects</u></p> <p>No Direct Effects due to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures</p>	<p>Yes</p> <p>Mitigation measures required and detailed in full in section 4.2 of NIS</p>	<p>Yes</p>	<p>Yes</p>
<p>Shelduck</p> <p><i>Tadorna tadorna</i></p> <p>[A048]</p>	<p>Maintain long term population trend as stable or increasing.</p> <p>No significant decrease in</p>	<p><u>Direct effects</u></p> <p>No Direct Effects due to separation distance.</p> <p><u>Indirect effects</u></p>	<p>Yes</p> <p>Mitigation measures required and detailed in full in</p>	<p>Yes</p>	<p>Yes</p>

	the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	section 4.2 of NIS		
Wigeon <i>Anas Penelope</i> [A050]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

		associated with the SPA, in absence of site-specific mitigation measures			
Teal <i>Anas crecca</i> [A052]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes
Pintail <i>Anas acuta</i> [A054]	Maintain long term population	<u>Direct effects</u>  No Direct Effects due	Yes  Mitigation measures	Yes	Yes

	<p>trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation</p>	<p>to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures</p>	<p>required and detailed in full in section 4.2 of NIS</p>		
<p>Shoveler</p> <p><i>Anas clypeata</i></p> <p>[A056]</p>	<p>Maintain long term population trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from</p>	<p><u>Direct effects</u></p> <p>No Direct Effects due to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River</p>	<p>Yes</p> <p>Mitigation measures required and detailed in full in section 4.2 of NIS</p>	Yes	Yes

	natural patterns of variation	Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures			
Red-breasted Merganser <i>Mergus serrator</i> [A069]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

		mitigation measures			
Oystercatcher <i>Haematopus ostralegus</i> [A130]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes
Golden Plover <i>Pluvialis apricaria</i> [A140]	Maintain long term population trend as stable or increasing.  No significant decrease in	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>	Yes  Mitigation measures required and detailed in full in	Yes	Yes

	the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	section 4.2 of NIS		
Grey Plover <i>Pluvialis squatarola</i> [A141]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

		associated with the SPA, in absence of site-specific mitigation measures			
Lapwing <i>Vanellus vanellus</i> [A142]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes
Dunlin <i>Calidris alpina</i> [A149]	Maintain long term population	<u>Direct effects</u>  No Direct Effects due	Yes  Mitigation measures	Yes	Yes

	<p>trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation</p>	<p>to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures</p>	<p>required and detailed in full in section 4.2 of NIS</p>		
<p>Black-tailed Godwit</p> <p><i>Limosa limosa</i></p> <p>[A156]</p>	<p>Maintain long term population trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from</p>	<p><u>Direct effects</u></p> <p>No Direct Effects due to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River</p>	<p>Yes</p> <p>Mitigation measures required and detailed in full in section 4.2 of NIS</p>	Yes	Yes

	natural patterns of variation	Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures			
Bar-tailed Godwit <i>Lamosa lapponica</i> [A157]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

		mitigation measures			
Curlew <i>Numenius</i> <i>Arquata</i> [A160]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes
Redshank <i>Tringa tetanus</i> [A162]	Maintain long term population trend as stable or increasing.  No significant decrease in	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>	Yes  Mitigation measures required and detailed in full in	Yes	Yes

	the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	section 4.2 of NIS		
Black-headed Gull <i>Chroicocephalus ridibundus</i> [A179]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

		associated with the SPA, in absence of site-specific mitigation measures			
Common Gull <i>Larus canus</i> [A182]	Maintain long term population trend as stable or increasing.  No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes
Lesser Black-backed Gull <i>Larus fuscus</i>	Maintain long term population	<u>Direct effects</u>  No Direct Effects due	Yes  Mitigation measures	Yes	Yes

