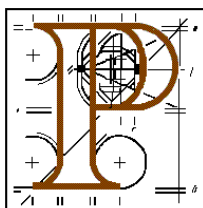


An Bord Pleanála



Inspector's Report

PL06F.245710

DEVELOPMENT:

Permission for a mixed use residential and retail development comprising 52 no. residential units consisting of 43 no. 2.5 storey dwellings (28 no. 3 bed terraced units; 5 no. 4 bed end of terrace units; and 10 no. 3 bed detached units); a 4 storey mixed use block containing 9 no. 2 bedroom apartments and 1 no. retail unit (357 square metres GFA); 122 no. surface level car parking spaces and 11 no. bicycle parking spaces, bin storage, 1no. ESB substation and all associated site development, engineering, roads and footpaths, landscaping and boundary treatment works including revised vehicular entrance to the Malahide Road. The proposed development will also consist of the demolition of the existing former 'Champions Public House' and ancillary store and sheds in order to facilitate this proposed development at the Former Champions Public House, its car park and lands to its rear, Malahide Road, Balgriffin, County Dublin.

PLANNING APPLICATION

Planning Authority:	Fingal County Council
Planning Authority Reg. No.:	F15A/0093
Applicant:	Crosswaithe Developments Limited
Application Type:	Permission
Planning Authority Decision:	REFUSE PERMISSION for Reasons and Considerations (4)

APPEAL

Appellant:	Crosswaithe Developments Limited
Type of Appeal:	FIRST PARTY
Observer:	Derek McGowan
DATE OF SITE INSPECTION:	28 th January 2016
INSPECTOR:	Dermot Kelly

1. SITE LOCATION

The subject site is located at the former Campions Public House, its car park and lands to its rear, Malahide Road, Balgriffin, County Dublin, as indicated on **APPENDIX A - LOCATION MAP**.

2. SITE DESCRIPTION

2.1 The subject site lands at the former Campions Public House, its car park and lands to its rear, Malahide Road, Balgriffin, County Dublin are approximately 1.82 hectares in area and include the two-storey vacant Campions Public House which fronts onto the Malahide Road (R107) at its junction with the Balgriffin – Portmarnock Road (R123) and which is proposed to be demolished, and rectangular wooded lands to the rear thereof which adjoin to the south and west the open lands associated with the former Belcamp School. An existing watercourse forms the boundary between the subject site and the adjoining Belcamp lands to the south.

2.2 The Planning Report for the Planning Authority noted as follows:
'The subject site has a stated area of 1.82 hectares and is located at the site of the former Campions Public House, Malahide Road, Balgriffin. The site is bound to the north-east by an existing single-storey commercial property (Fingal Memorials), to the north by the rear garden of a residential property and lands in agricultural use and to the south and west by undeveloped lands which are currently in agricultural use. The site fronts onto the Malahide Road (R107) and its juncture with the R123 (a signalled junction). The application site is broadly rectangular in shape, approximately 65 metres in width (north-south) and 330 metres in depth (east-west). In terms of topography the site slopes from the north to south (from a point of c.22 metres at the southern boundary of the site to c.27 metres along the northern site boundary).'

2.3 The attached Photographs in **APPENDIX B – PHOTOGRAPHS** (including Key Plan which indicates the approximate Photograph locations) illustrate the nature of the subject site and its context.

3. PROPOSED DEVELOPMENT

3.1 Planning Application

- The proposed development comprises as specified above in the Public Notices. The completed Planning Application Form states that the existing buildings on site to be demolished are to a gross floor space of 512 square metres. The gross floor space of the proposed buildings is 6,351 square metres including Residential (5,951 square metres) and Retail (357 square metres). There are 122 existing car parking spaces and a total of 122 car parking spaces are proposed and 11 bicycle parking spaces. 38 x 3 Bed Houses, 5 x 4 Bed Houses and 9 x 2 Bed Apartments are proposed and a Retail Unit is proposed at ground floor level in the four-storey Apartment Block.
- The Planning Report for the Planning Authority described the proposed development as follows:

‘The applicant is proposing a residential development comprising 52 residential units (43 no. houses) and a 4 storey block containing 9 no. apartments and one retail unit (357 square metres). The demolition of the existing public house (512 square metres) is proposed to facilitate the proposal.

The applicant proposes three house types, House Type A, A1 and B. The dwellings are of similar design idiom, comprising 2.5 storey detached dwellings with pitched roofs. Material finishes are indicated as brick and render with dark roof slate. A schedule of floor areas has been submitted with the application setting out the breakdown of accommodation by unit type.’, and also

‘9 no. 2 bed apartments are proposed within a 4 storey block situated to the east of the site. These apartment units (Type A, B and C) vary in area from 82-86 square metres. Each apartment unit is served by a balcony and dedicated storage. The building accommodating the apartments and retail unit has a principal ridge height of c.14 metres. Frontage is provided onto the Malahide Road. Material finishes are indicated as render and brick.

A retail unit with a stated floor area of 357 square metres is proposed at ground floor level within the four storey block. The applicant has not specified the nature of retail to be accommodated i.e. convenience/comparison etc.

In terms of the general layout of the proposal, the dwellings are arranged in a courtyard fashion addressing an internal access road and landscaped play space. In terms of separation distance

between dwellings, all units have a minimum of 2.3 metres between side walls. The applicant is proposing in excess of 22 metres between rear opposing first floor windows.'

- The submitted Supporting Planning Statement, Natura 2000 Impact Screening Report, Engineering Services Report, Landscape Plans, Tree Survey and Arboricultural Impact Assessment and detailed drawings of the proposed residential/retail development are noted.

3.2 Further Information Request

- The Planning Authority by letter dated 9th May, 2015 sought Further Information including as follows:

'2. The Planning Officer has serious concerns in respect of the layout and design of the areas of public open space which are to serve the proposed development.

(i) The applicant states that a total of 0.196 hectares (or 11% of the overall site area of the application site) of public open space is provided. From the details submitted a portion of this consists of areas which would not be considered acceptable as public open space (e.g. car parking and vehicular circulation areas, traffic islands etc.) Furthermore the area to the south of the site (annotated as 240 square metres) is incidental and does not form public open space.

The applicant is requested to provide for a revised layout incorporating an appropriately sized and usable area(s) of public open space. The applicant should provide at least one area as a 'kick about' for formal recreation. All area(s) should be sufficiently overlooked and should not be located to the rear or sides of dwellings. The applicant is referred to Objective OS25 of the Fingal Development Plan 2011-2017 in relation to the provision of SuDS features, i.e. attenuation tanks within areas of public open space. A reduction in number of units may be required to provide for Fingal County Council OS requirements.

(ii) The proposed playground is located in close proximity to residential units. The applicant is requested to submit a revised location for a playground in a manner which protects the residential amenity of adjoining dwelling.', and also

'3. The application site adjoins a strategic 'road proposal' in the Fingal Development Plan 2011-2017 which terminates in the vicinity of the road junction which the proposed development seeks access onto. This future road alignment will serve zoned residential

development lands at Belcamp as well as providing access westwards to zoned employment land at Clonshaugh before crossing the M1 Motorway as part of a planned regional road network. The applicant is requested to satisfactorily demonstrate that the proposed development would not prejudice the provision of this future road infrastructure.'

Further Information as specified was also requested in regard to car parking provision and the design of the proposed dwellings and four-storey apartment block.

