



An  
Bord  
Pleanála

## Inspector's Report PL15.246674

---

<b>Development</b>	Outline permission for 11no. new houses and planning permission for all associated works at South End, Blackrock, Co. Louth.
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	16/154
<b>Applicant(s)</b>	Brian McDonnell
<b>Type of Application</b>	Outline Permission and Planning Permission
<b>Planning Authority Decision</b>	Refusal
<b>Appellant(s)</b>	1. Brian McDonnell
<b>Observer(s)</b>	1. The Residents of Southend Area of Blackrock
<b>Date of Site Inspection</b>	30 <sup>th</sup> of August 2016
<b>Inspector</b>	Angela Brereton

## 1.0 SITE LOCATION AND DESCRIPTION

- 1.1. The site abuts the R172 and is to the south east of the village of Blackrock. The site has a narrow road frontage and widens at the rear. The front portion of the site is framed by Wavecrest Drive residential scheme to the north and detached dwellings to the south. The northern and south western boundaries adjoin the rear gardens of these properties. More Coast Road properties and the entrance into Seaford Gardens lie on the opposite side of the road to the appeal site. The remainder of the site faces eastwards onto the shoreline of Dundalk Bay.
- 1.2. While the site is relatively flat and appears as greenfield, levels within the site vary and it slopes from west to east. There is currently a post and rail type boundary fence around the site. At present the site does not have vehicular access, and there is gated field access. The cul-de-sac Wavecrest Drive adjoins the site to the north, this has access onto the R172, Coast Road.
- 1.3. There is an unsurfaced path at the rear, to the east of the seaward side of the site, that provides a walkway linking to the village of Blackrock. There is currently no access from the site to this path.

## 2.0 PROPOSED DEVELOPMENT

- 2.1. The proposed development comprises the following:
  - 1) Outline permission is sought for 11no. new dwellinghouses and all associated siteworks.
  - 2) Planning permission is sought for site development works associated with the 11no. new dwelling houses at South End, Blackrock.

The application form provides that the area of the site is 1.0578ha. A new connection is proposed to the public sewer and public mains.

The following Reports have been submitted with the application:

- Infrastructure Design Details Report dated March 2016 by Eamonn McMahon, Chartered Engineer. This provides details of Roads/Access and Services.

A Flood Risk Assessment dated March 2016 also by Eamonn McMahon.

An AA Screening Report Tony Ewbanks has also been submitted.

### **3.0 PLANNING AUTHORITY DECISION**

#### **3.1. Decision**

On the 6<sup>th</sup> of May 2016, Louth County Council refused outline permission for the proposed development for 5no.reasons. These raise the issue of material contravention of the Dundalk and Environs Development Plan 2009 – 2015 (as extended) and are summarised as follows:

- 1) To permit the proposed development would materially contravene the objectives of the Core Strategy, would be contrary to Policy CS2 of the Strategy and would be contrary to the proper planning and sustainable development of the area.
- 2) The design and layout of the proposal would prejudice the achievement of the Council's objective RA6, along this section of the coast, to provide a coastal walkway and open up the coastline for amenity and recreational purposes.
- 3) The subject site is located on the seaward side of the coast road, and layout and design of the subject proposal is such that it would impede views out to sea along the entire coastline boundary and will have a negative impact on the seaward view V12 and would be contrary to Policy CH4.
- 4) The design and layout of the proposed development is considered to be substandard and is not in keeping with the ethos of the Guidelines for Sustainable Residential Development in Urban Areas and associated Design Manual and would be contrary to Policy HC9.
- 5) The subject site is located adjacent to Dundalk Bay (SAC and SPA) Natura 2000. It has not been demonstrated that the development would not have an adverse impact on the Natura 2000 network.

#### **3.2. Planning Authority Reports**

The report of the Area Planner can be summarised as follows:

Regard is had to the locational context of the site, planning history and policy and the submissions made. They provide that the subject site is located on land zoned 'Residential 1', outside the urban core area and phase 1 of the core strategy and could not be considered as an infill site. They consider that the proposal would prejudice the implementation of objectives to develop a walkway along the coast line at this location (and through the subject site to the eastern boundary) and will visually obstruct protected views namely V12 (out to sea from Cockle Hill road). They considered that there is scope to improve the range and type of housing mix and noted that the proposed dwellings are backing onto the shoreline and that improved open space should be provided. Also that this proposal is not in keeping with the ethos of the urban design manual best practice principles. They note that the Infrastructure Section has advised that the FRA has demonstrated that the development is not at risk of flooding. They had concerns about the AA screening carried out and considered that a Stage 2 Assessment maybe necessary. They considered that the principle of the proposed development is contrary to the objectives of the core strategy and had concerns regarding impact on Natura 2000 sites. They recommended that the proposed development be refused.

