

An Bord Pleanála



Inspector's Report

PL06F.246183

DEVELOPMENT:-

Construction of 9 houses together with new vehicular and pedestrian entrance to Balscadden Road and connection to the existing public main via a new surface watermain north of Asgard Park, Balscadden Road, Howth, Dublin 13.

PLANNING APPLICATION

Planning Authority: Fingal County Council
Planning Authority Reg. No: F15A/0545
Applicant: Crekav Landbank Investments Limited
Application Type: Permission
Planning Authority Decision: Refuse

APPEAL

Appellant: Crekov Landbank Investments Limited
Types of Appeal: 1st Party -v- Refusal
Observers: (i) Grainne Mallon, (ii) Paula Connolly, (iii) Jill Richard and Patrick Hanna.
DATE OF SITE INSPECTION: 26th May, 2016.

INSPECTOR: Paul Caprani

1.0 INTRODUCTION

PL06F.246183 relates to a first party appeal against the decision of Fingal County Council to issue notification to refuse planning permission for a small residential infill development at Bascadden Road in the eastern environs of Howth Village. Planning permission was refused for 6 reasons relating to, lack of geotechnical information regarding the suitability of the site to accommodate the development proposed, visual impact, prematurity pending the provision of water supply facilities, contravention of the greater Dublin Strategic Drainage Study and contravention of Objective UD18 of the Fingal Development Plan.

2.0 SITE LOCATION AND DESCRIPTION.

The subject site is approximately 0.405 hectares in size and is located in the eastern environs of Howth Village. The site fronts onto the Bascadden Road which runs along its eastern boundary adjacent to Bascadden Bay. There are a number of tightly clustered cottages, mainly single storey, on the eastern side of the Bascadden Road directly opposite the site. To the immediate north of the site the former EDROS building is located beyond which there are a number of tennis courts. The building and the tennis courts are no longer in use. Further to the north the land rises steeply to a Martello Tower, an important landmark overlooking the harbour.

Asgard Park, a suburban residential estate comprising of detached dwellings clustered around a central area of open space backs onto the southern boundary of the site. There is no pedestrian or vehicle links between the subject site and Asgard Park. The western boundary of the site comprises of a steep embankment which leads of the rear of buildings fronting onto Howth Main Street.

The site itself comprises of grass covered sandy dunes and soils rising up from Bascadden Road. The site is elevated and undulates and also provides commanding views over Bascadden Bay, Howth Harbour and to the west and south, Howth Village. The only access to the site is from the Bascadden Road which is a one-way road accommodating southbound traffic only from the village. Bascadden Road ends in a cul-de-sac further east. Traffic travelling along the Bascadden Road has to turn southwards along the Kilrock Road onto the Nashville Road and back into Howth Village. The Bascadden Road is used for vehicles and pedestrians accessing the popular cliff walk along Howth Head.

3.0 PROPOSED DEVELOPMENT

Planning permission is sought for the construction of 9 three-storey dwellings on the subject site. A sole access point is proposed at the north-eastern corner of the site onto the Balscadden Road. Four houses (House Type A & A1) are to face northwards onto the internal access road. House Type A comprises of a part two/part three storey, split level dwelling with a stepped access at first floor level where the front door entrance is located. The ground floor is to accommodate an en-suite bedroom with a separate segregated bin store. First floor level is to provide access to three additional bedrooms, bathrooms and storage areas while the top floor is to accommodate the main living areas. The three storey elements rises to an overall height of 10.86 metres. The two-storey element of the building incorporates a pitched roof while the three storey elements accommodate a mono-pitched slate roof. A mixture of brickwork and render finish is proposed on the external elevations. House Type A incorporates a total floor area of just less than 180 square metres.

To the rear of the site backing onto the buildings fronting onto Main Street four additional houses are proposed. These houses face eastwards towards Balscadden Road and Balscadden Bay. This row of four dwellinghouses accommodate House Type B and House Type C. Both House Type B and C likewise comprise of three storey split level dwellings with the ground floor accommodating bedroom and bin storage. The first floor accommodates the main living area and three additional bedrooms are provided at second floor level. The roof profiles are similar to House Type A in that pitched roofs and mono-pitched roofs are provided and the overall height of the dwelling amounts to 10.86 metres. Similar finishes are also proposed.

An additional house, House Type D is located in the south-eastern corner of the site and faces directly onto the Balscadden Road. Again this split level three storey structure incorporates an entrance at ground floor level which leads up to the main living accommodation at first floor level and three bedrooms at second floor level. The gross floor area of the proposed dwelling is 159 square metres. The dwelling mainly incorporates a plaster render finish.

Each of the dwellings accommodate two off-street car parking spaces with a small front garden area. Rear garden sizes range from a minimum of 83 square metres in the case of Plot No. 2, to 390 square metres in the case of Plot No. 9. No public open space with the

exception of incidental open space along the northern boundary of the site is provided. This open space is to incorporate an underground surface water attenuation tank.

4.0 PLANNING AUTHORITY'S DECISION

4.1 Documentation Submitted

The application was lodged on 23rd November, 2015 and was accompanied by the following documentation:

- **Supporting Planning Statement.** This document sets out the proposed development in the context of the site and its surroundings and the planning policy context relating to the site.
- **An Appropriate Assessment Screening Report.** It concludes that the main potential risk from the development of the subject site to any Natura 2000 site is considered to be indirectly related to surface water run-off during the construction phases of the project. Any surface water run-off will be collected and treated in accordance with the principles and specifications of the Fingal County Council Water Services Department. As the proposed project will have no direct or measureable indirect impact on any Natura 2000 sites in the vicinity it is considered that a Stage 2 Natura Impact Statement is not considered necessary.
- **An Engineering Services Report.** This report sets out details of the storm water drainage arrangements, foul water drainage and potable water supply. It also includes details of discharge calculation and storm water design and attenuation calculations.
- **An Architectural Visualisation** of the proposed development which contains photomontages from various vantage points around Howth Village depicting the visual impact of the proposed development in the context of the existing environment.
- **An Architect's Design Statement** which assess the development design in terms of connectivity, energy efficiency, distinctiveness, privacy and amenity and overall layout.