[A183]	<p>trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from natural patterns of variation</p>	<p>to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures</p>	<p>required and detailed in full in section 4.2 of NIS</p>		
<p>Greenshank</p> <p><i>Tringa nebularia</i></p> <p>[A164]</p>	<p>Maintain long term population trend as stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas by QI other than that occurring from</p>	<p><u>Direct effects</u></p> <p>No Direct Effects due to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River</p>	<p>Yes</p> <p>Mitigation measures required and detailed in full in section 4.2 of NIS</p>	<p>Yes</p>	<p>Yes</p>

	natural patterns of variation	Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures			
Common Tern <i>Sterna hirundo</i> [A193]	<p>No significant decline in: -</p> <ul style="list-style-type: none"> <li>-Breeding population abundance</li> <li>-Productivity rate</li> <li>-Distribution</li> <li>-Prey biomass</li> </ul> <p>No significant increase in: -</p> <ul style="list-style-type: none"> <li>-Barriers to connectivity</li> </ul> <p>Human activities should not occur at breeding sites at levels that would adversely</p>	<p><u>Direct effects</u></p> <p>No Direct Effects due to separation distance.</p> <p><u>Indirect effects</u></p> <p>Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific</p>	<p>Yes</p> <p>Mitigation measures required and detailed in full in section 4.2 of NIS</p>	Yes	Yes

	affect the breeding common tern population.	mitigation measures			
Wetland and Waterbirds [A999]	Maintain the permanent area occupied by the wetland habitat as stable and not significantly less than the area of 2,587ha, other than from natural patterns of variation	<u>Direct effects</u>  No Direct Effects due to separation distance.  <u>Indirect effects</u>  Potential for indirect effects on Douglas River Estuary/ Lough Mahon Transitional waterbody associated with the SPA, in absence of site-specific mitigation measures	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

#### Overall conclusion: Integrity test

Following the implementation of mitigation measures, the construction and operation of this development will not adversely affect the integrity of this European site and no reasonable doubt remains as to the presence of such effects.

Great Island Channel SAC (001058)					
Qualifying Interest	Conservation Objective	Potential adverse effects	Mitigation measures	In-combination effects	Can adverse effects on integrity be excluded?
Mudflats and sandflats not covered by seawater at low tides [1140]	Maintain permanent habitat area as stable or increasing subject to natural processes.  Conserve the following community type in a natural condition: Mixed sediment to sandy mud with polychaetes and oligochaetes community complex.	<u>Direct effects</u>  No direct effects due to separation distance  <u>Indirect effects</u>  Potential for indirect impacts on the Douglas River Estuary/ Lough Mahon Transitional waterbody, as a precaution due to the location of the SAC within Cork Harbour in combination	Yes  Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

		with the occurrence of tidal inundation onto the site.			
Atlantic salt meadows <i>Glauco-Puccinellietalia maritimae</i> [1330]	<u>Habitat area</u> Maintain permanent habitat area as stable or increasing subject to natural processes, including erosion and succession. <u>Habitat Distribution</u> No decline or change in habitat distribution subject to natural processes. <u>Physical Structure</u> - Maintain/restore natural circulation of	<u>Direct effects</u> No direct effects due to separation distance <u>Indirect effects</u> Potential for indirect impacts on the Douglas River Estuary/Lough Mahon Transitional waterbody, as a precaution due to the location of the SAC within Cork Harbour in combination with the occurrence of tidal	Yes Mitigation measures required and detailed in full in section 4.2 of NIS	Yes	Yes

	<p>sediments and organic matter.</p> <p>Maintain/restore creek and pan structure, subject to natural processes, including erosion and succession.</p> <p>Maintain natural tidal regime.</p> <p><u>Vegetation structure</u> –</p> <p>Zonation –</p> <p>Maintain range of coastal habitats including transitional zones, subject to natural processes including erosion and succession.</p> <p>Vegetation Height –</p> <p>Maintain structural</p>	<p>inundation onto the site.</p>			
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	<p>variation within sward.</p> <p>Vegetation cover –</p> <p>Maintain more than 90% area outside creeks vegetated.</p> <p><u>Vegetation composition</u> –</p> <p>Typical species and sub-communities –</p> <p>Maintain range of sub-communities with typical species listed in SMP.</p> <p>Vegetation structure:</p> <p>negative indicator species - spartina anglica – no significant expansion of common cordgrass, with an annual spread of less</p>				
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	than 1% where it is known to occur.				
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### Overall conclusion: Integrity test

Following the implementation of mitigation measures, the construction and operation of this development will not adversely affect the integrity of this European site and no reasonable doubt remains as to the presence of such effects.

