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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: F24A/1099E**

**Appeal** by Harry Byrne care of Downey Chartered Town Planners of 29 Merrion Square, Dublin against the decision made on the 6<sup>th</sup> day of February, 2025 by Fingal County Council to refuse permission.

**Proposed Development:** Construction of three number two-storey, detached three-bed houses all provided with private gardens and associated car parking, bicycle and bin stores, a new vehicular access on Chapel Road, landscaping, boundary treatments and all associated site engineering works necessary to facilitate the development, all on lands at Chapel Road, Kinsale, County Dublin, as amended by the revised public notices received by An Coimisiún Pleanála on the 10<sup>th</sup> day of April, 2025 which referred to the submission of a revised Natura Impact Statement.

**Decision**

**GRANT permission for the above proposed development for the reasons and considerations under and subject to the conditions set out below.**

## Reasons and Considerations

Having regard to Policy HCAP12 (Interventions to Protected Structures) of the Fingal Development Plan 2023-2029, which seeks to ensure that direct or indirect interventions to protected structures or adjoining development affecting them are guided by architectural conservation principles so that they are sympathetic, sensitive and appropriate to the special interest, appearance, character and setting of the protected structure, and having regard to the location of the site and the pattern of development in the area surrounding the adjacent protected structure (RPS455) and recorded monument (DU015-002), the scale and form of the design of the proposed development, incorporating a setback of circa five metres from the boundary wall adjacent the protected structure (RPS455), and the proposed screening on the western side of the site by trees and Irish native hedgerow, it is considered that, subject to compliance with the conditions set out below, the proposed development would provide a sympathetic, sensitive and appropriate relationship with the appearance, character and setting of the adjacent protected structure, and that the scale and design of the proposed development would be sensitive to the site location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Commission also considered, having regard to the Fingal Development Plan 2023-2029, and in particular Objective DMSO154 (Ecological Corridors), which seeks to protect and enhance certain ecological corridors, and Objective IUO26 (Riparian Corridors), which seeks to establish riparian corridors free from new development, that the layout and design of the proposed development, incorporating a 10-metre buffer with the riparian corridor of the Sluice River, would not negatively impact on the native riparian vegetation on the site, and would be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Commission agreed with the Inspector that, in the context of the constraints of the site, the proposed development provides a high quality of design and demonstrates consideration for its context, and the Commission agreed with the Inspector that it would not be warranted to refuse permission on the grounds that the proposed development is out of character with the rural setting of Kinsealy Village and with existing houses in the area, in terms of roof profile and layout, or that the proposed development would seriously injure the amenities of the area and of property in the vicinity. The Commission, on balance, agreed with the applicant that the proposed development would successfully integrate into the surrounding environment.

The Commission disagreed with the Inspector that the proposed development and its relationship with the adjacent protected structure did not meet the requirements of Policy HCAP12 (Interventions to Protected Structures) of the Fingal Development Plan 2023-2029, and the Commission was satisfied that the proposed development, incorporating a setback distance of circa five metres on the western boundary, together with proposed screening on the western side of the site by trees and Irish native hedgerow, would provide a sympathetic, sensitive and appropriate relationship with the appearance, character and setting of the adjacent protected structure, and that the scale and design of the proposed development would be sensitive to the site location.



The Commission also disagreed with the Inspector that the granting of permission for the proposed development would be premature, pending completion of further assessments in relation to otter and an identified otter holt, in lands beyond the site along the riverine habitat, as the Commission was mindful that the Development Applications Unit of the Department of Housing, Local Government and Heritage, having considered the appeal documentation, including the Otter and Bat Evaluation of the site undertaken in February 2025, was of the opinion that, notwithstanding the potential need to obtain a derogation from the Habitats Directive (92/43/EEC) from the Department's National Parks and Wildlife Service, a condition could be attached to a grant of planning permission requiring the developer, prior to commencement of development, to submit, for the written agreement of the planning authority, an Otter Conservation Plan to include provision for measures to avoid otter which may be using the otter holt, or which may do so in the future.