- **A Construction and Demolition Waste Management Plan** which details the likely impossible waste material which could arise from construction activities on site.
- **A Construction Management Plan** which details the development programme, the indicative site set up in terms of construction activities, details of the site monitoring, security and management, details of construction haul routes and community liaison.
- **A Geotechnical Interpretive Report** which concludes that all ground investigations undertaken have confirmed that, subject to appropriate engineering/geotechnical design and monitoring during construction, there is no geotechnical reason why the site cannot be developed.

4.2 Planning Authority Assessment

A report from the **Water Services Department** states that the Department do not have a surface water system or outfall on this road therefore currently there is nowhere for surface water to discharge to. The applicant is requested to contact the Drainage Department.

A report for **Irish Water** states that there is no objection subject to conditions. It is noted however that the 3 inch main on Balscadden Road has significant levels of tuberculation and is unlikely to be able to serve the proposed development. The development is 'probably' premature pending this rehabilitation.

A large number of third party observations were submitted objecting to the proposed development. The contents of these submissions have been read and noted.

A report from the **Parks Planning Section** notes that no public open space has been provided. While a financial contribution in lieu of open space may be acceptable in principle, the current layout for this development provides no communal area whatsoever for children to meet/play. At the very least the hard surface area should be provided in order to provide community open space. The applicant proposes an underground attenuation tank on the grass margin at the entrance of the development in terms of surface water drainage. Such tanks do not meet the Council's requirements in relation to SUDS provisions.

A report from the **Architect's Department** notes that the site is difficult to resolve given its steep topography which varies in levels of over 10 metres across the site. The site sections which are submitted relate to architectural expressions rather than the extent of engineering proposals required. Patches of soil slippage and erosion on site are apparent and the soil structure of the site is of gravels and sand with no bedrock level noted in the geophysical report submitted. Further details are required in this regard.

A further report from the **Water Services Section** requested additional information. It required and it notes that the use of underground attenuation tanks is not permitted in accordance with the Greater Dublin Strategic Drainage Study. It is also noted that there is no surface water drainage along the Balscadden Road.

A report from the **Transportation Planning Section** notes that the footpaths do not meet the minimum requirements of 1.5 metres. There is no provision of a footpath along the front boundary of the proposed development. In terms of road construction, it should be noted that the Council does not take permeable paving or certain material finishes in charge due to the associated maintenance costs. The proposed road construction is not suitable for taking in charge. The applicant shows gradients of 7.5% along the internal road and 6.6% at the proposed access. Maximum gradients should be 7% generally and 5% at the access. In terms of construction traffic, the number of traffic movements associated with the earthworks for the first phase of the proposed development is high. It is stated that the proposed layout does not facilitate access for bin collection. In conclusion therefore the Transportation Planning request additional information to address these issues.

A report from **The Heritage Officer** states that given the location and nature of the proposed development, there will be no adverse impacts to European sites. It is also considered that an archaeological monitoring condition should be attached to any grant of planning permission.

A report from the **Environment and Engineering Services Department** sets out a list of 10 conditions that should be attached in the case of any grant of planning permission.

A report from the **Structures and Building Control Section** states that the proposed development involves a potentially complicated and high risk works from a geotechnical point of view. The information submitted

by the applicant is lacking in clarity as to how they propose to build the development within the site constraints. Further information is required in this regard. It is suggested that there are a number of shortcomings in the geotechnical report and a more detailed construction and method statement for the initial site work stage is also required. A more detailed examination of ground water and surface water existing conditions on site is required.

The **Planner's Report** sets out the policies and objectives contained in the Development Plan as they relate to the subject site. And the planning history associated with the subject site and the site to the immediate north. Reference is made to the various reports both internal and third party in respect of the proposed development. The report goes on to set the proposed development, including the various house types in detail. The report notes that the proposed development is acceptable in terms of zoning but expresses concerns in respect of ground stability on the subject site and it is considered that insufficient information has been provided to fully assess the extent of excavation and retention structures required. This would have consequential impact on surrounding properties. In the absence of such information it is considered that the proposal would endanger public safety and would be contrary to the proper planning and sustainable development of the area. Refusal of planning permission is warranted for this reason.

In terms of the design and visible impact, it is noted that visual impact assessment has been submitted and while not detailed, an assessment from each viewpoint has been provided, it is noted that the proposed development, as shown in Images 1 – 4, is unlikely to have an adverse visual impact on the surrounding area. It is considered however that the proposed scheme significantly interrupts the visual link between the Martello Tower and the Village Church which is a landmark building within the village. Furthermore as there is insufficient information with regard to the extent of site excavation works and the extent of retaining structures which may be required. Thus the full impact of re-profiling and retention structures cannot be fully assessed on this visually prominent site. It is considered that the development would appear visually incongruous in this sensitive location.

In terms of impact on residential amenity it is noted that the site layout plan does not show the adjoining permitted development on the former Bailey Court Hotel to the west of the site and the potential for actual or perceived overlooking cannot be fully assessed without appropriate drawings.

In terms of transportation issues, the concerns of the Transportation Department are noted and it is stated that a number of issues remain unresolved as further consultation/information would be required. Concerns in respect of public open space are also reiterated. Finally the report comments in relation to Part V provision, archaeology and bin collection.

In conclusion the planner's report considers that insufficient information has been submitted in respect of the proposed development and that the Planning Authority consider that the proposal will have an adverse visual impact and result in unacceptable overlooking of neighbouring properties. Concerns are also expressed in relation to water supply and compliance with the GDSDS. It is therefore recommended that planning permission be refused for six reasons.

In its decision Fingal County Council refused planning permission for the six reasons set out below.