3.3 Further Information Submission

- Further Information was received on 14th September, 2015 and including stating as follows:
'The revised site layout plan clearly indicates the areas of public open space within the proposed scheme which are useable, recreational areas of open space. A total of 1,743 square metres of public open space is provided within the scheme. A children's playground is also provided which is adequately overlooked by surrounding dwellings providing passive surveillance.'
- A revised Landscaping Plan was submitted and also a revised Site Layout Plan which included indicating
'a proposed future link to serve the proposed development upon completion of the Distributor Road. It is considered that the proposed future link is such that the proposed development will not prejudice the provision of the future road proposal as contained within the Fingal Development Plan 2011-2017.', and that
'The applicant wishes to confirm that the proposed development provides for 120 car parking spaces. The proposed development generates a requirement of 118.5 car parking spaces. Accordingly, 120 no. spaces are proposed' as per the revised Site Layout Plan.
- Revisions as specified were submitted in regard to the design of the proposed residential development as indicated on the submitted Site Layout Plan Drawing No. pS (00)-002 Rev A. The submissions included under 'Applicant's Response to Item No. 5(i)' that 'All proposed house type A1 dwellings meet the required standard with separation distances of 22 metres provided between second floor windows'.

4. NOTIFICATION OF DECISION OF PLANNING AUTHORITY - Submissions and Relevant Reports

4.1 Third Party Submission of Brenda Doyle

- The Submission received is noted and included as follows:
‘The density is too high and is not sustainable for the area. It is certainly not in keeping with the character of the local area as in my opinion a 4 Storey Apartment block next to the ‘Preserved Single Storey Portion of Pub’ is not visually attractive and would have a negative visual impact on the nearby cottages and adjacent bungalows.
The entrance at a very busy traffic junction at Balgriffin Cemetery will have a detrimental impact on the traffic congestion for the local residents and is potentially hazardous. I am also concerned that the plan to have access via Malahide Road to the new ‘Retail Outlet’ would also further increase traffic issues’.

4.2 Third Party Submission of James and Anne Bates

- The Submission received is noted and included as follows:
‘A number of issues of principle arise including: prematurity pending a Local Area Plan; Integration with adjoining development (plan); and density.
Furthermore, items of detail arise which can be summarised as: layout (in particular the access road); loss of trees; height of the local centre; the quantum and quality of public open space; cycle provision; and the design and layout of the courtyards’.
- The Submission included under ‘Prematurity and other RA lands’:
‘The Traffic Impact Assessment submitted with the application, provides only for an analysis of the traffic generated by the proposed houses and small local centre within the development. It does not consider the loadings that could arise from a future development to the north or south of the application site, and the impact of these loadings on the Malahide Road junction.’
- The density of the proposed development was not in accordance with the recommended densities for ‘Outer Suburban/Greenfield Sites’ in the Sustainable Residential Development Guidelines for Planning Authorities. Under ‘The Local Centre’ was stated:
‘The height of the local centre at four storeys is out of keeping with the prevailing buildings in the local area. Champions Pub is a

traditional two storey structure alongside a neighbouring single storey cottage (head stone manufacturer).'

- Under 'Trees and the Access Road' was submitted as follows:
'The proposed development includes a long, unbroken access road running almost the full length of the southern boundary. Extending to c.280 metres from the Malahide Road, it is straight save for a chicane, with minor deflection, towards the western boundary.Unacceptable in its own right, the road layout also results in the extensive loss of existing trees along the southern boundary of the application site. This does not accord with the principles of good site planning enshrined in established Urban Design guidance.'

4.3 Submission of Gannon Homes Limited

- The Submission received is noted and included as follows:
'Gannon Homes are the owner of the Belcamp lands adjacent to Campions. These lands comprise some 82 hectares (216 acres) and are strategically located north of the N32 and west of the Malahide Road. The lands will in time accommodate major road improvements as indicated on Fingal and Dublin City Development Plans.
One of these roads will connect Mayne Road at Campions in a westerly direction along the northern edge of the variously zoned lands from Belcamp to the M1, eventually connecting with the Airport box. It is essential that this connection and junction at Campions is not compromised by the current proposal. The access road shown in the proposal is not large enough to accommodate this objective and is compromised by the proximity of the residential development proposed.'

4.4 Irish Water Report

This report, dated 31st March, 2015 included under 'Observations' specifying Further Information to be required.

4.5 Parks Planning Section Report

This report, dated 17th April, 2015 included stating that the layout and design of the open space was not acceptable as specified including in relation to the extent of open space provision.

4.6 Heritage Officer's Report

This report, received 21st April, 2015 included stating that the proposed development subject to requirements as specified would have 'no adverse impacts on Natura 2000 sites, either individually or in combination with other plans and projects'.

4.7 Transportation Planning Section Report

- This report, dated 24th April, 2015 included stating as follows:
'There is a requirement for 2 in-curtilage parking spaces for each of the housing residential units and 13 parking spaces for the apartment units. There is an additional visitor parking space required for the apartments based on 1 space per 5 apartment units. The commercial unit has a requirement for up to 17 parking spaces based on a gross floor area of 357 square metres at a rate of 1 space per 20 square metres of gross floor area. Consequently the maximum parking demand is 127 parking spaces. There are 122 parking spaces provided in the proposed development, however none of the parking for the house units is within curtilage.'

'The current Development Plan has indicated a future road link running close to the southern boundary of the proposed site. This road will link Clonshaugh Road and the R107 serving the development lands in between. The proximity of this road proposal could have a significant impact on the proposed development and require amendments to the Transportation Assessment provided.'

It was considered that the proposed location of the Playground would result in a traffic hazard as specified. Further Information was recommended including a revised car parking layout, traffic calming measures, relocation of the Playground and also as stated: 'The applicant should provide information detailing how the proposed development integrates with the future link road indicated in the Development Plan.'

4.8 Planning Report

- The Planning Report dated 30th April, 2015 included a Site Description and noted the land use zoning objectives for the subject site under the 2011-2017 Fingal County Development Plan.

- Third Party Submissions (3) were summarised as follows:
 ‘Proposed development would be premature pending adoption of LAP and would materially contravene Development Plan.
 Concerns re density proposed.
 Design idiom, specifically four storey block is out of character with adjoining area.
 Traffic impact of proposal on adjacent area and junction, shortcomings in TIA methodology, requirement to not prejudice delivery of future strategic road network.
 Lack of clarity re third party agreements for road infrastructure linking to adjoining lands.
 Concerns re loss of trees and poor provision for cyclists.
 Inadequacy of public open space and internal road layout.’
- The Technical Reports received were noted and the proposed development was described in detail including under Private Open Space Provision, Public Open Space Provision, Landscaping and SuDS, Road Layout, Car Parking, Refuse Storage/Management and Traffic Impact Assessment.
- The Planning Report for the Planning Authority included stating:
 ‘The applicant is proposing 52 no. dwellings and a retail unit in an area which is zoned ‘RA’ and ‘LC’; the proposed uses are therefore considered to be acceptable in principle.
 The application site is located within the future Belcamp LAP lands. There is no adopted LAP for these lands. The application site comprises the northernmost part of these lands. Having regard to the position of these lands within the overall LAP, the size of the site relative to the overall LAP lands and the availability of direct access onto the Malahide Road, the proposed development may be considered prejudicial to the future LAP for the area and this will be considered in this assessment.’

‘In respect of density, the application site has a stated total site area of 1.82 hectares. The resultant density is therefore 28.5 dpha (dwelling per hectare). A density of this nature at this location (an outer suburban/greenfield site) is generally considered acceptable and in accordance with the guidance set out in the relevant guidelines, ‘Sustainable Residential Development in Urban Areas 2009’ DOEHLG.’, and also

‘The Planning Officer does not anticipate any undue impacts on the visual amenities of the area having regard to the design of the proposal, its layout and the scheme of landscaping which is

proposed. The scale and height of the apartment/retail block is generally acceptable having regard to the character of the adjoining area. Active frontage is provided for onto the Malahide Road.'

'The applicant states that the proposed development makes provision for the future development of the LAP lands further south in terms of accessibility. These lands are however outside of the applicant's ownership and no details of third party agreements have been included within the planning application. The applicant should be requested to clarify the manner in which access is to be facilitated to adjoining lands including facilitating the strategic 'road proposal' identified in the Fingal Development Plan at this location.'

