



An
Bord
Pleanála

Inspector's Report ABP-306268-19.

Development	Planning permission is sought for 4 no. duplex apartments together with all associated site works and services.
Location	Townland of Rush, Rush, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F19A/0468.
Applicant	Glenveagh Homes Ltd.
Type of Application	Planning Permission.
Planning Authority Decision	Refused.
Type of Appeal	First Party
Appellant	Glenveagh Homes Ltd.
Observer(s)	None.
Date of Site Inspection	6 th day of February, 2020.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The 0.049ha rectangular shaped appeal site is located c0.2km to the north of Brook Lane and c0.5km to the north west of Upper Main Street, Rush, in County Dublin, both as the bird would fly.
- 1.2. The site is situated within a larger residential scheme that is called 'Knightsgate' that at the time of my inspection was nearing completion. This residential scheme connects to the public road network via the aforementioned Brook Lane and it is bound on its western side by a residential scheme of detached and semi-detached dwellings of 2-storey built form that is called 'Sea Brook'. According to available information 'Sea Brook' is a residential development containing c90 dwelling units.
- 1.3. The site itself is a corner site located on a T-junction within the internal access road system serving the dwellings within the 'Knightsgate' residential scheme and at the time of inspection contained a number of temporary structures/storage units and other sundry items associated with the on-going construction works that I observed were nearing completion.
- 1.4. The site is adjoined on its southern side by a semi-detached pair that forms part of a larger group semi-detached pairs that extended in a southerly direction. A similar group of semi-detached pairs extends in a northerly direction commencing at the north western corner of the T-junction.
- 1.5. The surrounding area has a suburban new residential character with new residential schemes completed and occupied to the east and west of the 'Knightsgate' residential scheme.

2.0 Proposed Development

- 2.1. Planning permission is sought for the construction of 1 no. 2-storey duplex building comprising 2 no. 1 bedroom duplex apartments and 2 no. 2 bedroom duplex apartments (4 no. duplex apartments); 4 no. additional car parking spaces; associated private open space; bin storage; 2 no. bicycle spaces; all associated site development and landscape works; resulting in an increase of 4 no. dwellings from 129 no. dwellings to 133 no. dwellings on the overall wider site which has a stated c.6 hectare area. The public notices indicate that the site is located within the permitted wider residential site

known as 'Knightsgate' for which P.A. Reg. Ref. No. F15A/0294; F16A/0221 & An Bord Pleanála Ref. No. PL06F.247032 also relates.

2.2. This application is accompanied by the following documentation:

- Covering Letter, dated the 4th day of October, 2019.
- 'Creche Assessment – Proposed Residential Development at Knightsgate, Rush, County Dublin', dated October, 2019.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 27th day of November, 2019, the Planning Authority **refused** planning permission for the proposed development set out under Section 2.1 above for the following stated reason:

“Having regard to the number of residential units permitted on the overall Knightsgate site, the limited availability of childcare facilities and spaces in addition to the limited range of childcare services within easy access to the site, it is considered that the proposed development would result in the creation of an unsustainable and poorly integrated community and would materially contravene objectives PM34, PM66, PM74, PM75 and PM76 of the Fingal Development Plan 2017-2023. The proposed development is also contrary to Section 4.5 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009), Childcare Facilities: Guidelines for Planning Authorities (June 2001) and Circular Letter PL 3/2016 dated 31/03/2016, Re: Childcare facilities operating under the Early Childhood Care Education (ECCE) Scheme (Planning System support for childcare post September 2016 - Implementation of the Childcare Facility Guidelines for Planning Authorities 2001). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1. **Planning Reports:** The Planning Officers report is the basis of the Planning Authority's decision. It includes the following comments:

- The proposed development, if granted, would result in no childcare facility within this development of 129 no. residential units which is nearing completion.
- It is considered inappropriate in the context of the locality to remove provision for facilities which could cater for childcare demands.
- The proposed development would contravene objectives PM34, PM66, PM75 and PM76 of the Development Plan.
- This report concludes with a recommendation to refuse permission.