### 3.3. Other Technical Reports

#### *External*

##### Department of Arts, Heritage and the Gaeltacht

They recommend that as F.I. an Archaeological Impact Report should be prepared to assess the potential impact if any on archaeological remains in the area in which the development is to take place.

#### *Internal*

##### Infrastructure Section

They have regard to the site location and flooding and note that the Flood Risk Assessment Report demonstrates that the development is not at risk of flooding nor will it exacerbate flooding elsewhere. They recommended that F.I be sought regarding a number of service/road related issues and AA screening.

### 3.4. **Third Party Observations**

**Submissions** have been received from local residents whose concerns include the following:

- Flooding issues – there are issues with tidal and pluvial flooding and the site is located within a flood risk zone. They note the previous refusal on this site Reg.Ref.13/349 due to flood risk.
- Restricted visibility at the entrance/access – the inclusion of a new road junction replacing the existing Wavecrest Drive road.
- Traffic congestion will ensue and there is concern about potential traffic hazard including relative to the proposed access at Wavecrest Drive.
- Further AA screening needs to be carried out to consider the impact of the development on Dundalk Bay which is a designated SAC and SPA.
- Concerns about impact of discharge to Dundalk Bay.
- Views - this is the last remaining open site to the Bay and constitutes a mini nature reserve which should be retained.
- Blocking of pathway from the site to Wavecrest Drive and to the Shore.

### 4.0 **PLANNING HISTORY**

4.1. The Planner's Report has regard to the planning history. This includes the following relevant to the subject site:

- Reg.Ref/13/349 Extension of Duration for planning permission previously granted (Reg.Ref.08/153) for housing development of 24no. dwellings refused. This development consists of the demolition of an existing dwelling, Don Bosco, on the R127 Road and the construction of 2 storey houses as follows: 6no. 5 bed detached houses; 2no. 4 bed detached houses; 10no. 3 bed semi-detached houses and 6no. 2 bed terraced houses. The development was to be located on a new cul-de-sac road within the site and

to contain ancillary parking, amenity open space, boundary treatment and site works. This was refused for 2no. reasons which are summarised as follows:

1. The subject development located on lands that are vulnerable to flooding does not satisfy the flood justification test for development management and is inconsistent with the proper planning and sustainable development of the area having regard to the Flood Risk Management Guidelines (2009) issued by the Minister.
2. The subject site is located adjacent to Dundalk Bay SPA & SAC. The parent application was not subject to AA and as such an extension of duration cannot be considered in the context of section 42(1)(a)(ii)(IV) of the Planning & Development Act 2000 (as amended).

## **5.0 POLICY CONTEXT**

### **5.1 Sustainable Residential Development in Urban Areas May 2009**

These encourage high quality sustainable residential development, urban form and design. They are concerned to promote a sequential approach to development and to create an overall design framework with linkages to the existing developed area. They support Local Area Plans and the phasing of development, also having regard to the availability of infrastructure. Regard is had to the availability of community facilities, public transport and the quality of open space. Chapter 3 concerns the role of design. Chapter 4 provides for planning for sustainable neighbourhoods and includes the provision of community facilities. It also refers to amenity/quality of life issues including the provision of open space. Chapter 5 refers to development in Cities and larger towns. This also has regard to appropriate locations for increased densities. Chapter 7 deals with the home and it's setting and discusses issues such as daylight, sunlight, privacy, open space and communal facilities.

Regard is had to the accompanying DOEHLG 'Urban Design Manual-A best practice guide 2009' and to the 12 criteria to promote quality sustainable urban design discussed in this document. Regard is also had to the application of these criteria, which are divided into three sections: Neighbourhood, Housing Site and Home.

## **5.2 Quality Housing for Sustainable Communities- Best Practice Guidelines Feb.2007**

These provide that the successful design of a good quality sustainable housing project depends on the balance struck between a range of factors. Issues such as accessibility, security, safety, privacy, community interaction, availability of appropriate services and the provision of adequate space should be given equal weight. They provide for flexibility in design and provide in Section 5.3.2 and Table 5.1 guidelines for Space provision and room sizes for typical dwellings.

## **5.3 Design Manual for Urban Roads and Streets 2013**

The DMURS document must be taken into consideration in examining planning applications. Within the DMURS document the application of the principles to existing streets must require a flexible approach. The document calls for a safer more attractive and vibrant street and the creation of a permeable network from a multi-layered process. The process should begin with a site analysis that identifies any constraints the proposal may have on the existing network, including points of access, major destinations and strategic connection (existing and proposed). The street hierarchy in terms of trips generated, access etc.