#### **Appropriate Assessment Stage 1:**

The Commission completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced area, the Inspector's report, and submissions on file. In completing the screening exercise, the Commission adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the Conservation Objectives of such sites, other than the Baldoyle Bay Special Area of Conservation (Site Code: 000199) and the Baldoyle Bay Special Protection Area (Site Code: 004016) which are European Sites for which there is potential for significant effects, based on:

- (a) The Zone of Influence of potential impacts.
- (b) The information presented in the Appropriate Assessment Screening and Natura Impact Statement and the revised Appropriate Assessment Screening and Natura Impact Statement submitted with the appeal.
- (c) The qualifying interests, special conservation interest and Conservation Objectives of the European Sites.
- (d) The Hydrological Pathway to the European Sites via the Sluice River and the potential for construction/operational impacts within the European Sites.
- (e) The requirement for mitigation measures to avoid/reduce potential harmful effect on the qualifying interests of the European Sites in addition to the standard pollution control measures.

#### **Appropriate Assessment Stage 2:**

The Commission considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for the Baldoyle Bay Special Area of Conservation (Site Code: 000199) and the Baldoyle Bay Special Protection Area (Site Code: 004016) in view of the sites' Conservation Objectives. The Commission considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the Appropriate Assessment, the Commission considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,



- (b) the mitigation measures which are included as part of the current proposal, and
- (c) the Conservation Objectives for the European Sites.

In completing the Appropriate Assessment, the Commission accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the Baldoyle Bay Special Area of Conservation (Site Code: 000199) and the Baldoyle Bay Special Protection Area (Site Code: 004016), having regard to the sites' Conservation Objectives. In overall conclusion, the Commission was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites in view of the sites' Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed development and there is no reasonable scientific doubt as to the absence of adverse effects.

## Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Coimisiún Pleanála on the 5<sup>th</sup> day of March, 2025, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the proposed development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Prior to commencement of development, the developer shall submit for the written agreement of the planning authority an Otter Conservation Plan which shall include measures to be taken during the construction phase of the proposed development to avoid otter which may be using an otter holt identified in the Otter and Bat Evaluation of the site undertaken in February 2025, and to make provision for the holt's future usage by otter during the proposed development's operational phase.

**Reason:** To protect the potential breeding ground or resting place of otters.

3. Prior to commencement of development, the developer shall submit details for the written agreement of the planning authority of the proposed phasing of the proposed development and shall provide for the construction and completion of the boundary with the riparian corridor prior to the commencement of further phases of the proposed development.

**Reason:** To protect the environment.

4. Proposals for an estate name/house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. No advertisements or marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility.

5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall have due regard to the protection of the boundary wall adjacent to the protected structure on the western side of the site. All planting shall be adequately protected from damage until established. Any plants which die, are removed, or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of residential and visual amenity and to provide for the screening of the protected structure.

6. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity and the protection of residential amenity.

7. The proposed development shall be provided with adequate noise insulation having regard to the location of the site within the Dublin Airport Noise Zone C.

**Reason:** In the interest of public health and residential amenity.



8. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to commencement of development, the developer shall submit details of the disposal of surface water from the site for the written agreement of the planning authority.

**Reason:** To prevent flooding and in the interest of sustainable drainage.

9. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann.

**Reason:** In the interest of public health.

10. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays, inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

11. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority a Construction Management Plan which shall be adhered to during construction. This plan shall provide details of intended construction practice for the proposed development, including noise and dust management measures, off-site disposal of construction/demolition waste, and the provision of adequate off carriageway parking facilities for all traffic associated with the proposed development, including delivery and service vehicles/trucks. There shall be no parking along the public road or footpath.

**Reason:** In the interest of road safety, public safety and to protect the amenities of the area.

12. All public service cables for the proposed development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

13. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Coimisiún Pleanála for determination.

**Reason:** In the interest of traffic safety and the proper planning and sustainable development of the area.



14. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Coimisiún Pleanála to determine the proper application of the terms of the Scheme. **Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

  
MaryRose McGovern

Planning Commissioner of An Coimisiún  
Pleanála duly authorised to authenticate  
the seal of the Commission.

Dated this 7<sup>th</sup> day of July 2025.