## 9.9. Mitigation measures

- 9.9.1. Mitigation measures in respect of the proposed development are set out in Section 4.2 of the NIS and in the Construction Environmental Management Plan in relation to potential surface-water run-off drainage effects on Cork Harbour SPA, and as a precautionary approach, on Great Island Channel SAC due to the occurrence of tidal inundation.
- 9.9.2. The Surface Water Run-off Mitigation Measures for the Construction Phase include the following:

- Sediment erosion control – silt management including silt fencing and cut-off/diversion drains.
- Wheelwash and fuel storage – temporary wash-down and re-fuelling areas to have control measures to minimise risk of contaminants entering receptors.
- Design criteria – to minimise any change to the hydrology and ground water conditions on site by measures such as controlling run-off close to the source, retaining silts on site and controlling run-off rates.
- Protecting water quality and environmental management – operations will be strictly controlled by means of a Method Statement, training of personnel etc. Measures will include soil excavation during dry periods, use of cut-off drains, silt fencing, erosion control and attenuation and restriction of construction of site drainage/sediment control systems during dry periods.

- Dewatering – using the minimum volume and rate necessary, using dewatering bags to retain silt and minimising further ingress of groundwater into excavations.
- Spoil management – avoid placing spoil on slopes with shaping to encourage efficient run-off with silt fencing and cut-off drains. Spoil to be used as part of landscaping and reinstatement where possible and movement of material to be minimised.
- Concrete and materials delivery, storage and handling – on-site placement and movement of concrete on site to be strictly controlled with restrictions on carrying capacity of trucks, measures to prevent spillages and ensure rapid and correct clean-up when necessary and avoiding concrete pouring during /after rainy periods.
- Oil storage and re-fuelling – standard measures to prevent accidental spillage of hydrocarbons during re-fuelling of construction machinery.
- Pollution control and environmental management – sediment run-off will be controlled with no uncontrolled discharge of soiled waters down gradient.
- Oil and fuel spills from construction plant – re-fuelling of plant to take place in designated, bunded locations with an emergency plan for any accidental spillages.

9.9.3. The NIS concluded that with the implementation of the mitigation measures specified in section 4.2, no significant adverse effects related to indirect habitat loss or deterioration of the Natura 2000 sites arising from silt laden or contaminated surface water runoff associated with the construction or operational phases of the proposed development are deemed likely in this case. Potential wastewater impacts and disturbance displacement impacts including collision were not considered relevant and no mitigation measures were considered necessary.

9.9.4. I consider that the proposed mitigation measures are clearly described, are reasonable, practical and enforceable. I am satisfied that the measures outlined fully address any potential impacts on the Cork Harbour SPA and Great Island Channel SAC arising from the proposed development and that this conclusion can be made on the basis of objective scientific information.

## 9.10. In-Combination Effects

- 9.10.1. Potential cumulative effects could arise in respect of construction/operational related surface-water run-off and operational related waste-water effluent inputs to water features. Cumulative impacts could result from hydrological or water quality impacts such as increased siltation, nutrient release and contaminated run-off arising from the proposed development in combination with other relevant developments.
- 9.10.2. I note that the Cork City Development Plan 2022-2028 includes objectives relating to the management of stormwater and surface water run-off in accordance with SUDS and Nature Based Solutions. The proposed development incorporates a surface-water management strategy which includes attenuation, interception storage and hydrocarbon interception as outlined in 2.3.2.2 of the NIS. These proposed measures are generally in accordance with the objectives of the Development Plan and would not be likely to give rise to in-combination effects. Given the negligible contribution of the proposed development to wastewater discharge and to the remaining capacity of the municipal WWTP, it is considered that any potential for in-combination effects on the water quality in the Douglas River Estuary and Lough Mahon water body can be excluded.
- 9.10.3. It is further considered that any future development of the adjoining lands which may influence the conditions of Cork Harbour SPA and Great Island Channel SAC will also be subject to Appropriate Assessment and will be required to comply with standard environmental practice during construction and operational phases. As such, it is considered that significant adverse effects on Natura 2000 sites related to cumulative or in-combination effects are unlikely to arise in this case.

