



An  
Bord  
Pleanála

## Inspector's Report ABP-306800-20

---

<b>Development</b>	Demolition of outhouses and construction of two storey dwelling house together with all associated site works and services.
<b>Location</b>	Hands Lane, Rush, County Dublin.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	F19A/0201.
<b>Applicants</b>	D. O' Loughlin & Co. SSAP.
<b>Type of Application</b>	Planning permission.
<b>Planning Authority Decision</b>	Grant with Conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Eibhlin Hudson.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	20 <sup>th</sup> day of May, 2020.
<b>Inspector</b>	Patricia-Marie Young

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	6
3.4. Third Party Observations .....	6
4.0 Planning History.....	6
5.0 Policy & Context .....	7
5.1. Local Planning Provisions .....	7
5.2. National Policy .....	8
5.3. Natural Heritage Designations .....	8
6.0 The Appeal .....	8
6.1. Grounds of Appeal .....	8
6.2. Applicant Response .....	9
6.3. Planning Authority Response .....	10
7.0 Assessment.....	10
8.0 Conclusion.....	21
9.0 Recommendation.....	22
10.0 Reasons and Considerations .....	22

## 1.0 Site Location and Description

- 1.1. This appeal site was subject to a recent appeal to the Board under ABP-301636-18. Having inspected the site and its setting I consider that the site location description provided by the Board Inspector in their report for a previous appeal case relating to it is still applicable. It reads as follows:

*“The appeal site, which has a stated area of 0.089 ha, is located on the eastern side of Hands Lane, which runs in a north-south direction between Main Street and South Beach in Rush, Co. Dublin.*

*The appeal site is located to the rear of existing houses, and is accessed via a laneway from Hands Lane. There is currently a gate across this laneway, and it also provides rear access to a number of other properties to the north and south of the appeal site.*

*The appeal site is relatively level, and it is currently overgrown. Some outbuildings, which are in a poor state of repair, are located on the western portion of the site. The site is surrounded by existing residential development to all sides, which comprises a mix of single storey and two storey development.”*

- 1.2. To this I add that whilst Hands Lane contains a number of light standards, it is of a restricted width, it is poorly surfaced, it contains no footpaths and it is significantly developed on either side of it. The surrounding development is predominantly *ad hoc* residential developments which share no coherent architectural styles, periods, palette of materials and have variable-built forms ranging from single, dormer through to a two storey.
- 1.3. I also observed that the site is physically divided into two separate parcels with the northern portion of the site benefitting from having an access point onto Hands Lane on the north westernmost boundary of the site. This is accessed via a restricted and variable in width driveway that is bound by a modest dormer dwelling house on its southern side and a modest single storey dwelling house on its northern side. This portion of the site is unkempt, and it contains a number of structures including a large freight type container on the north easternmost corner. The southernmost portion of the site forms part of the rear private amenity space associated with a substantial 2-storey dwelling house that adjoins the southernmost boundary of the site. It is currently in cut grass as well as contains the oil tank of this dwelling house and an ancillary

vehicle parking area. It is separated from the northern portion of the site by a concrete post and timber panel fence. To the immediate south of the site boundary as indicated in the Site Layout Plan there are several outbuildings and garage type structures of single storey built form.

1.4. Photographs taken during my inspection of the site and its setting are attached.

## 2.0 Proposed Development

2.1. Planning permission is sought for a development described as the demolition of existing outhouses and the construction of a 2-storey 4-bedroom detached dwelling house together with its associated site works and services.

2.2. According to the documentation submitted with this application the gross floor area of existing buildings for which demolition is proposed is stated to be 41m<sup>2</sup>; the proposed stated gross floor area of the proposed dwelling is 257m<sup>2</sup>; and, an open space area of 260m<sup>2</sup>. In addition, it is proposed to serve this dwelling by way of a new connection to public water and public sewer infrastructure in the immediate vicinity. This application is accompanied by:

- Covering Letter;
- Flood Risk Assessment;
- Natura Impact Statement – Stage 1 Screening; &
- Surface Water Percolation Test Report.