3.2.2. Other Technical Reports

- **Water and Drainage:** No objection, subject to safeguards.
- **Transportation Planning Section:** No objection, subject to safeguards.
- **Parks and Green Infrastructure:** No objection, subject to safeguards.

3.3. Prescribed Bodies

- **Fingal County Childcare Committee** makes the following comments:
 - The expected increase in population will put extreme pressure on existing early years and school age services in this locality.
- **Irish Water:** No objection, subject to safeguards.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Site

- **P.A. Reg. Ref. No. F18A/0256:** Planning permission was **granted** subject to conditions for amendments to residential development permitted under P.A. Reg. Ref. No. F15A/0294 and ABP Ref. No. PL06F.247032 consisting of amendments to the approved 74 No. 2-Storey 3 and 4 Bedroom dwellings (relating to house types and mix on c2.1ha of the overall permitted site) to now comprise of 86 no. dwellings consisting of 36 No. 2 Bedroom terraced dwellings; 19 No. 3 Bedroom

terraced dwellings; 22 No. 3 bedroom semi-detached dwellings; and, 1 no. detached 4 bedroom dwelling with all housing being 2-storey in their built form along with all associated alterations and amendments.

- **ABP Ref. No. PL06F.247032 (P.A. Reg. Ref. No. F16A/0221):** On appeal to the Board planning permission was **granted** subject to condition for a development consisting of the construction of 129 houses in total comprising five number blocks of two-storey, three-bedroom terraced houses (20 houses), one number block of 2.5-storey, four-bedroom terraced houses (three houses), one number detached and 36 number semi-detached 2.5 storey four-bedroom houses (37 houses), three number detached and 66 number semi-detached, two-storey, three-bedroom house (69 houses). The development will also incorporate a site for a future crèche/childcare facility and all associated site development works, all on lands known as Site 1 on planning register reference number F15A/0294 (6.038 hectare plot of land bounded by Seabrook housing development to the west, Brook Lane and Brookford housing development to the south and agricultural fields/Woodland Park to the north and east, Rush, County Dublin).
- **P.A. Reg. Ref. No. F15A/0294:** Planning permission was **granted** for infrastructural site development works including demolition, roads, footpaths, cycleways, drains, sewers, watermains, surface water attenuation areas, below ground pumping station, utilities, landscaping works, boundary treatment and all ancillary infrastructure and site development works to facilitate future housing development. The development also included widening of c. 356m of Park Road (south of St Maurs GAA Club) and construction of a section of the north/south urban road. The development also included removal of an existing temporary wastewater treatment plant and connecting its existing sewers to the proposed foul sewer system. The application included a non-statutory 'Phase 1A Conceptual Framework/Masterplan'.

4.2. In the Vicinity - Adjoining Site to the West

- **P.A. Reg. Ref. No. F19A/0489:** Planning permission was **granted** subject to conditions for a development consisting of the change of use for 3 no. years from a creche to residential use.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The policies and provisions of the Fingal Development Plan, 2017 to 2023, apply. Under this Development Plan the site is zoned 'RA' *"to provide for new residential communities subject to the provision of the necessary social and physical infrastructure"*.
- 5.1.2. Chapter 3 of the Development Plan sets out the provisions for community infrastructure including 'Childcare Facilities'.
- 5.1.3. Objective PM74 of the Development Plan seeks to *"encourage the provision of childcare facilities in appropriate locations, including residential areas"*.
- 5.1.4. Objective PM76 of the Development Plan seeks to require as part of the planning applications for new residential developments that provision be made for appropriate purpose-built childcare facilities where such facilities are deemed necessary by the Planning Authority.