'..There is some ambiguity in relation to the quantum of public open space which is being provided within the proposed development. The development will have an overall reckoned occupancy of 164 persons. The proposed development has an open space requirement of 0.41 hectares (0.182 or 10% of which must be provided for on-site). The applicant states that the current proposal provides 0.2085 hectares of public open space on the site (in excess of the 10% requirement). The location of these areas of public open space are however unclear.'

It was recommended that Further Information be requested.

4.9 Third Party Submissions on Further Information Submission

No Submissions were received.

4.10 Irish Water Report on Further Information Submission

This report dated 28th September, 2015 raised no objection to the proposed development subject to Observations as specified.

4.11 Parks Planning Section Report

This report dated 30th September, 2015 included as follows:

'Objective OS02 of the Fingal Development Plan 2011-2017 requires a minimum public open space provision of 2.5 hectares per 1,000 population' or 1,820 square metres as calculated in this case.

'The applicant states that a total of 1,743 square metres of public open space is being provided within the development. However, the applicant appears to have also included areas not considered public open space in their calculation of open space provision – i.e. incidental planted

areas in surrounding car park spaces nos. 105-110. Therefore the minimum of 10% provision of open space on site has not been met...'

'It is noted from the lodged landscape master plan that the applicant is proposing to locate a SuDS scheme within all the open space areas. This is not acceptable due to the size of the open space and the scale of the proposed SuDS area within it. Furthermore under Objective OS25 of the Fingal Development Plan 2011-2017, '*SuDS do not form part of the open space provision, except where it contributes in a significant and positive way to the design and quality of the open space*'. Fingal County Council does not accept that the proposed SuDS contribute in a significant and positive way and in fact will minimise the use of the public open space.', and also

'The provision of SuDS on greater than 10% of the open space provision is not acceptable and the design of the proposed SuDS seriously detracts from the play value of the open space in an estate where open space is extremely limited. Furthermore, due to the presence of SuDS on all of the open spaces, no provision has been given for a kick about area for children in this estate. The base of the detention basins is shown as stone (on the proposed cross sections Drawing No. N196-H03 RevP2) and so in reality the only place for children from a 52 unit development to play will be concentrated in a playground of 264 square metres. The concentration of all play to one central playground within an estate that has no provision for a kick about area is not acceptable.'

4.12 Transportation Planning Section Report

This report dated 2nd October, 2015 included stating that 'The parking for the proposed development is not located within the curtilage of the individual house units as per the requirements of the Development Plan Standards' and that the parking spaces further to taking in charge as proposed would constitute public parking spaces. Conditions were recommended to be included in any permission to be granted for the proposed development including as follows:

'1. The area marked as open space to the south-west of the proposed development adjoining Plot 1, shall be taken-in-charge by the Council to facilitate the construction of the future link road as indicated in the Development Plan.'

4.13 Final Planning Report for Planning Authority

- The Final Planning Report dated 7th October, 2015 included noting the Further Information Submission (Items 1 to 5). The 'Response and Assessment to Item No. 2' included stating as follows:
'The report received from the Parks and Green Infrastructure Division notes that the applicant has not met the minimum requirements for the provision of open space due to the quantum of open space being provided as well as the quantum and layout of SuDS on the open space.', and also
'Objective OS02 of the Fingal Development Plan 2011-2017 requires a minimum public open space provision of 2.5 hectares per 1,000 population. The proposed development, therefore, gives rise to an open space requirement of 1,820 square metres. The applicant states that a total of 1,743 square metres of public open space is being provided within the development but this appears to include areas which are not considered public open space, i.e. incidental planted areas adjacent to car parking spaces nos. 105-110. As such the minimum of 10% provision of open space on the site has not been met.'
- The 'Response and Assessment to Item 3' included as follows:
'It is noted that the revised site layout plan (Drawing No. pS (00) – 002 Rev A) that the applicant has overlaid the strategic 'road proposal' in a manner which generally reflects that indicated in the Fingal Development Plan 2011-2017. However, it must be noted that the location of this road in the Development Plan is indicative only and subject to change as may be required.
It is also noted that the road encroaches on an area marked as open space in the south-western corner of the application site, adjoining plot 1. The report received from the Transportation Planning Section notes that this area could be taken in charge by the Council to facilitate the construction of the future link road as indicated in the Development Plan. Although this may overcome the concerns in relation to the provision of the link road as indicated on the revised site layout plan this may not be the definitive location of this road. As such the applicant has not satisfactorily demonstrated that the proposed development will not prejudice the provision of this future road infrastructure.'
- The 'Response and Assessment to Item 5' included as follows:
'Objective OS35 of the Fingal Development Plan 2011-2017 states that a minimum standard of 22 metres between directly opposing

rear first floor windows shall generally be observed but in residential developments over 2 storeys, minimum separation distances shall be increased in instances where overlooking occurs. As such the separation distance between rear opposing second floor gable windows is insufficient and it is considered that the proposal will result in an adverse impact on neighbouring amenity in respect to overlooking and loss of privacy.'

- The Final Planning Report noted the Transportation Planning Section Report on the Further Information Submission and also a number of discrepancies between the revised Site Layout Plan and the Overall Landscape Site Plan. Under 'Conclusion' was stated: 'The applicant has not satisfactorily addressed the additional information requested in relation to surface water and public open space. The applicant has not satisfactorily demonstrated that the proposed development would not prejudice the delivery of the strategic road proposal in the Fingal Development Plan 2011-2017. The application has also not satisfactorily addressed the concerns in relation to the design of the proposal.'

Refusal of permission was recommended for the Reasons and Considerations (4) as stated in the notification of decision of the Planning Authority.

4.14 Notification of Decision of Planning Authority

The Planning Authority, Fingal County Council, issued a notification of decision to **REFUSE PERMISSION** for the proposed development for Reasons and Considerations (4) relating to public open space provision; prematurity pending the determination of a road layout and Local Area Plan for the area; relating to surface water drainage; and overlooking of neighbouring properties and inadequate bin storage.

5. APPEAL GROUNDS

First Party Appeal

- The First Party Appeal Grounds included stating that the revised drawings submitted with the Appeal reduced the number of proposed residential units from 52 to 43. The history of the Planning Application was documented and the submitted revisions to the proposed development included as follows:

‘Change of certain house types from terraced units to semi-detached units in order to facilitate access to rear gardens for purposes of wheelie bins and other services;
 Increase in the area of public open space, including the provision of a larger area of ‘usable’ open space at Courtyard No. 3;
 Provision of a Riparian Corridor of 10 metres from the existing watercourse on the southern site boundary; and
 Facilitation of the future distributor road as indicated on the Fingal Development Plan Zoning Map.

House size/type	Quantity	% of total scheme
2 bed apartment	9	21%
3 bed unit house	28	65%
4 bed unit house	6	14%
Total	43	100%

Table 3 – Mix of Units in the revised proposed submitted to An Bord Pleanála’

- Under ‘Reason for Refusal No. 1’ the Appeal Grounds stated:
 ‘The subject site is a long, rectangular shaped site that is affected by a number of Development Plan designations, including a riparian strip of 10 metres along its southern boundary and a road proposal that traverses the south-western corner of the site as well as a requirement to provide for an acceptable SuDS proposal. This has greatly hindered the ability to provide a large and centralised area of public open space that would be considered as the traditional form for a residential housing layout and has influenced the layout of this proposed development.’, and also

‘This has seen a number of changes to the open space provision on the subject site, including the provision of a larger area of public open space within Courtyard No. 3 in the centre of the proposed development. This, along with the public open space in Courtyard No. 2 provides a total of 1,525 square metres of public open space within the subject site. While this is slightly below the 10% of public open space required in the Development Plan, the Development Plan does provide for an applicant to make a financial contribution in lieu of the public open space, where a shortfall arises. In this regard, Objective OS02B of the development states.....’, and
 ‘It is the view of the applicant that the original design was GDSDS compliant and was the most sustainable solution for what is a long narrow site (330 metres long x 65 metres wide approximately). A revised design, based on the original GDSDS compliant design is being submitted with this appeal for the consideration of the Board.