- 1. The proposed development by reason of the extent of works proposed, the inadequate information submitted on the extent of excavation, re-profiling, and ground retention works required to stabilise the site and stabilise the surrounding properties, in addition to the history of land slippages in the area would endanger public safety and be prejudicial to public health. The proposed development would therefore be seriously injurious to the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.*
- 2. The proposed development by reason of its design height and scale would be visually incongruous at this prominent location in Howth, within the Howth Special Amenity Area Buffer Zone and abutting the architectural conservation area for the historic core of Howth. The proposed development fails to satisfactorily address the levels and contouring of the proposed site and the proposal will result in significant overlooking and overshadowing of properties within the adjoining development. The proposed development would therefore seriously injure the visual and residential amenities of the area, would be out of character with the area and would be contrary to the proper planning and sustainable development of the area.*

3. *The proposed development within this highly sensitive landscape by reason of site layout, design and scale would interrupt the visual link between the Martello Tower and the Church and would be contrary to an objective of the Fingal County Development Plan 2011-2017 to preserve views along Balscadden Road. In addition the extent of site excavation works required and the extent of retaining structures required as a result are anticipated to be seriously injurious to the visual and residential amenity of this scenic and prominently located site.*
4. *It is considered that the proposed development would be premature by reference to the existing deficiency in water supply facilities and the period within which these constraints may reasonably be expected to cease. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.*
5. *The proposed surface water drainage scheme incorporating underground attenuation tanks is contrary to the requirements of the Greater Dublin Strategic Drainage Study. Furthermore insufficient information has been submitted in relation to surface water treatment and the proposal is therefore considered to be prejudicial to public health.*
6. *The proposed three storey house types do not demonstrate how the requirements of universal access are to be met. The proposal therefore materially contravenes Objective UD18 of the Fingal Development Plan 2011-2017.*

5.0 PLANNING HISTORY

Partial details of a number of planning applications and Board orders are attached in pouches to the rear of the file. The main planning history associated with the site and its surroundings are set out below.

Under Reg. Ref. F06A/1897 (An Bord Pleanála Ref. PL06F.224372) An Bord Pleanála upheld the decision of Fingal County Council and granted planning permission on the subject site for 6 detached dwellings.

Under Reg. Ref. F06A/1897/E1 Fingal County Council granted an extension of duration of the previous permission until 20th November, 2016.

Under Reg. Ref. F05A/0864, Fingal County Council refused outline planning permission for a development comprising of 33 apartments.

Under Reg. Ref. 99A/0838 An Bord Pleanála overturned the decision of Fingal County Council and granted planning permission for a dwellinghouse with a basement garage and retaining walls.

Under Reg. Ref. F94A/0304 An Bord Pleanála overturned the decision of Fingal County Council and granted planning permission for a single dwelling on the subject site.

Under Reg. Ref. F99A/0032 Fingal County Council refused planning permission for a change of use design that was previously approved under Reg. Ref. F94/0304.

In respect of lands directly north of the site, the most relevant application is F14A/0108 where Fingal County Council granted planning permission for a residential development consisting of 22 units. This decision was subject to an appeal to An Bord Pleanála under Reg. Ref. PL06F.244026. An Bord Pleanála upheld this decision. The Board's decision was dated 21st May, 2015.

Previously to this under Reg. Ref. 07A/1349, An Bord Pleanála overturned the decision of Fingal County Council to grant planning permission for the demolition of the disused sports building and the construction of 64 dwellings and 1 café on the adjoining site to the north. An Bord Pleanála under Reg. Ref. PL06F.227972 refused planning permission for three reasons relating to zoning, impact on high amenity areas and substandard access arrangements.

6.0 GROUNDS OF APPEAL

The decision of Fingal County Council was the subject of a first party appeal which is summarised below.

The appeal sets out the site location and description together with the Development Plan Policies and Planning History as it relates to the subject site.

Specifically in relation to the grounds of the refusal, it is noted that none of the inter-departmental reports prepared by Fingal County Council

recommended a refusal of planning permission but rather sought additional information in respect of specific issues.

The grounds of appeal include a separate report prepared by O'Connor Sutton and Cronin, Consulting Engineers dealing with reasons for refusal 1, 4 and 5.

In respect of Reason No. 1 which related to geotechnical considerations, it is stated that the site investigation works included four boreholes and four trial pits and the investigations and testing confirmed that the site is comprised of a slope of dry granular material. No groundwater was encountered during the excavation. The site is considered to be a low risk site for development from a geotechnical point of view. Due to the fact that there is no evidence of groundwater at the site to the excavation depth, it is highly unlikely that re-profiling of the site will have any significant effect on the groundwater regime or in the wider vicinity of the proposed development.

In respect of Reason No. 4 which argues that the proposed development will be premature by reference to an existing deficiency in groundwater supplies, it is noted that the proposed development is located in a suburb of the capital city and planning permission was previously granted for six houses on the same site. It is not understood how the Planning Authority or Irish Water could contemplate refusing planning permission for an additional three houses over and above already permitted development.

In relation to Reason No. 5 which relates to the provision of an underground attenuation tank, it is stated that the provision of such an attenuation tank is not contrary to the requirements of the Greater Dublin Strategy Drainage Study. The topography of the site is such that it is not practical to provide a surface based storage facility for storm events. The appellants suggest that, given the site constraints, it is not possible to provide a surface based stormwater attenuation facility and maintain the viability of the site. The proposed underground attenuation tank is located in the green space and complies with all other requirements set out in the Code of Practice Document. As such it fully complies with paragraph 16.6 of the Greater Dublin Regional Code of Practice for Drainage Works. The surface water outfall from the site is based on the previous planning application which was granted for the subject site.

The engineering response goes on to address concerns raised in the Transportation Section Report and the third party observation submitted to the Planning Authority by which specifically related to groundwater issues.

With regard to Reason for Refusal No. 2 relating to visual impact, it is stated that the height of the overall proposal was reduced on foot of pre-application consultations with the Planning Authority. The three storey nature of the building is in compliance with Local Objective 527 which allows for development of up to three storeys in the area. Because of the split nature of the development, the dwellings read as two storey and this is indicated in the photomontages submitted. It is considered that the current application is visually more sympathetic and sensitive to the extant permission. With regard to impact on adjoining amenity, it is suggested that the separation distances from the neighbouring property on the opposite side of the Balscadden Road range from 17 to 22 metres. It is acknowledged that the units are larger than a standard household but this is necessary as three storey split-level buildings are required to address the level changes on site and this results in larger units.