5.2. Childcare Facilities Guidelines for Planning Authorities, 2001.

- 5.2.1. Section 1.2 of the guideline indicates that the Government Policy on childcare is to increase the number of childcare places and facilities available as well as to improve the quality of childcare services for the community.
- 5.2.2. Section 2.4 of the said guidelines sets out what it considers to be appropriate locations for childcare facilities. This includes but is not limited to larger new housing developments. In such locations it indicates that Planning Authorities should require the provision of at least one childcare facility unless there are significant reasons to the contrary. It includes that the development consists of single bed apartments or where there are adequate childcare facilities in adjoining developments. It also states: *"for new housing areas, an average of one childcare facility for each 75 dwellings would be appropriate"; and, that "the threshold for provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of the areas"*.
- 5.2.3. Section 3.3.1 of the guidelines state: *"in relation to new housing areas, a standard of one childcare facility providing for a minimum of 20 childcare places per approximately*

75 dwellings may be appropriate”; and, that this: *“is a guideline standard and will depend on the particular circumstances of each individual site”*.

5.2.4. Appendix 1 sets out the general standards for childcare facilities.

5.3. **Circular Letter PL 3/2016**

5.3.1. This circular notes that with the governments policy for increasing access to childcare requires the Childcare Facilities Guidelines for Planning Authorities, 2001, to be revised. It also acknowledges the increased demands on childcare facilities on foot of the extension of the ECCE scheme.

5.4. **National Planning Framework – Ireland 2040 – Our Plan, 2018.**

5.4.1. Section 6.4 of the Framework states that: *“the number of people aged 15 or under will continue to increase until the early 2020’s and decline only slowly thereafter. This means that the continued provision and enhancement of facilities and amenities for children and young people, such as childcare, schools, playgrounds, parks and sportsgrounds, remains necessary and will need to be maintained at similar levels for the foreseeable future thereafter. It also means that, if a significant proportion of future population growth occurs within or close to the current built-up footprint of settlements as targeted, it will be possible to maximise the use of existing facilities near where children and young people live”*.

5.4.2. Section 6.5 of the Framework states that: *“access to affordable and high quality childcare is an essential requirement for an equitable society, a thriving economy and sustainable communities and is a critical part of our nation’s infrastructure. Childcare provision in Ireland is reaching capacity and new planning approaches and sustained investment will be required”*.

5.4.3. National Policy Objective 31 seeks to prioritise the alignment of targeted and planned population and employment growth within investment in *“the provision of childcare facilities”*.

5.5. **Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities, December 2008.**

5.5.1. Section 4.5 of the guidelines reiterates the importance of local assessment of need to provide childcare facilities at the development plan or local area plan stage, having regard to the provision of existing facilities in the area. It states: *“when considering*

planning applications, in the case of larger housing schemes, the guidelines recommend the provision of one childcare facility (equivalent to a minimum of 20 child places) for every 75 dwelling units. However, the threshold for such provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas, in consultation with city / county childcare committees. The location of childcare facilities should be easily accessible by parents, and the facility may be combined with other appropriate uses, such as places of employment”.

5.6. Natural Heritage Designations

5.6.1. There are a number of Natura 2000 sites within a 15km radius of the site. The nearest are:

- Special Protection Areas: Rogerstown Estuary SPA (Site Code: 004015) which lies c1.1km to the south at its nearest point.
- Special Area of Conservation: Rogerstown Estuary SAC (Site Code: 000208) which lies c2.2km to the east.
- Special Area of Conservation: Rockabill to Dalkey Island SAC (Site Code: 003000) which lies c2.2km to the east.

5.7. EIA Screening

5.7.1. Having regard to the modest nature, scale and extent of the proposed development, the serviced nature of the site and its setting within the development fringes of the settlement of Rush in north County Dublin, the lateral separation distance from the site and the nearest Natura 2000 site together with the changing nature of the land in between, the distance of the site from nearby sensitive receptors, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development; and, that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:

- On the adjacent site to the west there is creche facility that has been vacant and advertised without any interest. It is therefore difficult to justify reserving a site for a creche when there is clearly no interest in the same. Should future demand be identified the site on the adjacent land to which P.A. Reg. Ref. No. F19A/0489 relates has a yet to be implemented change of use that expires in 3-years and would be available to meet this demand.
- The proposed dwellings will be acquired by the Council subject to planning permission to meet the housing need in the area and as such the proposed dwelling units would contribute to the available housing stock as well as the mix in this locality.
- The appellant has no interest in the construction of a creche on a site that would be better served to meet residential need. Particularly in the context of Government policy to prioritise housing provision.
- The creche demand report submitted with this application confirms that there are existing childcare facilities in the area which can cater for the insubstantial demand that would arise from the Knightsgate development.
- The Fingal Childcare Committee have not substantiated any deficiency in childcare places in the area.
- There is no creche facility permitted as part of the parent permission or any subsequent permission relating to these lands.
- It is unreasonable to expect a vacant site within a development under construction to remain undeveloped indefinitely.
- There are 7 childcare facilities within walking distance of this development and there is no compelling case for an additional facility.