2.3. On the 15<sup>th</sup> day of January, 2020, the Planning Authority received the applicant's response to their additional information request. This was accompanied by revised public notices due to the design of the proposed dwelling having changed significantly to a now part single and part two storey dwelling house with skillion roofs over, with what I calculated from the submitted drawings a gross floor area of 188m<sup>2</sup> and a stated height of 8m. In addition, it was also accompanied by a document titled: '*Sunlight, Daylight & Shadow Assessment – Impact on Neighbours*'.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The Planning Authority decided to **grant** permission subject to 15 no conditions. I note the requirements of the following conditions:

Condition No. 2: Requires all window openings at first floor level on the eastern and western elevations to be permanently fitted with obscure glass.

Condition No. 6: Requires parking for two cars to be provided with their provision subject to safeguards.

Condition No. 11: Provision of unimpeded access to the laneway during the construction phase and a requirement that the laneway shall not be used for materials, parking, deliveries and the like.

Condition No. 15: Payment of Development Contribution.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The **initial Planning Officers report** concluded with a request for additional information. This request consisted of three separate items which can be summarised as follows:

- 1) Revised design of the proposed dwelling was sought.
- 2) A shadow analysis was sought.
- 3) Revised site location plan and site layout plan was sought.

#### 3.2.2. Other Technical Reports

**Transportation:** No objection, subject to safeguards.

**Water:** No objection, subject to safeguards.

### 3.3. Prescribed Bodies

3.3.1. **Irish Water:** No objection, subject to safeguards.

### 3.4. Third Party Observations

3.4.1. The Planning Authority received three number third party submissions to the proposed development during the course of its determination of this planning application. The substantive concerns raised related to visual and residential amenity impact. Additional concerns were raised in relation to a number of contended inaccuracies in the documentation accompanying this planning application.

## 4.0 Planning History

4.1. Site:

**ABP-301636-18 (P.A. Reg. Ref. No. F18A/0093):** By way of a 3<sup>rd</sup> Party appeal to the Board planning permission for demolition of existing outhouses and construction of 2 no. semi-detached dwellings together with all associated site works was refused. The stated reasons and considerations for refusal read as follows:

*“Having regard to the bulk and height of the proposed houses, and their close proximity to the side boundaries of the site, it is considered that the proposed development would seriously injure the residential amenities of adjoining properties, especially that of the existing single storey bungalow to the east, by reason of overshadowing and overbearing impacts. Furthermore, it is considered that the proposed development would represent overdevelopment of this restricted site, leading to inadequate provision for parking and turning areas for vehicles and inadequate rear garden space for the occupants of the proposed houses. The proposed development would, therefore, seriously injure the residential amenities of adjoining property, and of future occupants of the proposed houses, and would be contrary to the proper planning and sustainable development of the area.”*

The Boards decision was accompanied by the following Board Members note: *“in deciding not to accept the Inspector's recommendation to grant permission, the Board did not concur with his view that the development would not result in an undue level of overshadowing to the neighbouring property to the east, and in this regard noted*

*the limited separation distance between the proposed development and that dwelling, and also the significant height difference between the two structures in question. Furthermore, the Board did not agree with the Inspector that the proposed development was at an appropriate density, having regard to the limited developable area of the site, and did not agree with the condition recommended by the Inspector, requiring the provision of 4 no parking spaces and a turning area, as it considered that such provision could not be achieved without having impacts on the proposed houses, such as may require the setting back the front building line of the proposed houses, thereby reducing further the limited rear garden areas proposed, or modifying the floor area of the houses. In the Board's view, these problems were a reflection of the excessive footprint of the proposed development on this restricted site, as well as the excessive height and bulk of the proposed dwellings in the context of neighbouring dwellings".*

## 5.0 Policy & Context

### 5.1. Local Planning Provisions

#### 5.1.1. Development Plan

The policies and provisions of the Fingal Development Plan, 2017-2023, apply. The site lies within an area zoned 'RS' which has an aim to: "*provide for residential development and protect and improve residential amenity*" and is located within the settlement of Rush development boundary. In addition, this appeal site is also within the designated 'Highly Sensitive Landscape' area.

The following Development Plan provisions are noted:

- **Objective PM44** seeks to encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.
- **Objective RUSH 3** seeks to prepare an Urban Framework Plan to guide and inform future development.

- **Objective DMS39** seeks that new infill development respect the height and massing of existing residential units. Infill development shall retain the physical character of the area.