#### **9.11. Appropriate Assessment Conclusion**

- 9.11.1. The proposed development has been considered in light of the assessment requirements of sections 177U and 177V of the Planning and Development Act 2000, as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that the likelihood of significant effects on the following sites could not be excluded:
- Cork Harbour SPA (004030)
  - Great Island Channel SAC (001058)
- 9.11.2. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation

objectives. Following an Appropriate Assessment, I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out an appropriate Assessment, and subject to the implementation of the mitigation measures, which I also consider sufficient, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of Cork Harbour SPA (site code 004030) or Great Island Channel SAC (001058), or any other European site in view of the sites' conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects. This is consistent with the findings of the submitted NIS.

## **10.0 Recommendation**

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

## **11.0 Reasons and Considerations**

1. Having regard to the Board's decision to refuse permission for a previous SHD application (ABP.308790-20) on the site on the basis of the findings of the Fifth Interim Report (2019) and the Final Report (2020) of the Commission of Investigation into Mother and Baby Homes, together with the information submitted in the course of the previous application and oral hearing (ABP.308790-20), the Board is not satisfied that the site was not previously used as, and does not contain, a children's burial ground and considers that there are reasonable concerns in relation to the potential for a children's burial ground within the site, associated with the former use of the lands as a Mother and Baby Home over the period 1922 to 1998. No new material information or evidence has been presented to the Board following that decision. In this context, the Board considers that it would be premature to grant permission for the proposed development prior to establishing if there is a children's burial ground located within the site and the extent of any such burial ground. It also considers that it would be premature to grant permission given the implications of such for the delivery of the development as proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the height, scale, design of the proposed apartment blocks and to their poor relationship to the historic landscape which forms the setting

of Bessborough House, a protected structure, and its folly and landscaped gardens, it is considered that the proposed development, notwithstanding the revised scheme submitted with the grounds of appeal, would result in isolated residential blocks which would be visually obtrusive within the curtilage and adversely affect the character and setting of the protected structure and the associated folly which sits within a Landscape Protection Zone, and would comprise haphazard, piecemeal development which would dominate this historic landscape and detract from the character of the landscape which is designated as an Area of High Landscape Value in the current Cork City Development Plan. The proposed development would, therefore, seriously injure the visual amenity and heritage assets of this important historic landscape and would be contrary to Objectives 6.12, 6.13, 8.19 and 8.20 in the Cork City Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

3. Having regard to the density and height targets for Mahon as set out in Table 11.2 of the current Cork City Development Plan 2022-2028, to the prevailing densities in the area and to the location of the site within a landscaped former country house estate with a lack of safe and convenient pedestrian and cycle friendly means of connectivity with local services and facilities in the neighbourhood, notwithstanding the proximity to the Passage West Greenway, it is considered that the density, height and scale of the proposed development is excessive, would fail to provide safe and accessible means of pedestrian access to and from the development, particularly after dark, and would fail to respond in a positive and proportionate manner to the established development in the surrounding area. The proposed development would, therefore, materially contravene the density and height provisions of the Development Plan for the area, would be contrary to the advice contained in the Sustainable Residential Development and Compact Settlement Guidelines (2024) and would 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.

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Mary Kennelly  
Senior Planning Inspector

27<sup>th</sup> June 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP 315 820 - 23		
<b>Proposed Development Summary</b>	construction of a residential development of 92 apartments and creche to be provided in two buildings ranging in height from 5 to 8 storeys, including the provision of a new pedestrian and cyclist ramp access to the site from the Passage West Greenway to the east and vehicular access to the proposed development will be via an existing access road off the Bessborough Rd. Part of the proposed development is situated within the curtilage of Bessborough House which is a Protected Structure (Ref. RPS 490)		
<b>Development Address</b>	Bessborough, Ballinure, Mahon, Cork City		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	✓
		<b>No</b>	No further action required
<b>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?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>	✓		Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	No EIAR or Preliminary Examination required

<b>Yes</b>	√	Class/Threshold – Class 10(b)(i) Threshold 500 dwellings		Proceed to Q.4
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<b>4. Has Schedule 7A information been submitted?</b>				
<b>No</b>			<b>Preliminary Examination required</b>	
<b>Yes</b>	√		<b>Screening Determination required</b>	

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_