In terms of overlooking and overshadowing, a site layout map is submitted indicating separation distances between the proposed development and existing development in the vicinity. The layout map also sets out separating distances between the appeal site and the dwellings granted planning permission (but not yet constructed) on the site to the immediate north. It is argued that the separation distances are appropriate and the level distances between the permitted and proposed units will ensure that there is no excessive overlooking or overshadowing between the developments. In terms of design, it is stated that the design of the proposal has many similarities with other approved houses on the peninsula. Examples of contemporary building designs in the Howth area are contained in the submission.

With regard to Refusal No. 3 which relates to the visual link between the Martello Tower and the Church, it is argued that there appears to be conflicting objectives in the Development Plan in that the site has been zoned for residential use with a specific objective of allowing three storey units directly in line where the view lies between the Martello Tower and the Church Tower in Howth Village. It is suggested that the planner has incorrectly interpreted the Development Plan. It is suggested that the view between the Martello Tower and the Church

Tower on the Main Street is not the protected view but the protected view relates to the views out to sea.

The applicant's architects have produced an optional House Type B which is two storey in nature and does not extend beyond the existing bank line on site and therefore does not interfere with the Martello Tower views. In the event that the Board consider the view between the Martello Tower and the Church Tower to be material in nature, it is requested that the Board reduce the height of the units to permit House Type B which will have no impact on the sight line between the Church and the Martello Tower. Details of the plans of House Type B are set out in the submission.

With regard to the extent of excavation and retaining structures, it is respectfully submitted that the extent of excavation and retaining structures are equally applicable in the case of the extant permission for six houses on site.

Finally in respect of Refusal Reason No. 6 which relates to compliance with Part M of the Building Regulations, it is stated that this objective does not relate to house types therefore the reason for refusal is not clear. Reference is made to Part M of the Building Regulations and it is stated that there is a habitable room and bedroom at ground floor level along with a bathroom. Therefore the stairs are designed to Part K of the Building Regulations only.

In conclusion therefore the Board are requested to overturn the decision of Fingal County Council and grant planning permission for the subject development.

7.0 APPEAL RESPONSES

Fingal County Council's response to the grounds of appeal are as follows:

In terms of Reason for Refusal No. 1, the applicant states that there are no civil structural or geotechnical engineering basis for refusal of planning permission. It is stated that the development of the site will require extensive excavation and earth movement. However no detailed information was provided with the application as to what engineering solutions could be employed to mitigate against the risk of land slippage and subsidence in the surrounding area. Given the history of land slips

in the area, the Planning Authority considers this information should have been provided at application stage to enable a full assessment of the potential impact of the proposed excavation and re-profiling of the site. In the absence of such information the Planning Authority considers the proposal would endanger public safety and would be prejudicial to public health.

In respect of Reason for Refusal No. 2, the Planning Authority remains of the opinion that the proposed development by reason of its design, height and scale and elevated position, along with the significance of retaining structures required throughout the site, would be visually incongruous at this prominent location in Howth within the Howth Special Amenity Area buffer zone. The proposed development would therefore seriously injure the visual and residential amenities of the area and would be out of character of the area.

The applicant states that the view between the Martello Tower and the Church is not a protected view and that protected views are out to sea only. However this is not explicitly stated in the Fingal Development Plan. In any event the Planning Authority considers that the interruption of the visual link between the Martello Tower and the Church is unacceptable.

A report from Irish Water notes that the watermain on Balscadden Road which the development proposes to connect to has significant levels of tuberculation and is unlikely to be able to serve the proposed development. The development is likely to be premature pending the rehabilitation of this watermain.

The Planning Authority considers that the attenuation tanks do not address the water quality, amenity or habitat enhancement requirements of the GSDS and as such they are not considered as SUDS devices. The proposal is contrary to WS04 of the Fingal Development Plan which requires the use of sustainable drainage techniques for new development or for extensions to existing developments. Attenuation tanks within the public open space will not be taken in charge. As such the Planning Authority remains of the opinion that the proposed development for underground attenuation tanks is not acceptable.

With regard to Reason for Refusal No. 6 the Planning Authority acknowledges that the site is constrained but nevertheless considers the proposed development which incorporate main entrance to the first

floor level do not demonstrate how the requirements of universal access are met. It is noted that ground floor access to a bedroom is provided in some of the houses but this is not acceptable in terms of access to the main living areas. Thus the proposed development is contrary to Objective UD18 of the Fingal Development Plan 2011-2017.

In the event that the appeal is successful provision should be made in any determination by the Board to apply a financial contribution condition in accordance with the adopted Development Contribution Scheme.

8.0 OBSERVATIONS

8.1 Observation by Grainne Mallon

The applicants in formulating the grounds of appeal continually and excessively rely on the fact that there is an extant permission for six houses on the subject site. The excavation works and the magnitude of such retaining structures required would be seriously injurious to the visual and residential amenities of this prominent site. Notwithstanding the fact that an extant permission exists, no further details in relation to a construction method statement including site investigations and assessment have been carried out.

With regard to the validity of the time extension for the extant permission for 6 houses (Reg. Ref. 06F/1897/E1) the observer notes that the applicants made no statement with regard to EIA or Appropriate Assessment in seeking an extension of time as required under Section 42(1)(a)(ii)(iv).

It is argued that the proposed development totally ignores Objective 528 of the Fingal Development Plan which seeks to ensure that the layout, scale and height designs respects the high amenity status of surrounding area including the Martello Tower and the village character. The proposed development will impact on the amenity and privacy of surrounding dwellings. The developments would be visually incongruous in this prominent location adjacent to Howth Village and within the Howth Special Amenity Area buffer zone and abutting an Architectural Conservation Area for the historic core of Howth. Concerns are also expressed that an estate for nine family houses on a sloping site with no play area for children can be considered to comply with the proper planning and sustainable development of the area. Neither does the

applicant seem to understand that compliance with Part M of the Building Regulations means having universal access to the public realm of the dwelling. Non-compliance with this requirement does materially contravene Objective UD18 of the Fingal Development Plan.

Since planning permission was granted on the subject site there, have been numerous landslides and slippages in this locality.