## 5.2. **National Policy**

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, (DEHLG 2009) and the accompanying Urban Design Manual: A Best Practice Guide, (DEHLG 2009).
- Project Ireland 2040 National Planning Framework, (2018).

## 5.3. **Natural Heritage Designations**

- 5.3.1. The boundaries of Rogerstown Estuary SAC and SPA (Site Codes 000208 and 004015, respectively) are located c0.55m to the south of the appeal site. I note that Rogerstown Estuary is also a pNHA.

## 5.4. **EIA Screening**

- 5.4.1. Having regard to the nature, scale and scope of the proposed development, the established built-up residential setting of the suburban area surrounding it, in north County Dublin and within the development boundaries of Rush, the nature of the receiving environment, the serviced nature of the site and its surroundings, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for Environmental Impact Assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

- 6.1.1. The 3<sup>rd</sup> Party appeal can be summarised as follows:

- The size of the development relative to the size of the site and surrounding area is considered to be significant and out of context.

- Concern is raised that this proposal is even higher than the original proposal rejected by the Board on appeal. The height proposed is considered to be problematic having regard to the infill nature and the higher ground levels of the site when compared to that of surrounding properties.
- Obscure glass should also have been required on the back windows of the proposed dwelling and not just the side elevations.
- The access serving the property is via a lane with obstructed views. This gives rise to a road safety concern.
- This development would give rise to significant increase in use of the lane and it would give rise to safety concerns for pedestrians and it would add to the difficulty for emergency services using this lane as well as the proposed access which is argued to be unsuitable for such access if required.
- The grant of permission required adequate turning area to allow all vehicles to exit in a forward gear. It is considered that this condition would be difficult to adhere to if a car from Hands Lane turns into the lane and another car is attempting to exit.
- This proposal includes the demolition of a shared boundary wall.
- Maintaining structural stability of the shared boundary is a cause of concern should permission be granted.
- Concern is raised that a right of way may need to be granted at the back of the development for a property referred to as 'Loretto'.

## 6.2. Applicant Response

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

- The height of the proposed dwelling is in keeping with the heights of adjacent properties.
- This development exceeds the minimum lateral separation distance between opposing windows as set out under Objective DMS27 of the Development Plan. Therefore, obscuring the window at the first-floor level on the east and west side elevations is not required.

- There is more than sufficient space to adequately provide for 2 no. vehicles to park and a three-point turn in the space to the front of the proposed dwelling.
- The proposed development would not result in a significant increase in traffic using the laneway and there are adequate sightlines for exiting onto the roadway.
- Fire brigade access to the lane is not considered an issue as there is a fire hydrant indicated on the Ordnance Survey mapping at the entrance to the lane.
- Demolition works will not result in any damage to the shared boundary wall.
- There is no right of way required for adjoining property 'Loretto'.
- The proposed development is considered to be proportional for this residential site.

### 6.3. **Planning Authority Response**

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

- Should the Planning Authority's decision be upheld it is requested that the Board attach Condition No. 15 in its determination.

## 7.0 **Assessment**

### 7.1. **Overview**

7.1.1. I consider that the main issues that arise in this appeal are:

- Principle of Development;
- Planning History;
- Access, Road Safety and Traffic Hazard; &
- Appropriate Assessment.

7.1.2. During the course of the Planning Authorities determination of this application they sought further information. This sought to deal with a number of concerns relating to the proposed development and the accompanying documentation.

7.1.3. I consider that the applicant's response to this further information request as received by the Planning Authority on the 20<sup>th</sup> day of January, 2020, puts forward a number of qualitative revisions to the original proposed development. In particular, in terms of

addressing some of the undue residential and visual amenity impacts of the proposed dwelling on its immediate setting. On this matter I concur with the Planning Authority's concerns that it raised in Item No. 1 of its further information request in relation to the appropriateness of the scale and design of the proposed dwelling initially sought. In particular, relative to the adjoining property to the east and its visual prominence as observed from higher vantage points in its setting including from the area of open shoreline to the east.