The SuDS provisions within this scheme now include:

Pervious paving in the car parking spaces;

Water butts; and

Attenuation storage tanks.'

- Under 'Reason for Refusal No. 2' the submissions included in regard to 'the proposed future distributor road as set out in the Development Plan's zoning map for the area':-

'This proposed road would traverse through the south-western corner of the subject site. In order to show the full extent of this proposed road and how this scheme could eventually integrate with it, an indicative future road connection from our client's land was also indicated on that drawing, which could also connect to the adjoining Belcamp Lands to provide an integrated development.

The indicative future road proposal is also illustrated on the revised site layout plan that is submitted to An Bord Pleanála as part of this first party appeal. In order to provide for this road proposal, an area of open space has been indicated in the south-western corner of the site. This piece of open space was not included in the calculations for the overall provision of public open space as it is the intention of the applicant that this piece of land will be utilised to accommodate the proposed future road as set out in the Development Plan. It is evident from the submitted plans that more than adequate land provision is being made available for this road to be accommodated.'

- Under 'Reason for Refusal No. 3' the submissions included:
'The Planning Authority's reference to the Greater Dublin Strategic Drainage Study (GSDSDS) is noted and the applicant submits herewith a GSDSDS compliant surface water design along with all supporting calculations. In response to the Planning Authority's Reason for Refusal the access road serving the development, which was previously proposed to run along the southern boundary of the site and would have required this watercourse to have been culverted, has been relocated northwards on the revised plans submitted to An Bord Pleanála so as to provide the requisite riparian strip. This strip is being provided to allow future maintenance of the watercourse which runs along this southern boundary.....the proposed development as submitted to An Bord Pleanála, can no longer be considered to materially contravene Objective G129 of the Fingal Development Plan 2011-2017 noting the provision of this riparian strip.'

- Under 'Reason for Refusal No. 4' the submissions included:
'.....it is noted that Objective OS35 of the Development Plan does not specify a separation distance between buildings in excess of 2 storeys in height and as such the Planning Authority have taken a subjective view in this instance. It should be noted that in the case of these A1 house types that the only window on the gable end at second floor level is a narrow bedroom window, which will primarily be occupied at night. It is not a main living room that would attract more activity and could give rise to the possibility of overlooking.',
'.....the proposed terraced units have now been replaced by detached or semi-detached units, which will now have access to their rear gardens and thus removing the requirement for a bins storage area to the front of the units. The provision of Objective RD26 of the Fingal Development Plan 2011-2017 is therefore not relevant in this instance.'
- The Appeal Grounds submitted in regard to Zoning Objective LC:
'Both retail (convenience <500 square metres gfa) and residential are permitted uses within the LC zoning objective. In this regard the proposed mixed use block is to be located within the LC zoning and will contain a retail unit (357 square metres GFA) at ground floor level with 9 no. 2 bed apartments across 1st – 3rd floors inclusive. The proposed uses are therefore acceptable in principle under this zoning.';
and submitted in regard to Zoning Objective RA that 'A local area plan (LAP) for these 'RA' lands has not been prepared' and 'noting that the review of the County Development Plan 2011-2017 is due to commence without a local area plan being prepared or indeed commencing' that it was considered 'inappropriate to stymie the development of these lands pending the preparation of the LAP.'

6. APPEAL RESPONSES

6.1 Planning Authority Appeal Response

This Appeal Response received 3rd December, 2015 included:
'The appellant states that the revised site plan indicates the proposed future road as set out in the Fingal Development Plan 2011-2017 and that adequate land provision is made within the site to accommodate the future road. However, it must be noted that the location of this road is indicative only and is subject to change as may be required. The Planning Authority remains of the opinion that the development has the

potential to prejudice the provision of this future road infrastructure as well as the optimal use of the land between the strategic road and the southern boundary of the application site. It is considered that the proposal is not only premature pending the determination of a road layout for the area but is also premature pending the adoption of a local area plan for the area.', and also

'Objective OS02 of the Fingal Development Plan 2011-2017 requires a minimum public open space provision of 2.5 hectares per thousand population. This gives rise to a requirement of 3,300 square metres of public open space for the revised scheme.

Objective OS02B of the Fingal Development Plan 2011-2017 requires a minimum 10% of a proposed development site area to be designated for use as public open space. Thus there is a requirement for a minimum of 1,830 square metres open space on the site. Objective OS02B states the Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement required under Objective OS02.

The appellant states that a total of 1,525 square metres of public open space will be provided within the site and although this is below the 10% requirement a financial contribution can be made in lieu of the shortfall. However, Objective OS02B only provides for a financial contribution in lieu of the remaining open space requirement under Objective OS02, i.e. 3,300 square metres. Objective OS02B requires a minimum 10% of the site to be designated as public open space, i.e. 1,830 square metres and no provision is made for a financial contribution in lieu of this shortfall. As such the proposed development contravenes materially Objective OS02B of the Fingal Development Plan 2011-2017.', and

'Furthermore, Objective OS25 of the Fingal Development Plan 2011-2017 states that SuDS should not form part of the public open space provision except where it contributes in a significant and positive way to the design and quality of the open space. In instances where SuDS makes a significant and positive contribution to open space Objective OS25 states a maximum 10% of open space provision shall be taken up by SuDS. It is considered in this instance that the design of the proposed SuDS detracts from the play value of the open space in a development where open space provision is already limited. The provision of SuDS on greater than 10% of the open space is not acceptable and it is considered the proposal materially contravenes Objective OS25 of the Fingal Development Plan 2011-2017. The

proposal is therefore considered contrary to the proper planning and sustainable development of the area.’, and also

‘In order to protect, improve and enhance the natural character of the watercourses within the county and in order to meet the objective of the Water Framework Directive, sustainable urban drainage requirements and the Greater Dublin Strategic Drainage Study, a riparian strip of a minimum width of 10 metres must be maintained either side of all watercourses. Both Objective WQ05 and BD23 call for no development within the riparian corridor. The applicant’s proposed road is within and constitutes the greater part of the riparian corridor. The applicant’s proposal is not acceptable.

Attenuation tanks do not address the water quality, amenity or habitat enhancement requirements of the GDSDS and are not considered as SuDS devices by the GDSDS. Objective SW04 requires ‘the use of sustainable drainage techniques for new development or for extensions to existing developments’. Attenuation tanks within public open space will not be taken in charge. The applicant’s proposals for using underground storage are not acceptable. The applicant should be required to examine the use of swales, soakaways, detention basins...’

6.2 Appeal Observation of Derek McGowan

This Appeal Observation received 30th November, 2015 included stating that the Observer was the owner of the Fingal Memorial premises including showrooms adjoining the former Champions Public House and with car parking to the rear of the Public House which was no longer available as stated and raised concerns as stated:

‘The scale of the 4 storey mixed use block of retail and apartments that is to be built directly adjacent to their premises.

Lack of localised information in relation to the proposed uses of land directly to the south and west of his premises.

Car parking allocation/arrangements for their premises.

Deliveries to the showroom due to new junction arrangement and increased traffic.’

‘The Appeal Observation submitted that the proposed Apartment Block ‘to the south of our client’s premises will have the effect of reducing the amount of natural light that reaches their unit’, and that ‘a 4 storey block directly adjacent to a single storey cottage with a difference in height of in excess of 10.5 metres’ was not ‘considered to be sympathetic to the existing streetscape’ and that ‘there is a laneway being formed between our client’s premises and the new four storey

block with a gated access to the Malahide Road' – which lane terminates in a yard area as stated.

'We would request that An Bord Pleanála seek clarification from the applicant in relation to their intended use for these areas and to ensure that they be set aside to accommodate loading and parking for the existing commercial unit that is currently in the applicant's ownership and leased to our clients.' and also

'Our client has some concerns in relation to the alteration to the existing busy junction at the proposed entrance to the new development. This junction is an extremely busy junction at peak times of the day and the addition of the proposed access road to this junction will only add to the traffic delays that are currently experienced at peak time.'