Also attached to this observation is a consulting **Civil and Structural Engineering Report** carried out by MTW Engineers. It states that the Geotechnical Report prepared in respect of the current application acknowledges a risk of slope failure if water is introduced into previously dry slopes. In order to prevent this it is necessary that water will be discharged into sealed pipes to an existing pipe network or soakaway. It is suggested that the conclusion of the report is most confusing in that it emphasises the need to control stormwater and states that stormwater may be discharged in sealed pipes or soakaways. The surface water layout as designed begs a number of questions and is not consistent with the comprehensive geotechnical assessment of the site. Fingal County Council Water Services Department do not permit the use of attenuation tanks. It is clear from Fingal County Council's documentation that there is no surface water main which discharges to the sea shown on drainage plans. This undermines the surface water design layout since the volume of surface water cannot be disposed of on site and hence the design is flawed.

It is also suggested that the volume of material to be removed off-site, including construction of foundations and services, is in excess of 20,000 cubic metres. The method and route of disposal for such a large volume of material has not been adequately addressed. The road serving the development is narrow with a challenging gradient and no turning facilities at the end of the cul-de-sac.

No details have been provided in respect of retaining structures despite the fact that there will be differences in ground levels of up to 7 metres. The Building Control Engineer of Fingal County Council was clearly not satisfied with the information provided. In conclusion it is stated that the technical arguments supporting the proposed development are at best inadequate and at worst flawed.

8.2 Observation by Paula Connolly

It is stated that the Balscadden Road is the sole access to the Howth cliff walk which is a very popular tourist amenity. High density housing with increased traffic would make the road chaotic and dangerous. The proposed development would alter the character of the road completely.

There is a collective bin area at the entrance of the proposed development and the weekly bin collection would be chaotic for the road.

There are no drawings showing measurements comparing heights of the observer's house with the proposed houses. The size and scale of the proposed houses are totally out of proportion with existing dwellings which would result in overlooking and overshadowing.

Concern is expressed regarding the movement of huge amounts of sand and there was resultant potential settlement and movement issues which could endanger the observer's home.

8.3 Observation by Jill Richard and Patrick Hanna

The observation states that their home is directly opposite the entrance to the proposed development. As it stands the road is inundated with tourists (pedestrians) and the road could not cope with the high volume of traffic. The collective bin area directly faces the observer's home and would lead to undesirable impacts in terms of odour issues and unsightly views. This may also deter tourists as well as being unpleasant for local residents. The observers believe that the developers have not taken into account the effect that the development on local and tourists in the area.

9.0 FURTHER SUBMISSION ON BEHALF OF THE APPLICANT

The applicants state that they are currently preparing a Construction Management Plan for six units on site and have met with the Planning Authority to identify key areas of concern. Details of the meeting and construction management plan are set out in the submission. The Construction Management Plan will detail equipment to be used, slope stability, mitigation measures, settlement and vibration monitoring, traffic management, hoardings etc. The plan is being undertaken in the event that planning permission is not forthcoming for the current proposal and

the applicant will be required to rely on the extant permission on site. Given that the existing permission can be built out safely, the current application which requires less excavation and retaining walls can equally be built out safely. Should the Board decide to grant planning permission the applicant would welcome a condition similar to Condition No. 11 of the extant permission. The applicants are of the opinion that they have provided sufficient information to Fingal County Council to make a decision on the principle of development at this location. In terms of design, height, scale and elevated position the applicants are of the opinion that the application is a well thought out scheme which addresses difficult levels on the site. The site cannot be developed without excavation and without retaining walls. The accompanying drawings illustrate that the level of excavation and retaining wall in this application is far less than the current permission. The current application incorporates back gardens that will be split level creating a much safer and attractive boundary. It is reiterated that there will be no overlooking of adjoining developments.

With regard to visual linkages, it is stated that it is not possible to develop this site and leave the views unchanged. However the applicants have endeavoured to maintain this visual link by flattening the roof profile of houses to the rear of the site. The view will inevitably be altered with the implementation of the extant permission on site and the permissions relating to the adjoining site to the north.

With regard to water it is stated that Irish Water is currently improving the water supply to the Howth area by building a reservoir. There will be no shortage of water. And it is noted that no such concerns were raised in respect of the adjoining development which is under the applicant's ownership.

With regard to universal access it is noted that the accessible entrance is located on the ground floor and meets criteria set out in Section 3.2.2 of Part M of the Building Regulations. It is maintained that the houses meet the requirements of Part M of the Building Regulations therefore An Bord Pleanála's is requested to overturn the decision of the Planning Authority and grant planning permission for the proposal.

10.0 DEVELOPMENT PLAN PROVISION

10.1 Fingal Development Plan 2011-2017

The appeal site is governed by the policies and provisions contained in the Fingal Development Plan 2011-2017. The subject site is governed by two land use zoning objectives. The eastern portion of the site is governed by the zoning objective “RS” which seeks to “provide for residential development and to protect and improve residential amenity”. The remaining western portion of the site is zoned “TC” which seeks to “protect and enhance the special, physical and social character of the town and district centres and to provide and/or improve urban facilities”. Residential development is permitted in principle under both of these zoning objectives.

There are two specific local objectives relating to the site and its surroundings. These are **Local Objective 527** which seeks to “*allow for the development of up to three storeys, the design and mix of uses therein shall be appropriate to this visually sensitive edge of town location*”. Specific **Local Objective 528** seeks to “*ensure that the layout, scale, height and design respects the high amenity status of the surrounding area, the Martello Tower and the village character*”.

The subject site forms part of the SAAO buffer zone. The development plan states that the strategy for the Howth Peninsula seeks to ensure the conservation and preservation of its sensitive and scenic area in particular through the implementation of the Howth Special Area Amenity Order. The SAAO identifies the Martello Tower to the north of the site and a possible moat to the north as a site as area to be preserved (Site No. 14) and provides for the following description “the tower built in 1804 occupies the position that is thought to be the location of the Lawrence Family’s 12th century castle occupied before the construction of Howth Castle. In relation to the Special Amenity Area Order, Objective SA01 and SA03 of the said Plan seeks to protect and enhance the character, heritage amenities of Howth in accordance with relevant orders whilst facilitating public access.

Objective Howth 1 seeks to “*implement the Urban Centre Strategy for the village core including the detailed Urban Design Guidelines and Actions for the harbour and village area and respect the Howth historic and architectural character of the area*”.