- 7.1.4. I further consider that the design in the initial form proposed would have given rise to significant adverse visual and residential amenity impacts, to a degree that it would have been contrary to the site's 'RS' land use zoning objective and Objective PM44 of the Development Plan. Both of which essentially seek to protect residential amenity from developments that would have the potential to be bad neighbours. That is the potential to significantly diminish established residential amenities and/or the visual character as well as quality of their setting with the latter requiring regard in this case due to the fact that the site forms part of a landscape setting characterised under the current Development Plan as being a 'highly sensitive landscape'.
- 7.1.5. The applicant's further information response in my view also provides a more accurate representation of existing buildings in its immediate vicinity than that provided with the initial application. It also provides an analysis of the potential impact improvements the revised design would have in terms of daylighting as well as overshadowing of adjoining properties.
- 7.1.6. For these reasons and considerations, my assessment below is based on the proposed development as revised by the applicant's further information response only.

## **7.2. Principle of Development**

- 7.2.1. The Fingal Development Plan, 2017-2023, is the applicable Development Plan for this site and its setting. Under this Development Plan the appeal site and its setting are zoned 'RS' which has an aim to: "*provide for residential development and protect and improve residential amenity*". The site is also located within the development boundary of Rush, a settlement to the north of Dublin's city centre and an area whose hinterland is under strong pressure for various types of residential development. In addition, to this the appeal site forms part of a highly sensitive landscape and is also due to its location of its main site area, a site, that could be described as being

backland and infill, so any built insertion within this described setting has to demonstrate that would not compromise the residential as well as visual amenity qualities of the area.

- 7.2.2. I raise no particular concern with the first component of the proposed development. This essentially seeks planning permission for the demolition of outhouses/outbuildings that appear to be of no inherent functional use through to architectural merit and to allow for the residential redevelopment of the site. I consider this generally accords with the principle of development on 'RS' zoned land.
- 7.2.3. In relation of the amalgamation of two parcels of land of the 'RS' zoning this I consider generally accords with the principle of development on this land, however, the southernmost portion of the site clearly forms part of the rear private amenity space of an adjoining recent in construction substantial detached dwelling house.
- 7.2.4. As such it is imperative that it is demonstrated that this dwelling house maintains quantitative and qualitative private amenity space provision to the standards set out in the Development Plan.
- 7.2.5. In addition to this, I am cognisant that the efficient and compact use of serviced lands within existing settlements is a type of development that is generally supported under the National Planning Framework. For example, National Policy Objective 3a of the said Framework seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements.
- 7.2.6. This proposal seeks to provide additional residential development on residentially zoned lands within the suburban area around the settlement of Rush where connection to existing public water and public sewer infrastructure is possible. Alongside this the site itself is within walking distance of public transport, amenities, community infrastructure and it is located within easy reach of the Irish sea shoreline (South Beach, Rush).
- 7.2.7. Against this context the provision of additional residential units within 'RS' zoned land within a well-served with amenities, infrastructure and other facilities settlement which are accepted as being conducive and synergistic to residential developments is in my view consistent with the local through to national planning policy provisions that seek to facilitate more compact settlements whilst safeguarding the open countryside from one-off residential developments. I therefore consider that the general principle of the

development sought is acceptable, subject to safeguards in particular in relation to visual and residential amenity impact.

### **7.3. Planning History**

- 7.3.1. I draw the Board attention to the planning history of the site. In particular, a recently refused planning application for a development consisting of a semi-detached pair of dwellings which was also subject of an appeal to the Board under ABP-301636-18 (P.A. Reg. Ref. No. F18A/0093).
- 7.3.2. Having regard to the available history documents in relation to this particular application these previously proposed dwelling houses had a combined total stated gross floor space of 304m<sup>2</sup>, a maximum ridge height of 7.235m, and c2.4m to c3m lateral separation distances from the side boundaries. The Board in its stated reasons and considerations, having had regard to the bulk and height of the proposed semi-detached pair, together with the close proximity of the proposed dwellings to the side boundaries of the site considered that the development, if permitted, would seriously injure the residential amenities of adjoining properties. In particular, the single storey dwelling house to the east by way of overshadowing and overbearing adverse impacts.
- 7.3.3. Having regard to the submitted documentation with this planning application in my view the initial design did little in terms of its overall built form and design had the potential to give rise to undue dis-amenity to the established residential amenity of properties in its immediate vicinity by way of its design, height, massing through to bulk.
- 7.3.4. This concern was also raised to the applicant to address by way of further information during the Planning Authority's determination of the initial application.
- 7.3.5. On foot of this a revised design for the proposed dwelling house was put forward with its built form now having a part single and part two storey built form with a reduced gross floor area. With the two-storey element being positioned on its western side which benefits from a greater lateral separation distance from the existing residential properties than would be the case if positioned on the eastern side.
- 7.3.6. The revised design also provided limited glazing on the eastern and western side elevations above ground floor level.