6.3 Applicant's Response to Appeal Observation

This Response received 11th January, 2016 included stating:

'The proposed mixed use block has been designed purposefully as a design response to its location adjacent to the main vehicular entrance to the subject site as well as its location at the junction between the R107 and R123 roads. The subject site represents the start of a large redevelopment area that includes the much larger Belcamp lands, which are also subject to a current planning application with Fingal County Council (Reg. Ref. F15A/0609) and as such the setting and character of the entire area will be dramatically changed over the coming years. The current Campions Pub building is 2 storeys and as such the overall increase in height of the proposed building is just 2 storeys, which is not a significant increase in scale and should be considered appropriate noting the wider development that is being planned for the area.'

The Applicant's Response submitted that the proposed development would not result in any loss of natural light entering the Fingal Memorials building. The Applicant's Response also submitted that negotiations were underway with the Observer to provide car parking and delivery facilities for the Observer's commercial premises within the proposed development.

6.4 Planning Authority Response to Appeal Observation

This Response received 7th January, 2016 made no further comments.

7. PLANNING HISTORY

The Planning Report for the Planning Authority documented the Planning History of the subject site/area including as follows:

92A-0878 – Permission GRANTED for the enclosure of an existing first floor/roof beer garden to form lounge area at Campion’s Public House, Malahide Road, Balgriffin, County Dublin.

8. DEVELOPMENT PLAN

The provisions of the 2011-2017 Fingal County Development Plan have been considered, and in particular the following provisions which are attached in **Appendix C – Development Plan**.

The Planning Report for the Planning Authority documented relevant provisions in the Development Plan including as follows:

‘The eastern portion of the application site is zoned ‘LC’ *‘protect, provide for and/or improve local centre facilities’*.....

The western portion of the application site is zoned ‘RA’ *‘provide for new residential communities in accordance with approved local area plans and subject to the provision of the necessary social and physical infrastructure’*..... and also

‘In respect of residential developments in general:

Objective OS02 – require a minimum public open space provision...

Objective OS02B – require a minimum 10% of a proposed development site area be designated for use as public open space...

Objective OS25 – SuDS do not form part of the public open space provision, except where it contributes in a significant and positive way to the design and quality of open space... a maximum 10% of open space provisions shall be taken up by SuDS.’

The following provisions in the Development Plan are also relevant:

Objective OS35 – in regard to Private Open Space

Objective G129 – in regard to Riparian Strips along Watercourses

Objective RD26 – in regard to Design Measures for Refuse Bins

Strategic ‘Road Proposal’ as indicated on the Zoning Map

Section 9.2 – ‘Local Area Plans’

The ‘Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities’ published by the Department of the Environment, Heritage and Local Government in May 2009 are noted.

9. PLANNING ASSESSMENT – Issues and Evaluation

- The subject site lands at the former Campions Public House, its car park and lands to its rear, Malahide Road, Balgriffin, County Dublin are approximately 1.82 hectares in area and include the two-storey vacant Campions Public House which fronts onto the Malahide Road (R107) at its junction with the Balgriffin – Portmarnock Road (R123) and which is proposed to be demolished, and rectangular wooded lands to the rear thereof which adjoin to the south and west the open lands associated with the former Belcamp School. An existing watercourse forms the boundary between the subject site and the adjoining Belcamp lands to the south.
- The Planning Report for the Planning Authority noted as follows:
‘The subject site has a stated area of 1.82 hectares and is located at the site of the former Campions Public House, Malahide Road, Balgriffin. The site is bound to the north-east by an existing single-storey commercial property (Fingal Memorials), to the north by the rear garden of a residential property and lands in agricultural use and to the south and west by undeveloped lands which are currently in agricultural use. The site fronts onto the Malahide Road (R107) and its juncture with the R123 (a signalled junction). The application site is broadly rectangular in shape, approximately 65 metres in width (north-south) and 330 metres in depth (east-west). In terms of topography the site slopes from the north to south (from a point of c.22 metres at the southern boundary of the site to c.27 metres along the northern site boundary).’
- The proposed development comprises as specified as follows:
Permission for a mixed use residential and retail development comprising 52 no. residential units consisting of 43 no. 2.5 storey dwellings (28 no. 3 bed terraced units; 5 no. 4 bed end of terrace units; and 10 no. 3 bed detached units); a 4 storey mixed use block containing 9 no. 2 bedroom apartments and 1 no. retail unit (357 square metres GFA); 122 no. surface level car parking spaces and 11 no. bicycle parking spaces, bin storage, 1no. ESB substation and all associated site development, engineering, roads and footpaths, landscaping and boundary treatment works including revised vehicular entrance to the Malahide Road. The proposed development will also consist of the demolition of the existing former ‘Campions Public House’ and ancillary store and sheds in order to facilitate this proposed development at the Former

Campions Public House, its car park and lands to its rear, Malahide Road, Balgriffin, County Dublin.

- A Third Party Submission raised concerns in regard to excessive residential density and height and traffic hazard at an existing traffic junction. It was also submitted that the proposed access road 'results in the extensive loss of existing trees' along the southern site boundary. A Third Party Submission was also received from the owner of the Belcamp lands adjoining the subject site.
- The Transportation Planning Section Report for the Planning Authority included stating that none of the proposed 122 parking spaces were 'within curtilage' as required and also as follows: 'The current Development Plan has indicated a future road link running close to the southern boundary of the proposed site. This road will link Clonshaugh Road and the R107 serving the development lands in between. The proximity of this road proposal could have a significant impact on the proposed development and require amendments to the Transportation Assessment provided.'
- This Planning Report noted the location of the subject site 'within the future Belcamp LAP lands' and considered that the proposed residential density of 28.5 dpha (dwelling per hectare) was acceptable as also the design including 'the scale and height of the apartment block'. The Planning Report queried the proposed public open space provision stating that 'The proposed development has an open space requirement of 0.41 hectares (0.182 or 10% of which must be provided for on-site)'. It was recommended that Further Information be requested and also noted that 'no details of third party agreements' in regard to access to the adjoining lands to the south were submitted.
- The Planning Authority requested Further Information in regard to the layout and design of public open space and in regard to a strategic 'road proposal' in the Development Plan. Further Information was also requested in regard to car parking provision and the design of the proposed dwellings and four-storey apartment block.
- The Further Information Submission included revised public open space proposals as indicated on a revised Site Layout Plan drawing which also indicated 'a proposed future link to the

Distributor Road' and car parking provision and design revisions as indicated on the revised Site Layout Plan drawing.

- The Parks Planning Section Report for the Planning Authority on the Further Information Submission included stating that the minimum requirement of 10% provision of public open space was not achieved in the proposed development and also that the proposed Sustainable Drainage System (SuDS) within all the Open Space areas was not acceptable resulting in unacceptable provision of play facilities for children as specified.
- The Transportation Planning Section Report on the Further Information Submission included stating that the proposed car parking provision outside the curtilage of the individual house units was not acceptable and specified Conditions to be included in any decision to grant permission for the proposed development including as follows: '1. The area marked as open space to the south-west of the proposed development adjoining Plot 1, shall be taken-in-charge by the Council to facilitate the construction of the future link road as indicated in the Development Plan.'
- The Final Planning Report for the Planning Authority included noting that the Parks Department considered that 'the applicant has not met the minimum requirements for the provision of open space due to the quantum of open space being provided as well as the quantum and layout of SuDS on the open space', and also that areas submitted as public open space 'are not considered public open space' as 'incidental planted areas'. It was stated in regard to the strategic 'road proposal' that 'it must be noted that the location of this road in the Development Plan is indicative only and subject to change as may be required..... the applicant has not satisfactorily demonstrated that the proposed development will not prejudice the provision of this future road infrastructure.'
- The Final Planning Report also considered that 'the separation distance between rear opposing second floor gable windows is insufficient', and under Conclusion stated as follows:
'The applicant has not satisfactorily addressed the additional information requested in relation to surface water and public open space. The applicant has not satisfactorily demonstrated that the proposed development would not prejudice the delivery of the strategic road proposal in the Fingal Development Plan 2011-2017. The application has also not satisfactorily addressed the concerns in relation to the design of the proposal.'

