



An
Bord
Pleanála

Board Direction
BD-004884-20
ABP-304966-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/01/2020.

The Board decided by a majority of 2:1 to refuse permission, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

Reasons and Considerations

On the basis of the information provided with the application and appeal and, in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not be likely to have a significant effect on the South Dublin Bay & River Tolka Estuary Special Protection Area (Site Code: 004024) and the South Dublin Bay Special Area of Conservation (Site Code: 000210), in view of the sites' Conservation Objectives. In this regard, the Board noted that the submitted Appropriate Assessment Screening Statement relies on measures (described in the submitted documentation as "housekeeping and pollution control measures") which would have the effect of avoiding or reducing the impact of silt and other potential pollutants arising from the proposed development on the Carysfort Maretime stream that leads directly into these European sites. In the light of the judgement of the European Court of Justice in the case of People Over Wind (C-323/17), reliance on such measures is not appropriate in the context of screening for Appropriate Assessment. Accordingly, it is considered by the Board that a Natura Impact Statement should have been submitted with the application. In the absence of such a Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not be likely to have a significant

effect on the South Dublin Bay & River Tolka Estuary SPA and the South Dublin Bay SAC, and therefore is precluded from granting planning permission.

Note: Furthermore, the Board concurred with the Planning Authority's Reason for Refusal Number 1 in so far as it related to the layout of the terrace of houses on the northeast and the duplex units to the south of the site. The Board noted the applicant's proposal at appeal stage to replace the duplex units originally proposed along the east with a terrace of houses. However, the Board remained concerned about the potential impact of the houses on the northeast and the duplex units to the south on the overall existing sylvan character of the site and on the residential amenities of adjacent residential properties arising from their undue proximity to the northeast and southern boundaries of the site.

Board Member

Date: 10/01/2020

Maria FitzGerald