- 7.3.7. Notwithstanding, the proposed dwelling still maintained its maximum ridge height over its 2-storey part with a mono-pitched roof structure over which has a stated maximum ridge height of 8m. It also maintained similar lateral separation distances as the initial design between the proposed dwelling and its side boundaries. I note that the initial lateral separation distances when compared to the previous application refused by the Board are also largely the same as that now proposed and the maximum height is greater.
- 7.3.8. As part of assuring that the Planning Authority that the proposed revised dwelling's design would not give rise to any undue levels of overshadowing, diminishment of daylighting through to sunlight for adjoining properties an examination and analysis of this was provided as part of the further information response.
- 7.3.9. This I am cognisant was also a requirement of the further information request and it concluded that all tested neighbouring amenity spaces pass the BRE guidelines as well as indicate that the proposed development has no BRE impact on shadow (sunlight) on any tested amenity space of any sensitive receptor in its immediate setting.
- 7.3.10. It also indicates that the proposed development would comply with the requirements of 'Site Layout Planning for Daylight and Sunlight a Guide to Good Practice', 2<sup>nd</sup> Edition, 2011, and that any resultant impact on properties in its vicinity would be minimal.
- 7.3.11. I note that the Planning Authority were satisfied that both the revised design and the aforementioned shadow analysis allayed their residential and visual amenity impact concerns.
- 7.3.12. I would share the view of the Planning Authority that the resultant overshadowing through to daylight impact of the proposed development, were it to be permitted as revised, would be minimal and in such suburban locations a level of overlooking can be expected.
- 7.3.13. I also share the previous Boards inspectors view in their report for appeal case ABP-301636-18 that the existing residential character of the area in which the site is situated is defined by a wide variety of house types, sizes as well as designs ranging from traditional single storey cottages to large two storey contemporary dwellings and as such there is no particular uniformity present in this area.

- 7.3.14. Notwithstanding, during inspection of the site and its setting I observed that the dwellings that are in closest proximity to where the proposed dwelling is to be positioned immediately adjoining the western boundary are dormer in profile.
- 7.3.15. Immediately to the east, the adjoining property is a diminutive single storey property and it also appears to be situated on lower ground levels when compared to that of the site and the location within the site where the proposed dwelling would be positioned.
- 7.3.16. Immediately to the south, with the appeal site including part of the rear private amenity space associated with an adjoining 2-storey substantial detached dwelling, which is referred to as 'Loretto'. Its main rear garden area forms part of the indicated appeal site area.
- 7.3.17. Immediately to the north of the entrance is a diminutive what appears to be a semi-detached single storey pair. I observed that there is a prevalence of single storey and dormer dwellings within the immediate setting beyond that described and 2-storey properties like Loretto within this immediate setting are not the norm.
- 7.3.18. Against this context I raise a concern that the 8m height of the proposed dwelling even as revised is out of character, would be overbearing as well as would be out of context within this setting. In my view this height together with the design attributes of the proposed dwelling would be visually imposing due to its lack of its visual subservience and/or respect to the dwellings that bound its site boundaries as well as the public roads of Hand's Lane and the cul-de-sac road of South Shore Road to the west and south, respectively.
- 7.3.19. I note that the proposed height of the dwelling exceeds the stated maximum 7.235m ridge height of the previously sought semi-detached pair which was refused by the Board. Though the two-storey component now sought has a setback of c4.9m from its eastern elevation. This together with the lateral separation distance of a stated 2.92m from the eastern boundary whilst representing an improved situation in terms of visual and residential impact on the property to the east of the site is somewhat diminished by the mono-pitched roof structure over. This two-storey roof structure extends eastwards by c1.2m over the single storey structure below it. This extension of roof structure is not replicated with any visual balance and symmetry in the design of the detached dwelling when considered in the round.