- The purpose of the proposed development is to provide an improved level of choice within this scheme that also responds to market demands and it would bring the numbers of units within this scheme to 133.
- It is not accepted that there is a limited childcare availability in the area.
- In relation to Objectives PM34 and PM66 of the Development Plan it is not accepted that the subject site and its setting are lacking in services.
- It is requested that permission be granted as the proposed development is in accordance with the proper planning and sustainable development of the area.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- It is estimated by the applicant a population of 31 children from the Knightsbridge development. This is considered to be quite a conservative estimate.
- There are only 3 existing childcare facilities identified in the creche assessment within 500m from the site with only 16 vacancies. The remaining 9 childcare providers range from 650m and 2.2km from the subject site. It is not considered that these facilities are easily and readily accessible. In addition, only 3 childcare facilities out of the 12 assessed by the applicant offer full day care services and two of these currently have no vacancies.
- The creche assessment indicates that the childcare facility in 'Sea Brook' to the west has currently 35 vacancies. This is not the case as this facility is closed.
- The Board is requested to uphold their decision; however, in the event that the appeal is successful it is requested that a Section 48 contribution condition be imposed.

7.0 Assessment

7.1. Overview

7.1.1. Having regard to the nature of this appeal, undertaken a site visit, as well as having considered the information submitted with this application alongside all the

submissions received by the Board, I consider that the key issues that arise in this appeal case are:

- Principle of the Proposed Development
- Other Matters Arising
- Appropriate Assessment

7.1.2. I propose to deal with each in turn in my assessment below.

7.2. Principle of the Proposed Development and Planning History

- 7.2.1. The appeal site forms part of a larger parcel of suburban land on the fringes of the settlement of Rush that is zoned 'RA'. The zoning objective for such land is: *"to provide for new residential communities subject to the provision of the necessary social and physical infrastructure"* and I further note that the vision for such land is to: *"ensure the provision of high quality new residential environments with good layout and design, with adequate public transport and cycle links and within walking distance of community facilities. Provide an appropriate mix of house sizes, types and tenures in order to meet household needs and to promote balanced communities"*.
- 7.2.2. From a land use zoning perspective, the proposed development, a development which essentially consists of the proposed construction of 4 no. duplex apartments together with all their associated works and services, is a type of development that is deemed to be generally acceptable in principle on 'RA' zoned land, subject to safeguards.
- 7.2.3. In addition to this having examined the design resolution put forward for the proposed duplex units I am generally satisfied that they meet qualitative and quantitative local through to national standards for this type of development. I am also generally satisfied that the design is consistent with that of its surrounding site context as part of the Knightsgate residential scheme which is nearing completion and whose design resolution is highly coherent in its architectural design, appearance, built forms, materials through to building to space relationship. The proposed development would result in an increase from 129 dwelling units to 133 dwelling units within this scheme and it would result in a greater density of residential development at this location in a manner that still accords with local through to national planning provisions for such a development at such a location.