- Having inspected the site and having reviewed all documents on file including as set out above, the following is my assessment of this case where the major planning issues for consideration are:

Proposed Development and First Party Appeal Grounds

The Planning Authority, Fingal County Council, issued a notification of decision to **REFUSE PERMISSION** for the proposed development for Reasons and Considerations (4) as stated.

- The *First Party Appeal Grounds* submitted revised drawings reducing the proposed residential units from 52 to 43 including:
 - ‘Change of certain house types from terraced units to semi-detached units in order to facilitate access to rear gardens for purposes of wheelie bins and other services;
 - Increase in the area of public open space, including the provision of a larger area of ‘usable’ open space at Courtyard No. 3;
 - Provision of a Riparian Corridor of 10 metres from the existing watercourse on the southern site boundary; and
 - Facilitation of the future distributor road as indicated on the Fingal Development Plan Zoning Map.’

The *First Party Appeal Grounds* included detailed submissions as outlined below in relation to *Reasons for Refusal 1, 2, 3 and 4* in the notification of decision of the Planning Authority.
- Relevant provisions in the Development Plan include as follows:
 - ‘The eastern portion of the application site is zoned ‘LC’ ‘*protect, provide for and/or improve local centre facilities*’.....
 - The western portion of the application site is zoned ‘RA’ ‘*provide for new residential communities in accordance with approved local area plans and subject to the provision of the necessary social and physical infrastructure*’.....
 - Objective OS02* – require a minimum public open space provision...
 - Objective OS02B* – require a minimum 10% of a proposed development site area be designated for use as public open space.
 - Objective OS25* – SuDS do not form part of the public open space provision, except where it contributes in a significant and positive way to the design and quality of open space... a maximum 10% of open space provisions shall be taken up by SuDS.’

The following provisions in the Development Plan are also relevant:

 - Objective OS35 – in regard to Private Open Space
 - Objective G129 – in regard to Riparian Strips along Watercourses
 - Objective RD26 – in regard to Design Measures for Refuse Bins
 - Strategic ‘Road Proposal’ as indicated on the Zoning Map
 - Section 9.2 – ‘Local Area Plans’

Reason for Refusal No. 1

- I note the submitted First Party Appeal Grounds addressed in order the stated Reasons of Refusal (4) in the notification of decision of the Planning Authority commencing with Reason for Refusal No. 1:
 1. *Having regard to the quantum, quality and layout of the public open space provided, in addition to the proposed design and scale of SuDS features proposed, it is considered that the proposed development contravenes materially Objective OS02 and Objective OS25 of the Fingal Development Plan 2011-2017 and is therefore considered contrary to the proper planning and sustainable development of the area.*
- The Appeal Grounds under Reason for Refusal No. 1 noted that ‘the subject site is a long, rectangular shaped site that is affected by a number of Development Plan designations, including a riparian strip of 10 metres along its southern boundary and a road proposal that traverses the south-western corner of the site as well as a requirement to provide for an acceptable SuDS proposal’. The revised proposals submitted included increased public open space provision and revised SuDS provisions as specified.
- I note Objective OS02 in the Development Plan requires ‘*minimum public open space provision*’ as specified. Objective 0202A includes ‘*Require a minimum 10% of a proposed development site be designated for use as public open space*’. Objective 0202B includes ‘*Require a minimum 10% of a proposed development site to be designated for use as public open space*’, see Appendix C – Development Plan in this report.
- Having reviewed the provisions of Objective OS02, Objective OS02A and Objective OS02B, I fully concur with the Planning Authority Appeal Response where stated as follows:

‘*Objective OS02 of the Fingal Development Plan 2011-2017 requires a minimum public open space provision of 2.5 hectares per thousand population. This gives rise to a requirement of 3,300 square metres of public open space for the revised scheme.*

Objective OS02B of the Fingal Development Plan 2011-2017 requires a minimum 10% of a proposed development site area to be designated for use as public open space. Thus there is a requirement for a minimum of 1,830 square metres open space on the site. Objective OS02B states the Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement required under Objective OS02.

The appellant states that a total of 1,525 square metres of public open space will be provided within the site and although this is below the 10% requirement a financial contribution can be made in lieu of the shortfall. However, Objective OS02B only provides for a financial contribution in lieu of the remaining open space requirement under Objective OS02, i.e. 3,300 square metres. Objective OS02B requires a minimum 10% of the site to be designated as public open space, i.e. 1,830 square metres and no provision is made for a financial contribution in lieu of this shortfall. As such the proposed development contravenes materially Objective OS02B of the Fingal Development Plan 2011-2017.'

- I note the Sustainable Drainage System (SuDS) statement (p.261) in the Development Plan including where stated:
'SuDS areas do not form part of the public open space provision except where they contribute in a significant way to the design and quality of open space'. I note also that Objective OS25 states:
'Ensure as far as practical that the design of SuDS enhances the quality of open space. *SuDS do not form part of the public open space provision, except where it contributes in a significant and positive way to the design and quality of open space. In instances where the Council determines that SuDS make a significant and positive contribution to open space, a maximum 10% of open space provision shall be taken up by SuDS.'*
- Having reviewed the submissions in regard to Sustainable Drainage Systems (SuDS) within the proposed development as revised in the submitted First Party Appeal Grounds, I fully concur where stated in the Planning Authority Appeal Response:
'In instances where SuDS makes a significant and positive contribution to open space, *Objective OS25 states a maximum 10% of open space provision shall be taken up by SuDS. It is considered in this instance that the design of the proposed SuDS detracts from the play value of the open space in a development where open space provision is already limited. The provision of SuDS on greater than 10% of the open space is not acceptable and it is considered the proposal materially contravenes Objective OS25 of the Fingal Development Plan 2011-2017'*.
Further to the above assessment I consider that Reason for Refusal No. 1 in the notification of decision of the Planning Authority to refuse permission for the proposed development is appropriate in this case, subject to amendment as set out.

Reason for Refusal No. 2

- Reason for Refusal No. 2 states as follows:
 2. *The applicant has failed to demonstrate to the satisfaction of the Planning Authority that the proposed development would not prejudice the provision of a strategic road proposal contained in the Fingal Development Plan 2011-2017. The proposed development is considered premature pending the determination of a road layout for the area and, having regard to the Zoning Objective RA, the adoption of a local area plan for the area.*
- I note a *Third Party Submission* included submitting that the proposed development would be premature pending a Local Area Plan as stated under 'Prematurity and other RA lands'. Another *Third Party Submission* from the owner of the adjoining Belcamp lands (82 hectares) stated that 'The lands will in time accommodate major road improvements as indicated on Fingal and Dublin City Development Plans. *One of these roads will connect Mayne Road at Campions in a westerly direction along the northern edge of the variously zoned lands from Belcamp to the M1, eventually connecting with the Airport box.* It is essential that this connection and junction at Campions is not compromised by the current proposal. The access road shown in the proposal is not large enough to accommodate this objective and is compromised by the proximity of the residential development proposed.'
- In this regard I note the Further Information Request of the Planning Authority stated as follows:

'1. The application site adjoins a *strategic 'road proposal'* in the Fingal Development Plan 2011-2017 which terminates in the vicinity of the road junction which the proposed development seeks access onto. *This future road alignment will serve zoned residential development lands at Belcamp as well as providing access westwards to zoned employment land at Clonshaugh before crossing the M1 Motorway as part of a planned regional road network.* The applicant is requested to satisfactorily demonstrate that the proposed development would not prejudice the provision of this future road infrastructure.'