- 7.3.20. Where similar mono-pitched roof components are proposed these have diminutive projections associated with them. Whilst the design, shape and profile of the mono-pitched roof over the two-storey component may be a design feature it adds unnecessarily to the height, the visual dominance and visual overbearance of the revised design. This visual overbearance would in my view be more prominent when viewed from adjoining properties to the west and south. In relation to the properties to the west, the 2-storey elevation would rise in height from c6.5m from its western elevation to a stated 8m at the end of the roof structure over. With this height added to by a proposed chimney stack which would project above the 8m height. The indicated lateral separation distance from the western boundary of the proposed dwelling is 2.69m.
- 7.3.21. I also consider this 8m height to be unnecessary considering that the Development Plan under Objective DMS39 seeks that new infill development respect the height and massing of existing residential units.
- 7.3.22. Further, Objective PM44 of the Development Plan encourages and promoted the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected. Moreover, Objective PM55 of the Development Plan also seeks the use of contemporary and innovative design solutions subject to the design respecting the character and architectural heritage of the area.
- 7.3.23. I acknowledge that there is a lack of uniformity and coherence in terms of the existing building stock, their built-form, their massing, their scale through to use of materials in the immediate and wider area; however, I do not considered that justifies the height of the detached dwelling proposed on a backland site.
- 7.3.24. Further the revised design in my view takes no inspiration of any particular vernacular built forms, use of material and the like of merit in the wider area whether that be traditional or contemporary in order to provide it with some sense of connection, place and identity.
- 7.3.25. In backland and infill situations one would expect an innovative design that was respectful and/or subservient to existing dwellings that predominate its surrounds. I am of the view that the site is also of a sufficient size to modulate and break down a building successful whilst ensuring that amenities of adjoining properties are not overly

impacted alongside providing a level of private open space for occupants that is not unduly overlooked.

- 7.3.26. Of further concern the appeal site appears to incorporate the main private open space serving the dwelling house adjoining to the south and there is no clarity or assurance provided that this property would maintain a level of private open space that would be adequate for the size of dwelling that it is and/or would be a private open space provision that would accord with the Development Plan provisions for a dwelling of its size.
- 7.3.27. In relation to this dwelling (Loretto) I also note to the Board that the extent of additional permanent structures is not fully and accurately depicted in the submitted drawings.
- 7.3.28. I note that Chapter 3 and Chapter 12 of the Development Plan indicates that all residential units be they traditional type or not be provided with private open space with this open space being both qualitative and quantitative in its standard to ensure that maximum benefit is derived from it.
- 7.3.29. In addition, Objective PM65 of the Development requires such space to have an adequate level of privacy for residents with Objective DMS87 clearly setting out that houses with four or more bedrooms, which would appear to be the case with Loretto, have a minimum of 75m<sup>2</sup> of private open space located behind the front building line of the house. This has not been demonstrated would be the case if the southern portion of the appeal site is amalgamated into creation of this residential subdivision and having inspected the site I doubt that this property would maintain this minimum requirement of private open space for its existing and future occupants.
- 7.3.30. I note that concerns are raised in terms of the level of visual overlooking arising from the northern elevation for properties in its vicinity. However, in this case it would appear that the design resolution put forward can achieve over the required 22m lateral separation between the northern elevation and properties in its vicinity. Notwithstanding, I do accept the level of glazing on the southern and northern elevations of the proposed dwelling have the potential to give rise to additional levels of overlooking and perceived overlooking of rear garden areas over and above that which is existing. With this added to by the height of the proposed dwelling.
- 7.3.31. Having inspected the setting of the site I raise a concern that it is highly likely that from certain vantage points that the 8m height 2-storey component of the proposed dwelling

would be visible over the roofline of dwellings in its vicinity that address Hands Lane and South Shore Road from other vantage points including that of the nearby shoreline.

7.3.32. Having regard to the visual and residential amenity concerns raised above I am not satisfied that the design resolution put forward for the proposed dwelling house demonstrates a satisfactorily level of respect and harmony to its site context nor does its design seek to minimise residential and visual amenity impacts to an acceptable level. I consider that the proposed development fails to accord with the 'RS' zoning objective of the site and its setting which essentially seeks to protect and improve residential amenity. Similarly, I consider that the proposed development fails to demonstrate that it accords with Objectives DMS39 and Objective PM44 of the Development Plan.