- 7.2.4. I am also cognisant that the Planning Authority did not raise any substantive issue in terms of these aspects of the proposed development sought. Outside of drawing the Boards attention to the planning history of the site which allowed a development that did accept a level of concessions in the developments that were permitted. Including tenure mix and provision of public open space.
- 7.2.5. On this point I note that the proposed development sought under P.A. Reg. Ref. No. F18A/247032) contained a quantitative shortage of public open space over and above that noted by the Board under ABP Ref. No. PL06F.247032. For which a contribution was levied under Condition No. 4 of the notification to grant permission.
- 7.2.6. In addition, the Planning Authority's Planning Officer in their report for P.A. Reg. Ref. No. F18A/247032 raised concern that despite the amendments proposed in this application to the development approved by the Board under ABP Ref. No. PL06F.247032 (P.A. Reg. Ref. No. F16A/0221) and the parent grant of permission P.A. Reg. Ref. No. F15A/0294) which added to the mixture of tenure types; notwithstanding, the provisions of the Kenure Rush Local Area Plan, 2009 to 2015 (Note: Plan Expired 2019), sought that the provision of 2-bedroom dwelling units should not exceed 20% within a residential scheme yet this application whilst increasing the density of the scheme which was considered positive exceeded this cap by c5%.
- 7.2.7. The Board may wish to consider that as this application proposes an additional 2 no. 2 bedroom duplex apartment that this is a type of dwelling unit that has already been amply provided for in this area alongside the additional increased density of units would arguably place a greater burden on amenities within the 'Knightsgate' residential development, including its already below minimum quantitative standard of public open space and including the amenities as well as services within walking distance of this development. Whilst the latter in my view would likely have a negligible impact upon in relation to the quantum of public open space available to serve the future residents of this scheme does give rise in my view to a question of qualitative provision of amenity for future occupants and whether sufficient justification for increasing the number of 2 bedroom dwelling units has been put forward in this application. In my view the documentation submitted does not provide this clarity.

- 7.2.8. Of further relevance to this appeal case is the fact that the submitted suite of documentation accompanying the planning application for P.A. Reg. Ref. No. F18A/247032 on which planning permission was granted included the subject site area as a future creche with the adjoining access road on its northern boundary containing an inset for the set down/parking of cars.
- 7.2.9. In relation to proposed development sought under this current planning application, I note that the reason for the Planning Authority's refusal relates to their concerns that if it were to be permitted it would give rise to a limited availability of childcare facilities and spaces within the overall Knightsgate residential scheme alongside would result in the creation of an unsustainable and poorly integrated community in a manner that would materially contravene objectives PM34, PM66, PM74, PM75 and PM76 of the Fingal Development Plan, 2017 to 2023.
- 7.2.10. The single stated reason for refusal also considered that the proposed development would be contrary to Section 4.5 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009), Childcare Facilities: Guidelines for Planning Authorities (June 2001) and Circular Letter PL 3/2016 dated 31/03/2016, Re: Childcare facilities operating under the Early Childhood Care Education (ECCE) Scheme (Planning System support for childcare post September 2016 - Implementation of the Childcare Facility Guidelines for Planning Authorities 2001). For these reasons it considered that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 7.2.11. By way of this 1st Party Appeal it is sought that the Planning Authority's decision is overturned for several reasons including it is contended that there are existing creche facilities that have the capacity to cater for what is described as the insubstantial demand that would arise from the Knightsbridge residential scheme; the appellant has no interest in seeking permission to construct a creche on the site which would only remain vacant and be potentially subject to vandalism; that by way of the grant of permission for the temporary change of use on an adjacent development site to the west from creche to residential use confirms that there is no justification for the provision of such a facility in this area (Note: P.A. Reg. Ref. No. F19A/0489); through to the dwelling units proposed by way of this application are to be acquired by the Council to meet the housing demand in the area.