Objective Howth 2 seeks to “*encourage the retention and development of ground floor commercial retail uses within the core of the village. Such uses should be of a convenience and comparison retail mix with emphasis on the latter*”.

Objective Howth 3 seeks to “*implement the Howth Special Amenity Area Order and associated management plan and objectives for the buffer zone*”.

Objective Howth 4 seeks “*to provide traffic calming in Howth Village taken into account its environment, a residential and tourist and local shopping area*”.

Objective GI39 seeks to protect areas of high landscape quality including special amenity areas, high amenity zoned lands, highly sensitive landscape identified in the development plan and green infrastructure maps.

Objective LC04 seeks to ensure that new development does not impinge in any way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly scenic areas shall not be permitted if it causes unacceptable visual harm or introduces incongruous landscape elements.

Views from the Balscadden Road are preserved under the development plan.

Proposals in excess of 5 residential units in urban areas are required to demonstrate compliance with criteria set out under **Objective UD01** of the said Plan and **Objective TO67** of the said Plan seeks to ensure that all new developments are designed to include traffic calming measures in favour of pedestrian and cycle traffic over cars.

In terms of residential standards, **Objective RD07** requires that new residential units comply with or exceed the minimum standards set out in Tables RD01, RD02 and RD03. For 4-bedroomed three storey dwelling types the dwelling must have a minimum gross floor area of 120 square metre. For 3-bedroomed three-storey houses the minimum gross floor area must be 110 square metres.

Objective RD10 seeks to encourage and promote development of under-utilised infill and backland sites in existing residential areas subject to the character of the area being protected.

Objective UD18 seeks to provide universal access for all new urban areas and the redevelopment of existing urban areas.

The storage of bins and waste receptacles needs to be carefully considered at design stage.

In terms of private open space provision, there is a requirement for 3-bedroomed houses or less to have a minimum of 60 square metres of private open space and houses with 4 or more bedrooms have to have a minimum of 75 square metres of private open space as per Objective OS38.

11.0 PLANNING ASSESSMENT

I have read the entire contents of the file, visited the site in question, have had particular regard to the Planning Authority's reasons for refusal and the grounds of appeal and my planning assessment will assess the development in the context of each of the reasons for refusal cited by the Planning Authority.

11.1 Reason for Refusal No. 1

The first reason for refusal states that “the proposed development by reason of the extent of site works proposed, the inadequate information submitted on the extent of excavation, re-profiling and ground retention works required to stabilise the site and to stabilise the surrounding properties, in addition to the history of land slippages in the area, would endanger public safety and be prejudicial to public health. The proposed development would therefore be seriously injurious to the amenities of the area and property in the vicinity and would be contrary to the proper planning and sustainable development of the area”.

As part of the planning application lodged with An Bord Pleanála, the applicant submitted a Geotechnical Interpretive Report. It included field work carried out on site including the excavation of four bore holes and four trial holes and these are indicated in Figure 3.1. These excavations confirmed the presence of gravel, sand and silt on the subject site. No groundwater was encountered in any of the excavations. The

geotechnical parameters of the material on site were assessed in terms of bulk unit weight and effective stress parameters. It concludes that subject to appropriate engineering/geotechnical design and monitoring during the construction there is no geotechnical reason why the site cannot be developed. The conclusions reached in the report are similar to that in respect of investigations carried out for application F06A/1897 (An Bord Pleanála Ref. PL06F.224372). The inspector's report in respect of this previous application notes that the history of the site gives reasonable cause for concern about the feasibility of the scheme and that the applicant's site survey does not offer "a complete picture". The report goes on to note that "*it is my opinion that the stability of the site and risk of slippage should be treated in a precautionary manner. That is not to say that sound engineering solutions are not available. The responsibility for assessment as well as the investigation of ground conditions and the design and execution of remedial or precautionary measures rest with the developer and not with the Planning Authority*". It is further recommended that no development should commence on site until a construction method statement has been submitted and approved by the Planning Authority.

The Board in granting planning permission included Condition No. 11 which required, inter alia, that "*no development shall be commenced on site until a construction method statement to remediate any instability on the site has been prepared by a qualified structural engineer which shall be submitted to the Planning Authority for agreement*".

If the Board are minded to grant planning permission in this instance, I consider that a similar condition be attached in any grant of permission. It is clear from the previous decision on the site in question that the Board were satisfied that any geotechnical issues in respect of developing the site could be addressed but that a detailed construction method statement is required to be agreed with the Planning Authority prior to any commencement of development on site. The issue of site instability is an issue in my opinion that requires additional information prior to the commencement of works rather than forming a basis of refusal.

10.2 Reason for Refusal No. 2

The second reason for refusal states that "*the proposed development by reason of its design, height and scale would be visually incongruous at this prominent location in Howth within the Howth Special Amenity Area buffer zone and abutting the architectural conservation area for the*

historic core of Howth. The proposed development fails to satisfactorily address the levels of contouring of the proposed site and the development would result in significant overlooking and overshadowing of properties within the adjoining development. The proposed development would therefore seriously injure the visual and residential amenities of the area and would be out of character with the area and would be contrary to the proper planning and sustainable development of the area”.

The above reason for refusal expresses concerns in respect of the overall design of the proposed development in the context of the sensitive receiving landscape and also expresses concerns that the proposal will impact on adjoining amenities by reason of significant overlooking and overshadowing.

In relation to the overall design, height and scale of the proposed development I note that the overall topography and site characteristics present challenging issues in terms of providing a coherent and appropriate design for the subject site. The issue was further exacerbated by the fact that the landscape is designated as “sensitive” in the Development Plan as well as being located within the Howth Special Amenity Area buffer zone and lies adjacent to the Architectural Conservation Area for the historic core of Howth. The site is within and surrounded by highly sensitive designations from a visual point of view. The presence of a Martello Tower on a prominent site to the immediate north of the subject site is also an important consideration in any design approach to the subject site. Furthermore Local Objective 527 while allowing for a development of up to three storeys, it notes that the design and mix of uses therein shall be appropriate to this visually sensitive edge of town centre location. Furthermore Local Objective 528 seeks to ensure that the layout, scale, height and design of any development respects the high amenity status of the surrounding area, the Martello Tower and the village character.