#### **7.4. Access, Road Safety and Traffic Hazard.**

7.4.1. The appellant raises concern that the proposed development will result in additional traffic congestion and the creation of a traffic hazard, due to additional movements on the laneway and on Hands Lane.

7.4.2. I observed that Hands Lane, from which access is proposed to serve the dwelling house via an existing long narrow driveway that runs in a westerly direction between two existing dwellings away from the main area of the site is of a restricted as well as variable width and is poorly surfaced. A number of dwellings that address this road have setbacks which allows for additional width; however, there are no footpaths through to public lighting along it.

7.4.3. Hands Lane provides connection to South Shore Road. With both lanes being heavily developed by way of incremental one-off houses over the years with the location benefitting from being in close proximity to the centre of Rush but also being in easy reach of the coastline which at this location contains long sandy beaches.

7.4.4. I would question the carrying capacity of Hands Lane for any significant additional traffic in the absence of qualitative improvements to it. Notwithstanding, the volume of traffic the proposed development would generate once complete could not be considered as significant and I also note that the speed limit is restricted in this area to 50kmph.

- 7.4.5. Despite the unprecedented time in which the site inspection was carried out, i.e. it was a period of time whereby movements were significantly restricted and curtailed, Hands Lane had a steady flow of traffic. Due to the significant development along it this volume of traffic is likely to be locally generated.
- 7.4.6. I also observed that Hands Lane functioned as a shared surface with a number of pedestrians and cyclists using it to access properties but the main flow of movement was to the access to the coastline, i.e. South Beach and its adjoining amenity space.
- 7.4.7. Whilst I do not consider that the proposed infill development would result in any significant traffic congestion and/or additional traffic hazard issues for road users at this location, as the visibility from its existing access onto Hands Lane is aided by the setbacks to the front of properties adjoining it to the north and south. Notwithstanding, consideration should be had to the very evident cumulative impact of ad hoc residential development on this lane in the absence of any coherent qualitative improvements to it to cater for incremental increases in traffic volume.
- 7.4.8. I also note that the Board in its previous refusal for the previous development at this site raised no substantive concerns on this matter, albeit two dwelling units were proposed.
- 7.4.9. Further, I concur with the Planning Authority that it would appear from the dimensions of the area to the front of the proposed dwelling that two car parking spaces can be provided as well as a turning area to ensure that vehicles egress in forward gear.
- 7.4.10. As such from a road safety and traffic hazard perspective I recommend that these should be required as part of any grant of permission for the proposed development.
- 7.4.11. In relation to the concerns raised by the appellant in terms of emergency vehicle access, in particular, I note that concern is raised for emergency services, I concur with the Boards Inspectors comments in their report for appeal case ABP-301636-18, that there is sufficient minimum width in the laneway including at its narrowest points for such vehicles to access properties on this lane.
- 7.4.12. In relation to the subject site there is no tracking analysis that would show that a vehicle of this size could turn to the front of the proposed dwelling house and it is possible that it may have to reverse to exit the site which is c45m. It would not be a frequent event

for such an emergency service vehicle of any type to have to access the site and in my view, it is not a sufficient basis in itself for planning permission to be refused

- 7.4.13. In conclusion, should the Board be minded to grant permission I recommend that the safeguards recommended by the Planning Authority's Transportation Department are included by way of conditions as these would result in improvements to the design of the access serving the proposed dwelling as the submitted documents lack clarity in terms of achieving required sightlines. These improvements are in my view reasonable from a road safety and traffic hazard perspective.

## 7.5. **Appropriate Assessment**

- 7.5.1. As set out in Section 5.3 of this report above the appeal site is located c55m north of Rogerstown Estuary SAC and SPA (Site Codes: 000208 and 004015, respectively).
- 7.5.2. The initial application was accompanied by a document entitled '*Natura Impact Statement – Stage 1 Screening*'.
- 7.5.3. Having reviewed the report, I am satisfied that it constitutes an Appropriate Assessment Screening Report and that it adequately considers the potential effects of the proposed construction of one number dwelling house and its associated works on both of the said Natural 2000 sites mentioned above as well as those within a 10km radius.
- 7.5.4. Having regard to the Natura 2000 sites located within 10km to 15km radius of the sites lands at Hands Lane in Rush I do not consider that the proposed development would have any effects on them having regard to the significant lateral distance between these serviced lands and having regard to the modest size as well as nature of these brownfield lands.
- 7.5.5. This document concludes that the proposed development will not negatively impact on the conservation objectives and/or the integrity of the Rogerstown Estuary SAC and SPA and also that it will not have any significant direct, indirect or cumulative effects on the integrity and conservation status of the other identified Natura 2000 sites, and that an Appropriate Assessment is not required.
- 7.5.6. Having regard to the modest nature and scale of the proposed development sought and as said the relatively small size of the appeal site itself which benefits from the capacity to connect to public mains water and foul drainage through to the lack of any