- 7.2.12. In support of the proposed development the planning application was accompanied by a Creche Assessment, dated October, 2019, which bases the 31 no. spaces envisaged that the proposed Knightsgate residential development would give cumulatively result in based on the Census data for 2011 and 2016 the provision of a childcare facility at this location it concluded would not be a viable proposition.
- 7.2.13. The Planning Authority in their response to the appeal submission seek that the Board uphold its decision and consider that the estimate put forward by the applicant for a population of 31 children having regard to the existing number of units on this site, which is stated to be 129 as permitted, is quite conservative and they note that there are only three existing childcare facilities within less than 500m of the site with these having only 16 vacancies available.
- 7.2.14. They further note that there are 9 childcare facilities within 650m to 2.2km of the site. These are not considered to be easily and readily accessible to the residents of the subject scheme. Moreover, they note that only 3 out of the 12 assessed by the applicant offer full day care services with two of these presently have no vacancies.
- 7.2.15. I note that Chapter 3 of the Development Plan Community Infrastructure with Section 3.6 indicating that the provision of good community facilities in appropriate locations is important as they contribute positively to an enhanced quality of life.
- 7.2.16. It also acknowledges that the Regional Planning Guidelines require Planning Authorities to adopt objectives that facilitate the social, community and cultural needs of all persons and communities through the provision of well dispersed and easily accessible social and community infrastructure with the following Development Plan objectives being of particular relevance to this appeal case:
- Objective PM34 which states: *“locate different types of compatible land uses e.g. residential, employment, local retail, tourism and daily services needs close together, so as to encourage a greater emphasis on the use of sustainable transport modes”*.
 - Objective PM66 which states: *“ensure provision of accessible, adequate and diverse community facilities and services in new and established areas to provide for the well being of residents”*.

- Objective PM70 which states: “ensure proposals for large scale residential developments include a community facility, unless it can be established that the needs of the new residents can be adequately served within the existing or committed community facilities in the area”;
- Objective PM71 which states: “support the provision of new community centres and facilitate the refurbishment and extension of facilities where there is a need for such works. Such facilities shall be accessible by a range of travel modes”.
- Objective PM74 which states: “encourage the provision of childcare facilities in appropriate locations, including residential areas”.
- Objective PM76 which states: “require as part of planning applications for new residential and commercial developments that provision be made for appropriate purpose built childcare facilities where such facilities are deemed necessary by the Planning Authority”.

In my view these Development Plan provisions support and facilitate the provision of good quality and accessible childcare facilities at suitable locations within the County alongside they require the provision of new childcare facilities in tandem with the delivery of new communities.

7.2.17. In addition, Chapter 12 indicates that the Council will seek to facilitate the provision of childcare facilities in appropriate locations through the County and may require their provision in large residential developments in accordance with the provisions of the Childcare Facilities Guidelines for Planning Authorities, 2001.

7.2.18. These guidelines essentially require one childcare facility for each 75 dwellings and it would appear that the Masterplan and under P.A. Reg. Ref. No. F18A/0256 the subject site as previously mentioned is indicated in the suite of drawings as a future creche with the estates access road along the northern boundary of the site setback in a manner that could provide for setdown, collection and the like associated with any future operations of a creche at this location.

7.2.19. Moreover, on the opposite side of the access road serving the site and for which the eastern boundary aligns with there is linear strip of linear open space. In addition, the layout of the estate largely corresponds with the masterplan for this area with the

access road designed to include a north south urban road in close proximity to the site as well as to the north west a proposed school.

7.2.20. In relation to the notification of the Planning Authority to grant planning permission for the said development (Note: P.A. Reg. Ref. No. F18A/0256) this grant of permission was subject to a number of conditions including Condition No. 1 which required that the development shall be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application for reasons relating to ensuring that the development shall be carried out in accordance with the permission and to ensure that effective control be maintained.

7.2.21. In my view the provision of a dedicated plot of land for a future creche/childcare that is in a highly accessible location within this newly expanding residential suburban area of Rush under P.A. Reg. Ref. No. F18A/0256 carry's through from the previous application for the Knightsgate residential scheme, i.e. ABP Ref. No. PL06F.247032 (P.A. Reg. Ref. No. F16A/0221) and the LAP for the area that ultimately provided a Master Plan for this localities development.

7.2.22. I also note that under ABP Ref. No. PL06F.247032 the Boards Inspector considered that whilst the proposed development did not include a dedicated site for a future childcare facility, he stated that:

“The Childcare Facilities Guidelines for Planning Authorities 2001 require one childcare facility for each 75 dwellings, and it is a requirement of Phase 1 of the LAP that pro-rata childcare provision be made. The proposed site for the facility appears to be suitable, and includes dedicated car parking as well as set down areas for parents to utilise. Given that there are existing childcare facilities in the area, I do not consider it necessary to tie the provision of the on-site facility to the construction or occupation of the houses by way of Condition. The designated site will allow for the childcare facility to be delivered in a timely manner in due course as demand arises”.