I note that the 'Road Proposal' as indicated on the Zoning Map and to an extent as described above by the Planning Authority, relates to Major Future Road Infrastructure in the area which is identified in the Development Plan for the preparation of a Local Area Plan.

- I note the Further Information Submission indicated on the submitted revised Site Layout Plan as follows:
'a proposed future link to serve the proposed development upon completion of the Distributor Road. It is considered that the proposed future link is such that the proposed development will not prejudice the provision of the future road proposal as contained within the Fingal Development Plan 2011-2017.'
- The Final Planning Report for the Planning Authority stated in regard to the Further Information Submission as follows:
'It is noted that the revised site layout plan (Drawing No. pS (00) – 002 Rev A) that the applicant has overlaid the strategic 'road proposal' in a manner which generally reflects that indicated in the Fingal Development Plan 2011-2017. However, it must be noted that the location of this road in the Development Plan is indicative only and subject to change as may be required.
It is also noted that the road encroaches on an area marked as open space in the south-western corner of the application site, adjoining plot 1. The report received from the Transportation Planning Section notes that this area could be taken in charge by the Council to facilitate the construction of the future link road as indicated in the Development Plan. *Although this may overcome the concerns in relation to the provision of the link road as indicated on the revised site layout plan this may not be the definitive location of this road. As such the applicant has not satisfactorily demonstrated that the proposed development will not prejudice the provision of this future road infrastructure.'*
- The Appeal Grounds under Reason for Refusal No. 2 included submitting in regard to the 'the proposed future distributor road as set out in the Development Plan's zoning map for the area':-
'This proposed road would traverse through the south-western corner of the subject site. In order to show the full extent of this proposed road and how this scheme could eventually integrate with it, an indicative future road connection from our client's land was also indicated on that drawing, which could also connect to the adjoining Belcamp Lands to provide an integrated development...
In order to provide for this road proposal, an area of open space has been indicated in the south-western corner of the site..... It is evident from the submitted plans that more than adequate land provision is being made available for this road to be accommodated.'

- The Planning Authority Appeal Response included stating:
 ‘The appellant states that the revised site plan indicates the proposed future road as set out in the Fingal Development Plan 2011-2017 and that adequate land provision is made within the site to accommodate the future road. However, it must be noted that *the location of this road is indicative only and is subject to change as may be required*. The Planning Authority remains of the opinion that *the development has the potential to prejudice the provision of this future road infrastructure as well as the optimal use of the land between the strategic road and the southern boundary of the application site*. It is considered that the proposal is not only premature pending the determination of a road layout for the area but is also premature pending the adoption of a local area plan for the area’.
- In regard to the *Local Area Plan*, I note that the Planning Report for the Planning Authority stated as follows:
 ‘The application site is located within the future Belcamp LAP lands. There is no adopted LAP for these lands. The application site comprises the northernmost part of these lands. Having regard to the position of these lands within the overall LAP, the size of the site relative to the overall LAP lands and the availability of direct access onto the Malahide Road, *the proposed development may be considered prejudicial to the future LAP for the area.....*’, and
 ‘The applicant states that the proposed development makes provision for the future development of the LAP lands further south in terms of accessibility. *These lands are however outside of the applicant’s ownership and no details of third party agreements have been included within the planning application*. The applicant should be requested to clarify the manner in which access is to be facilitated to adjoining lands including facilitating the strategic ‘road proposal’ identified in the Fingal Development Plan at this location.’
- The First Party Appeal Grounds submitted that the proposed residential/retail development complied with Zoning Objective ‘LC’ and Zoning Objective ‘RA’ in the Development Plan and that ‘noting that the review of the County Development Plan 2011-2017 is due to commence without a local area plan being prepared or indeed commencing’ that it was considered ‘inappropriate to stymie the development of these lands pending the preparation of the LAP’.

- Section 9.2 'Local Area Plans' in the Development Plan includes stating: *'There is a requirement to prepare Local Area Plans on lands which are either identified on the zoning objective or the Development Plan Maps'*. The 'RA' Zoning Objective for the subject site lands is as follows: *'Provide for new residential communities in accordance with approved local area plans and subject to the provision of the necessary social and physical infrastructure'* - which provision of *'necessary physical infrastructure'* in this area identified in the 'RA' Zoning Objective as requiring a *Local Area Plan*, would include the *'Road Proposal'* as identified on the Development Plan Zoning Map.
- I note in this regard the Site Plan drawing and Road Layout drawing included in the First Party Appeal Grounds received 3rd November, 2015 including where specified on both drawings *'Proposed Future Link to Serve Development Upon Completion of Distributor Road, Indicative Location From Development Plan of Distributor Road as Detailed'*.
- I note the Submission on the Planning Application of the adjoining landowner including where stated that the Belcamp lands (area 82 hectares/216 acres) to the west of the Malahide Road (R107) and which adjoin to the south and west the subject site lands, and which adjoining lands as stated in the Submission *'will in time accommodate major road improvement as indicated on Fingal and Dublin City Development Plans'*. I note that no *'third party agreements'* in regard to the adjoining Belcamp lands in regard to the Proposed Future Link onto these adjoining Belcamp lands were submitted.
- Having considered the above submissions on file and noting that the Development Plan Zoning Map indicates a 'Road Proposal' as a Specific Objective in the south-western area of the subject site and also on the adjoining Belcamp lands to the south and east – which Road Proposal as outlined above constitutes Major Future Road Infrastructure in the area – I concur with the Planning Authority that Reason for Refusal No. 2 in regard to this Strategic 'Road Proposal' in the Development Plan in the notification of decision of the Planning Authority to refuse permission for the proposed development is appropriate in this case, subject to amendment as set out.

Reason for Refusal No. 3

- Reason for Refusal No. 3 states as follows:
 3. *The applicant has submitted insufficient information in relation to the proposed surface water drainage arrangements including design and storage capacity and the proposed development is contrary to the requirements of the Greater Dublin Strategic Drainage Study. In addition the proposed development contravenes materially Objective G129 of the Fingal Development Plan 2011-2017 due to the lack of provision of a riparian corridor. The proposed development is therefore considered contrary to the proper planning and sustainable development of the area.*
- The Appeal Grounds under Reason for Refusal No. 3 included:

‘the access road serving the development, which was previously proposed to run along the southern boundary of the site and would have required this watercourse to have been culverted, has been relocated northwards on the revised plans submitted to An Bord Pleanála so as to provide the requisite riparian strip’, and as such ‘the proposed development as submitted to An Bord Pleanála, can no longer be considered to materially contravene Objective G129 of the Fingal Development Plan 2011-2017 noting the provision of this riparian strip’.
- The Planning Authority Appeal Response included stating:

‘In order to protect, improve and enhance the natural character of the watercourses within the county and in order to meet the objective of the Water Framework Directive, sustainable urban drainage requirements and the Greater Dublin Strategic Drainage Study, a riparian strip of a minimum width of 10 metres must be maintained either side of all watercourses. Both Objective WQ05 and BD23 call for no development within the riparian corridor. The applicant’s proposed road is within and constitutes the greater part of the riparian corridor. The applicant’s proposal is not acceptable’.
- In this regard I note *Objective WQ05* in the Development Plan includes requiring as follows: *‘Establish riparian corridors free from new development along all significant watercourses in the County. Ensure a 10 to 15 metre wide riparian buffer strip measured from top of bank either side of all watercourses.....’* I note also that *Objective BD23* requires as follows: *‘Ensure that no development including clearance and storage of materials, takes place within a*

minimum distance of 10 metres – 15 metres measured from each bank of any river, stream or watercourse in the County.....’, see Appendix C – Development Plan.