Notwithstanding the fact that the site is zoned for development and has the benefit of planning permission for six units on the subject site, I would nevertheless have concerns from a design perspective similar to those expressed by the Planning Authority in its response to the grounds of appeal. The nature of the site and the pronounced variation in topography results in the presence of significant retaining structures required throughout the site. The size and scale of the three-storey buildings together with the large retaining walls around the perimeter of the site would have a profound visual impact on this narrow local

country type road leading towards the Howth Summit Walk. I would concur with the Planning Authority that the proposed development fails to satisfactorily address the levels and contouring of the proposed site and that the overall scale of the buildings would be out of character with the area.

While the applicant has submitted an architectural visualisation with the proposed development I consider that the most profound impact in visual terms would be from a vantage point approximately 50 metres to the east of the site along the Balscadden Road looking westwards. This view is not incorporated in the study undertaken by the applicant. I would also express some concerns in relation to the design of the individual houses and the juxtaposition between acute mono-pitched roofs and the more traditional pitched roofs within the scheme. The opposing roof styles provide an awkward relationship from a visual point of view on such a sensitive site. I further consider that the inherent constraints within the site do not readily lend itself to the suburban type terraced housing proposed on steep inclines. The suburban type nature of the layout has given rise to problems with regard to internal road gradients, open space provisions and surface water and storm water drainage as expressed in the Planning Authority's internal reports. The site is more suitable in my view to accommodate bespoke type detached dwellings such as that granted previously by the Board under Reg. Ref. PL06F.224372. In conclusion therefore I would share the Planning Authority's views in respect of the design, height and scale of the proposed development particularly in the context of the sensitive receiving environment and the various designations which reflect this sensitivity in the current Fingal Development Plan.

With regard to the issue of the impact on surrounding residential amenity, I refer the Board to Drawing PS00004 submitted with the grounds of appeal which indicates the separation distances between the proposed dwellings on site and the surrounding development in the vicinity. While the proposed separation distances are for the most part acceptable, it should be borne in mind that the subject site is somewhat elevated in the context of many of the dwellings in the vicinity and this will exacerbate the potential for overlooking and overshadowing. There can be little doubt that the dwellings adjacent to Balscadden Road will have a somewhat overbearing effect on the existing single storey on the eastern side of the road. Likewise the differential in ground levels between the dwellings to the rear of the site and the buildings fronting onto Main Street to the west could also have an overbearing effect. This again supports my conclusion that the subject site is better suited to

accommodate a lower density, non-suburban type development which would incorporate greater setbacks from the site boundary in order to reduce the overbearing nature of any structures on site.

With regard to the issue of overshadowing the Board should in my view consider requesting a shadow casting analysis in respect of the subject site if it is minded to grant planning permission. It is difficult to assess the impact of the proposed development on overshadowing having regard to the acute variations in ground levels both within the site and between the site surrounding lands.

10.3 Reason for Refusal No. 3

Reason for Refusal No. 3 states that “the proposed development within this highly sensitive landscape by reason of its site layout, design and scale would interrupt the visual link between the Martello Tower and the Church and would be contrary to an objective of the Fingal Development Plan 2011-2017 to preserve views along Balcadden Road. In addition the extent of site excavation works required and the extent of retaining structures required as a result are anticipated to be seriously injurious to the visual and residential amenity of this scenic and prominently located site”.

Issues regarding the extent of excavation work and the visual impact of the proposed development have already been assessed in respect of the previous reason for refusal. The key issue with regard to reason for refusal no. 3 is whether or not the proposed development would interrupt the visual link between the Martello Tower and the Church and as such be contrary to an objective of the Fingal County Development Plan which seeks to preserve views along the Balcadden Road. The Balcadden Road is designated in the Development Plan as a road on which it is proposed to preserve views. Furthermore specific objective 528 seeks to ensure that the layout, scale, height and design respects the high amenity status of the surrounding the Martello Tower and the village character. The grounds of appeal argue that Fingal County Council have misinterpreted the development plan. It is stated that the view between the Martello Tower and the Church Tower on Main Street is not a protected view and that the views that are required to be protected in this instance are views out to sea. Any interpretation of specific vantage points under which views are protected in the Fingal Development Plan are a moot point in that the development plan does not specify in which directions views are to be preserved. As already mentioned, I consider Balcadden Road to be a scenic local road with

unique rural-type characteristics between the edge of the village and Balscadden Bay. I consider that the suburban nature of the development proposed on the subject site is incongruous and inappropriate for a site of such prominence and visual sensitivity. Furthermore there can be little doubt in my view that the proposed development will impact on views southwards from the Martello Tower towards the Church. These two buildings are visually prominent and historic landmark buildings within Howth Village. The impact of the proposed development on views towards the Church are adequately illustrated in the photomontages submitted with the grounds of appeal. Even in the case where revised House Type B dwellings were to be incorporated into the design as indicated in the revised design submitted in the grounds of appeal, the proposed development would in my view still have a significant impact on views from the Martello Tower towards the centre of Howth Village and the case of the Church Steeple in particular. It could reasonably be argued in my view that the proposed development contravenes Objective 528 of the Fingal Development Plan which seeks to ensure that the layout, scale, height and design of any development respects the high amenity status of the surrounding area the Martello Tower and the village character. I do not consider that the proposed development in this instance respects the high amenity status of the surrounding area and in particular the Martello Tower and the character of the village.