7.2.23. Therefore having regard to the planning history of the site as it stands there is no onus at this point of time for the applicant to provide a creche irrespective of it being viable or not as permission essentially provides for this land to be simply set aside from any development until such a time as a demand arises for the provision of a childcare facility in this area. As such I consider it is a moot point to make by the appellant in their grounds of appeal that they are expected to construct such a facility at this

present point in time in the absence of any planning permission for the same through to envisaging that such a facility upon completion would remain vacant and potentially become a victim to vandalism.

7.2.24. It is also a moot point to imply that the appeal site would remain a vacant site should the proposed development sought under this application not be permitted. In my view it would be more reasonable for them to consider that this land be left safe and landscaped until such a time that there is a demand arises for a creche i.e. as near to its greenfield state as possible. To leave it otherwise would not accord with the manner in which developments have been permitted to date in this scheme and would in my view be negligent to do so.

7.2.25. In my view given the overview provided by the Planning Authority in their response to the grounds of this appeal and to the rapidly changing nature of this expanding suburban area on the fringes of the settlement of Rush it is not beyond the bounds of possibility given the location of the subject site on suburban fringes of Rush that is subject to rapid change and intensification of use, in particular by way of residential development that additional more accessible childcare facilities will be required to serve the needs of occupants of this area.

7.2.26. Having regard to the planning history in the vicinity I note that under P.A. Reg. Ref. No. F19A/0489 that permission was granted subject to conditions for a development described as consisting of a temporary change of use from a creche to residential use providing for 1 no. 2-storey 3-bedroom dwelling together with minor internal and external alterations to facilitate the proposed change of use. This planning application relates to the adjoining residential scheme of 'Seabrook'.

7.2.27. In this case, a modest in size creche building was provided as part of the overall scheme and the applicant upon its completion was unable to find a buyer following an extensive period of advertising and the building has been subject to vandalism. The Planning Authority allowed the temporary change of use for a period of 3 years on the as they considered that the considered that there is a likelihood that after this time a demand for childcare services will increase following on from the introduction of the National Childcare Scheme.

7.2.28. In relation to the National Childcare Scheme itself, I am cognisant that this is a new government scheme that seeks to provide financial support to help parents meet the

costs of childcare and that it will replace all existing childcare support programmes as well as the current universal childcare subsidy by 2021.

7.2.29. In this regard it appears to give financial support towards childcare for the hours spend outside of pre-school or school and it provides 2 types of childcare subsidy for children over 6 months of age, i.e. a universal subsidy for children under 3 which is not means tested and an income assessed subsidy for children up to 15 which is means-tested.

7.2.30. Importantly the Early Childhood Care and Education (ECCE) programme which provides early childhood care and education for pre-school children will not impacted by the introduction of this scheme and it will continue to operate alongside the National Childcare Scheme.

7.2.31. By way of the grant of permission for P.A. Reg. Ref. No. F19A/0489 Condition No. 3 required that the use of the building shall revert to that of a childcare facility within 3 years and one month of the final date of the grant of permission unless before that date permission for its residential use is granted. I note that the date of the Councils Order was the 9th day of December, 2019.

7.2.32. I do not consider that this decision in itself establishes a precedent to base a conclusion that there would be no basis for a childcare facility at the subject site in the near to long term to meet the demands within this expanding new suburban area of Rush.

7.2.33. Given the level of new residential development that has occurred, is in the construction phase through to is envisaged in the immediate area in the near to medium term; having regard to the arguments put forward by the Planning Authority in this case in relation to the actual demand together with the changing nature of government providing more robust financial assistance towards the provision of childcare I am of the view that to permit the four dwelling units on lands where the provision of a childcare facility has been pencilled in and formed part of the decision process on which residential development has been permitted to date for the 'Knightsgate' residential scheme would not be in accordance with the proper planning and sustainable development of the area.

7.2.34. I also consider having regard to the poor road network that is currently in place to serve this residential scheme i.e. Brook Lane, a lane that is significantly restricted in

its width with average vehicles in many sections along it unable to safely pass by one another through to containing no footpaths or lighting.