- I note also in this regard the submitted Site Plan drawing in the First Party Appeal Grounds received on 3rd November, 2015 including where specified on the drawing *‘Position of Existing Watercourse Ditch’* located alongside the proposed Access Road within the proposed development – and which as such evidently would not comply with the Development Plan requirements as set out above to provide a minimum 10 metre wide riparian corridor.
- The Planning Authority Appeal Response also included stating: *‘Attenuation tanks do not address the water quality, amenity or habitat enhancement requirements of the GSDS and are not considered as SuDS devices by the GSDS. Objective SW04 requires ‘the use of sustainable drainage techniques for new development or for extensions to existing developments’. Attenuation tanks within public open space will not be taken in charge. The applicant’s proposals for using underground storage are not acceptable. The applicant should be required to examine the use of swales, soakaways, detention basins...’*
- Having considered the above submissions on file I consider that Reason for Refusal No. 3 in the notification of decision of the Planning Authority to refuse permission for the proposed development is appropriate to the proposed development subject to amendment as set out.

Reason for Refusal No. 4

- Reason for Refusal No. 4 states as follows:
4. With regard to layout and design, specifically the 3 storey design of house type A1, it is considered that the proposed development contravenes Objective OS35 of the Fingal Development Plan 2011-2017 and would result in significant overlooking of neighbouring properties, impact on the residential amenity of the area. In addition the proposed location and design of the bin storage areas for the mid-terrace units is considered contrary to Objective RD26 of the Fingal Development Plan 2011-2017 and would impact negatively on the residential amenity of the proposed dwellings.

- The Appeal Grounds under Reason for Refusal No. 4 included submitting that *no undue overlooking would result from the gable ends of the A1 House Types* and that the revised detached/semi-detached houses in lieu of the previously proposed terraced houses, *would provide bin storage access as required under Objective RD26 of the Development Plan* as stated.
- The Planning Authority Appeal Response stated regarding potential for overlooking ‘between the gable ends of House Type A1’: *‘The appellant states that there is a minimum separation distance of 22.5 metres between the gable ends of House Type A1 and it is argued that this is sufficient distance between opposing upper floor windows to ensure there will be no direct overlooking. Objective OS35 of the Fingal Development Plan 2011-2015 states that a minimum standard of 22 metres between directly opposing rear first floor windows shall be provided and in residential developments over two storeys, minimum separation distances shall be increased in instances where overlooking occurs. The Planning Authority remains of the opinion that overlooking will arise from these windows and an increased separation distance of 0.5 metres over and above the 22 metres required for first floor windows is not sufficient to overcome this impact. As such it is considered that the proposal contravenes materially Objective OS35 of the Fingal Development Plan 2011-2017 and is contrary to the proper planning and sustainable development of the area.’*
- I note the First Party Appeal Grounds submission where stated as follows: *‘.....it is noted that Objective OS35 of the Development Plan does not specify a separation distance between buildings in excess of 2 storeys in height and as such the Planning Authority have taken a subjective view in this instance.’* I refer to Objective OS35 in the Development Plan which as submitted above states that *‘minimum separation distances shall be increased’* in such cases. In the context of the three (3) substantive Reasons for Refusal as considered appropriate above in this case, I would accept the First Party submissions in this regard.
- I further note in relation also to Reason for Refusal No. 4 in the notification of decision of the Planning Authority in regard to ‘the location and design of the bin storage areas for the mid-terraces’ contravening Objective RD26 of the Development Plan that further to the revised detached/semi-detached dwellings with rear garden access ‘thus removing the requirement for a bin storage area to the

front of the units', as included in the Revised Site Layout Plan in the First Party Appeal Grounds, that the Planning Authority accepts that same would be acceptable and I concur.

Appeal Observation

- The Appeal Observation of the owner of the adjoining Fingal Memorial premises on Malahide Road (R107) raised concerns:
'The scale of the 4 storey mixed use block of retail and apartments that is to be built directly adjacent to their premises.
Lack of localised information in relation to the proposed uses of land directly to the south and west of his premises.
Car parking allocation/arrangements for their premises.
Deliveries to the showroom due to new junction arrangement and increased traffic.'
- The Applicant's Response to the Appeal Observation included:
'The current Campions pub building is 2 storeys and as such the overall increase in height of the proposed building is just 2 storeys, which is not a significant increase in scale and should be considered appropriate noting the wider development that is being planned for the area.' The proposed development would not result in any loss of natural light entering the Fingal Memorials building and the Applicant's Response also submitted that negotiations were underway with the Observer to provide car parking and delivery facilities for the Observer's commercial premises.
- I note the Appeal Observation and Applicant's Response thereto in regard to the height of the proposed four-storey Apartment Block. In the context of the height of the adjacent single-storey Fingal Memorials building as indicated on the submitted Proposed East Elevation drawing, I consider that the exposed gable wall of the Apartment Block above the single-storey building which would be highly visible when travelling southwards along the Malahide – Dublin Road (R107) would be visually obtrusive. Noting the three (3) substantive Reasons for Refusal as considered appropriate above in this case, as such I do not consider that any further Reason for Refusal is warranted in this case.

Appropriate Assessment

I note the Appropriate Assessment Screening Report submitted with the planning application which concluded as stated: 'The proposed development will not have a significant effect on any SAC and SPA

sites which have been identified in closest proximity to the site subject to this planning application' in relation to the European Natura 2000 Sites as identified. Having regard to the location of the subject site and to the nature and scale of the proposed development and the intervening distance of approximately 2.8 kilometres between the subject site and the nearest identified European Sites i.e. Baldoyle Estuary SAC (Site Code: 000205) and Baldoyle Estuary SPA (Site Code: 004025), I consider that no Appropriate Assessment issues arise in this case. It is not considered that the proposed development either individually or in combination with other plans or projects, would be likely to have a significant effect on a European Site.

10. CONCLUSIONS AND RECOMMENDATION

In conclusion, further to the above planning assessment of matters pertaining to this appeal, including consideration of the submissions of each party to the appeal, and including the site inspection, I consider that the proposed development would be contrary to the proper planning and sustainable development of the area, having regard to the relevant provisions of the 2011-2017 Fingal County Development Plan which are considered reasonable. Accordingly, I recommend that permission be refused for the proposed development for the Reasons and Considerations stated in the Schedule below.

DECISION

REFUSE permission for the proposed development for the Reasons and Considerations set out below.

REASONS AND CONSIDERATIONS

1. The applicant has failed to demonstrate that the proposed development would not prejudice the provision of a strategic road proposal for the area as indicated as a Specific Objective on the Zoning Map for the area in the 2011-2017 Fingal County Development Plan. The proposed development is considered to be premature pending the determination of a road layout for the area, and having regard to Zoning Objective 'RA' in the Development Plan: 'Provide for new residential communities in accordance with approved local area plans and subject to the provision of the necessary social and physical infrastructure', is also considered to be premature pending the adoption of a local area plan for the area.

2. Having regard to the quantum, quality and layout of the proposed public open space and to the design and scale of the proposed Sustainable Urban Drainage (SuDS) features, it is considered that the proposed development would materially contravene Objective OS02B requiring 'a minimum 10% of a proposed development site area be designated for use as public open space' and Objective OS25 requiring 'a maximum 10% of open space provision shall be taken up by SuDS (Sustainable Drainage Systems)' as set out in the 2011-2017 Fingal County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. It is considered that the proposed surface water drainage arrangements including proposed attenuation tanks within public open space areas and proposed underground storage areas are contrary to the requirements of the Greater Dublin Strategic Drainage Study. The proposed development would materially contravene Objective GI29 of the 2011-2017 Fingal County Development Plan by reason of the lack of provision of an adequate riparian corridor to a minimum width of 10 metres alongside the watercourse which forms the southern site boundary and within which required riparian corridor the proposed access road is located in contravention also of the requirements of Objective WQ05 and BD23 in the Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

DERMOT KELLY
SENIOR PLANNING INSPECTOR

16th February, 2016.

Sg/ym

APPENDIX A - LOCATION MAP
APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)
APPENDIX C - DEVELOPMENT PLAN