10.4 Reason for Refusal No. 4

Fingal County Council's fourth reason for refusal states that it is considered that the proposed development would be premature by reference to the existing deficiency in water supply facilities and the period within which these constraints may be reasonably be expected to cease. The proposed development would therefore be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

This reason for refusal is predicated on a number of reports prepared in respect of the proposed development. In particular, a submission from Irish Water dated 21st December, 2015 states that *"the 3 inch main on Balscadden Road has significant levels of tuberculation and is unlikely to be able to service the proposed development. The main has been listed for rehabilitation but a final decision to proceed has yet to be made by Irish Water"*. It is stated that the development is "probably premature" pending this rehabilitation. The planner's report notes that

the Planning Officer contacted Irish Water to obtain a timeframe for when the rehabilitation of the pipeline to serve the development may take place. A response was not received at the time of writing the report. The applicant in response to the grounds of appeal notes that planning permission has been granted for six houses on the subject site and is at a loss to know how either the Planning Authority or Irish Water could contemplate refusing planning permission for an additional three houses over and above that already permitted in the development. While there is an extant permission on the subject site, problems in respect of water supply may have subsequently arisen since this grant of planning permission. However rather than refuse planning permission for the reasons set out, I would consider it more appropriate that the Board, if it is minded to grant planning permission, insert a condition requiring the applicant to get agreement from Irish Water that sufficient water supply is available to service the development prior to any commencement of development on site. I note that Irish Water in its submission did not definitely suggest that the proposal is premature but rather stated that the development of the site in question is “probably” premature. The issue therefore needs to be explored further. It would be reasonable in my view to incorporate a condition requiring appropriate liaison between Irish Water and the applicant to determine whether or not adequate water supply is available to service the development. As such development can only commence at such time as water supply is made available to service the development.

10.5 Reason for Refusal No. 5

Fingal County Council in its fifth reason for refusal stated *“the proposed surface water drainage scheme incorporating underground attenuation tanks is contrary to the requirements of the Greater Dublin Strategic Drainage Study. Furthermore insufficient information has been submitted in relation to surface water treatment and the proposal is therefore considered prejudicial to public health”*.

The applicant in its response to the grounds of appeal states that the provision of underground attenuation tanks is definitely not contrary to the requirements of the GDSDS. It is stated that based on the inherent constraints within the site it is not practical to provide a surface based storage facility for storm events. The Greater Dublin Regional Code of Practice for Drainage Works permits attenuation tanks as a last resort where it is shown that SUDS measures are not achievable. The document further notes that attenuation tanks shall normally be located

in green areas and any other location requires the approval of the local Sanitary Authority.

I note that the Water Services Section of Fingal County Council did not recommend planning permission be refused on the grounds that the underground attenuation tanks are not permitted under the GSDS. The report quite clearly states that additional information is required and that the applicant is requested to submit a revised drainage design following the principle of sustainable drainage systems in compliance with the principles outlined in the GSDS. The report from the Water Services Section suggests that a suitable revised drainage design can be incorporated to serve the proposed development. If the Board are minded to grant planning permission for the proposed development I consider that this issue can be appropriately addressed by way of condition.

10.6 Reason for Refusal No. 6

Fingal County Council in its sixth reason for refusal stated “*the proposed three-storey house does not demonstrate how the requirements of universal access are to be met. The proposal therefore materially contravenes Objective UD18 of the Fingal Development Plan 2011-2017*”.

Objective UD18 of the Development Plan relates to universal access. It states that property planned in developed urban areas should through the design incorporate access for all to and within an urban area. Permeability within an urban area will allow for easy access between one land use and another, for example from a shopping to a residential area. Potential barriers and obstruction to access should be avoided at the design phase of the development rather than having to be retrofitted or modified in the future. The two issues of access and permeability are key focus points in the development plan.

The Planning Authority in its response to the grounds of appeal states that the proposed dwellings which incorporate main entrances at first floor level do not demonstrate how the requirements of universal access are to be met. The Building Regulations are a separate legislative code to that of the Planning Code. The applicant is required to comply with the Building Regulations and in particular Part M of the Building Regulations which relates to universal and disabled access. I would consider that any such matter therefore is beyond the remit of An Bord Pleanála.

10.7 Other Issues

A number of observations were submitted in respect of the proposed development many of which supported and reiterated the concerns raised in Fingal County Council's decision. I have dealt with these issues in my assessment above. Any concerns in respect of construction traffic are noted, however I consider that some inconvenience will arise as a result of traffic taking excavated material off site for the purposes of development and this could impact on the amenity of surrounding residents and also tourists and pedestrians seeking to access the cliff walk along Howth Head. I consider however that such impacts would be temporary and as such would not constitute reasonable grounds for refusal.

With regard to the collective bin area I consider with proper management, maintenance and collection of the bins and the placement of the bins in a secure and covered receptacle area that no odour or litter issues would arise.

11.0 Appropriate Assessment

The applicant has submitted a Natura 2000 Screening Report which concludes that the proposed development will not give rise to any negative impact on any Natura 2000 sites. The report notes that there are no Natura 2000 sites located within the application site. There are however a total of 17 European sites within a 15 kilometre radius of the site. These sites are identified on the qualifying interests and conservation objectives associated with the sites are set out in the Screening Report. The Screening Report adequately assesses any potential adverse impacts. As all foul water and stormwater from the proposed development will be discharged into the existing network there is no potential for the proposed development to significantly affect any of the European sites in the vicinity. The conclusion that the proposal will have no direct or measurable indirect impacts on any of the Natura 2000 sites in proximity is a reasonable conclusion in my opinion having regard to the fact that the only potential adverse impact arises from surface water run-off and this run-off will be collected and treated in accordance with the principles and specifications of Fingal County Council's Water Services Department. It is therefore reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be

likely to have a significant effect on any of the designated European sites in the vicinity in view of these sites conservation objectives and a State 2 Appropriate Assessment and a submission of an NIS is not therefore required.

12.0 CONCLUSIONS AND RECOMMENDATION

Arising from my assessment above I consider that the decision of Fingal County Council should be upheld in this instance and that planning permission should be refused for the proposed development based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

The proposed development by reason of its suburban type design, height and scale contravenes specific Objective 528 of the Fingal County Development Plan 2011-2017 which seeks to ensure the layout, scale, height and design respects the high amenity status of the surrounding area, the Martello Tower and the village character. It is considered that the proposed development by reason of its design would be visually incongruous at this prominent location in Howth within the Howth Special Amenity Area buffer zone and adjacent to the Architectural Conservation Area for the historic core of Howth. The proposed development would therefore seriously injure the visual amenities of the area, be out of character with existing development in the area and therefore would be contrary to the proper planning and sustainable development of the area.

**Paul Caprani,
Senior Planning Inspector.**

1st June, 2016.

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