7.2.35. In my view the residential scheme as it is currently accessed via public road is not one that encourages the use of access to amenities and services in the area by foot and/or bicycle. As such access to facilities like childcare facilities in convenient and safe locations relative to medium to larger scale residential developments by other means than the car would be part and parcel of achieving a qualitative residential neighbourhood for this area until such a time qualitative improvements are made to the public road network that serves such developments.

7.2.36. In light of the above considerations I broadly concur with the Planning Authority's reasons for refusal of the development sought under this application.

7.3. **Appropriate Assessment**

7.3.1. The site is located c1.1km to the south of the Special Protection Areas: Rogerstown Estuary SPA (Site Code: 004015) at its nearest point. Having regard to the modest nature, scale and extent of the development on land that has been disturbed by ground works associated with the 'Knightsgate' residential scheme; its location in a newly serviced urban area in addition to the separation distance between the proposed development and the nearest European site with no connectivity between the two and/or any other European site within a 15km radius; I consider that no Appropriate Assessment issues arise and that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.4. **Other Matters Arising**

7.4.1. **Material Contravention:** The Planning Authority refused permission for the proposed development citing that the proposed development contravenes materially objectives of the Fingal Development Plan, 2017 to 2023, i.e. Objectives PM34; PM66; PM74; PM75 and PM7. The provisions provided under Section 37 (2) (a) of the Planning & Development Act, 2000, as amended, provides that the Board may in determining an appeal under this section of the Act decide to grant a permission for a development even if the development contravenes materially the Development Plan relating to the area of the Planning Authority to whose decision the appeal relates. It states:

“Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that”

“(i) the proposed development is of strategic or national importance”

“(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned”....

7.4.2. If one or both are applicable, so as to permit the Board to grant permission for the proposed development sought under this application, then the question to be determined is whether a favourable decision should, in the circumstances of the present case, be made. If they do not apply, then the Board is precluded from granting permission in this case.

7.4.3. In this instance case I consider that the proposed development is a type of development that is generally deemed to be acceptable on land subject to the ‘RA’ land use zoning. I do however consider that the proposed duplex units are of strategic or national objectives. Moreover, I do not consider that there are conflicting objectives in the Development Plan in relation to the amenities that should accompany residential developments like that of the permitted scale of Knightsgate including childcare facilities and childcare provisions. Given that residential development proposed under this application is a type of development generally deemed to be permissible subject to safeguards in this area that the proposed development would represent a type of development that would preclude in future the provision of an essentially amenity provision that would have the capacity to add to the quality of this residential neighbourhood. As such I do not consider that the proposed development if permitted would materially contravene the Development Plan in particular the objectives set out under the first reason for refusal.

7.4.4. **Compliance:** Having inspected the site I observed that the public footpath and carriageway adjoining the northern boundary of the site have not been provided as per the approved drawings for P.A. Reg. Ref. No. F18A/0256. However, I note that this is enforcement matter for the Planning Authority, but I do consider the indent that was included along this stretch of the access road was conducive for the set down and collection of children associated with any future childcare facility to be provided at this

location. As such this is a concern that this has not been provided in accordance with the approved drawings under Condition No. 1 of this grant of permission.

8.0 Recommendation

8.1. I recommend that planning permission be **refused** for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The proposed development which provides for four new dwelling houses would encroach upon an area of land dedicated for the provision of future childcare facilities associated with the residential development of Knightsgate that at this location contains 129 with limited availability of childcare facilities and spaces within easy reach of it. It is therefore considered that the proposed development would result in an unsustainable and poorly integrated residential area which would in turn fail to accord with Objectives PM34, PM66, PM70, PM71, PM74 and PM76 of the Fingal Development Plan, 2017 to 2023, which require the provision of such facilities in the interests of proper planning and sustainable development of the area. The proposed development would also be contrary to the Childcare Facilities: Guidelines for Planning Authorities, 2001, and Circular Letter PL 3/2016, and would seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector 16th day of April, 2020.