connection between this site and any Natura 2000 site within its immediate and wider vicinity, I concur with the conclusions of the accompanying Appropriate Assessment Screening Report.

7.5.7. I also note that the Planning Authority similarly were satisfied with its analysis and conclusions.

7.5.8. Based on the above 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, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Natura 2000 sites 000208 and 004015, or any other European site, in view of their Conservation Objectives; and, a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required in this case.

#### 7.6. **Other Matters Arising:**

7.6.1. **Right of Way for Adjoining Property:** There is no evidence to suggest that the property referred to as 'Loretto' by the appellants in their appeal will require a right of way across the subject site based on the information provided with this application. Notwithstanding, should the Board be minded to grant permission it may wish as a precaution to include an advisory note reiterating Section 34(13) of the Planning and Development Act, 2000, as amended. This essentially indicates that a person shall not be entitled solely by reason of a permission to carry out any development.

7.6.2. **Impact on Shared Boundaries:** I am cognisant that interference in a shared boundary or a property by a person who has no legal interest and/or no consent is a civil matter. Notwithstanding, I note that the applicant in their response to the grounds of this appeal indicate that no structural compromise would occur to the boundary of concern. This however does not negate their responsibility to secure consent for these works. Should the Board be minded to grant permission they may wish to include an appropriate advisory note to deal with this concern.

## 8.0 **Conclusion**

8.1. Whilst I consider that the appeal site does have potential to accommodate a detached dwelling I am not convinced that the design concept put forward in this instance is

appropriate to its site setting having regard to its built form, massing, scale and overall lack of appropriate subservience through to modulation of the built form in a manner that would respect this infill backland site.

- 8.2. It would also result in an adverse change of site context for adjoining and neighbouring properties by virtue of its overall design which would result in a diminishment of established residential amenities to an undue degree.
- 8.3. As such to permit the proposed development in the form proposed would be contrary to the proper planning and sustainable development of a parcel of suburban land where it is an objective to protect as well as improve residential amenities. Moreover, within its sensitive to change landscape setting. A setting that is recognised in the Development Plan as being highly sensitive to change the proposed development, if permitted, would diminish unnecessarily its visual character by way of its visual overbearance and lack of respect with existing built insertions as well as associated spaces that are residential in their functional use.
- 8.4. For these reasons I consider that the proposed development would fail to accord with the zoning objective for the site and its setting. As such the proposed development would conflict with the proper planning and sustainable development of the area.

## 9.0 Recommendation

- 9.1. I recommend that planning permission be **refused**.

## 10.0 Reasons and Considerations

1. The proposed development is located in an area for which the stated zoning objective in the current Fingal Development Plan, 2017 to 2023, is to 'protect and improve residential amenity to provide for and improve neighbourhood facilities', and is situated to the rear of properties to the south, east, west and north.

It is considered that this piecemeal development would constitute a form of development which would be out of character with the area and would constitute an overbearing form of development, which would interfere with established residential and visual amenities in a manner that fails to accord with the site and its setting zoning objective.

It is considered that the proposed development by reason of its excessive and unnecessary height relative to surrounding buildings, together with its bulk, massing and overall design including the use of mono-pitched roofs, would be out of character with the built forms of dwellings that predominate this area. Together with the changeable ground levels in its immediate vicinity the proposed height of the dwelling and its design would constitute a visually discordant feature that would be highly visible in its setting and it would seriously injure the amenities of property in the vicinity.

For these reasons it is considered that the proposed development would also be contrary to Objectives DMS39 and Objective PM44 of the Development Plan which requires such developments to respect the character of their setting. The proposed development, would therefore, be contrary to the proper planning and sustainable development of the area.

---

Patricia-Marie Young  
Planning Inspector  
16<sup>th</sup> day of May, 2020.