## **5.4 The Planning System and Flood Risk Management Guidelines 2009**

These have been adopted and are the DOEHLG Guidelines for Planning Authorities (November 2009). The key principles are:

- Avoid the risk, where possible –precautionary approach.
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

Flood Zone A has the highest probability of flooding, Zone B has a moderate risk of flooding and Zone C (which covers all remaining areas) has a low risk of flooding.

The sequential approach should aim to avoid development in areas at risk of flooding through the development management process.

An appropriate flood risk assessment and justification for development in and management of areas subject to flooding and adherence to SUDS is recommended.

This document sets out how to assess and manage flood risk potential and includes guidance on the preparation of flood risk assessments by developers. This has regard Screening Assessment, Scoping Assessment and Appropriate Risk Assessment. It provides that only developments which are consistent with the overall policy and technical approaches of these Guidelines should be permitted.

## **5.5 EU Water Framework Directive**

The purpose of the EU Water Framework Directive (WFD) 'is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;
- (b) promotes sustainable water use based on a long-term protection of available water resources;
- (c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
- (d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
- (e) contributes to mitigating the effects of floods and droughts'.

## **5.6 Development Plan**

### Louth County Development Plan 2015-2021

This Plan provides the strategic planning policies and objectives for the County. Section 2.16.4 notes that the Statutory Plan for Dundalk and the surrounding area is

the Dundalk and Environs Development Plan 2009-2015 and Policy SS3 seeks: *To review the Dundalk and Environs Development Plan 2009 – 2015 and to prepare a Local Area Plan for Dundalk and Environs which will be consistent with the provisions of the County Plan.*

Dundalk and Environs Development Plan 2009-2015 (as extended)

This plan outlines a low, medium and high growth rate for the Plan area to 2015 and 2022 of the Dundalk area with a key objective to provide sustainable development for the area and to direct additional growth to the appropriate serviced areas.

Policy HC9 seeks to: *Implement the guidelines and best practice manuals issued by the Department of Environment, Heritage and Local Government in the planning for and provision of sustainable communities within new residential areas.*

Variation No. 1 provides the Core Strategy and sets out the overall phasing strategy for a sustainable approach to residential development. Map 2.1 shows the subdivision into six areas and Section 2.4 provides an Evaluation of Development Areas. Table 2.1 provides a Ranking of Development Areas – Blackrock/Haggardstown is ranked no.4.

Section 2.5 refers to Brownfield/Infill lands and notes that their development has the potential to revitalise areas by using the capacity of existing social and physical infrastructure.

POLICY CS1 seeks: *To promote sustainable development on brownfield/ infill sites by excluding such sites from the requirement to comply with the phasing strategy throughout the Plan Area.*

Policy CS2 provides: *To apply the phasing of new residential development as per the phasing strategy set out, whereby residential development, other than infill, brownfield or mixed use development shall only be permitted in the identified area within Phase 1. Only on completion of the development of 75% of these lands shall subsequent phasing be considered for additional residential development.*

A copy of the Core Strategy Land Use Map A and the Core Strategy Phasing Map B is included in the Appendix to this Report.

## 5.7 Natural Heritage Designations

The site is proximate to Blackrock Bay SPA(004206) and SAC(000455) and details of this are given relative to the AA Screening Report Section below.

## 6.0 THE APPEAL

### 6.1 Grounds of Appeal

A First Party Appeal has been submitted by EHP Services. They have regard to each of the Council's reasons for refusal and their grounds of appeal can be summarised relative to these as follows:

#### *First Reason for Refusal*

- They consider that the appeal site meets the defining criteria of an infill/backland site as referenced in the 2009 Guidelines and that the reasons for refusal are not justifiable.
- The appeal site can be considered under the development exemption of the Development Plan's Core Strategy Policy CS2.
- They quote Section 5.9 of the Guidelines and Section 6.6.7 of the Development Plan which relates to inner suburban/ infill.
- The appeal site is within a well - developed residential area to the south of the village centre and shoreline promenade.
- The site has not been used for agricultural purposes for a considerable time and could now be considered as derelict land.
- The proposal is comparable to neighbouring residential schemes. It is not subsequently designated in the Core Strategy's phasing map. They include an extract of the Core Strategy's Phasing Map B in Appendix 1 of this statement.
- They consider that the proposed development is exempt from the Core Strategy's overall phasing strategy for the sustainable approach to residential development as set out in Policy CS1.

- The principle of developing such an infill/backland site is permitted under Policy CS2 as an exception to the phasing restrictions set out in the Core Strategy's Policy CS1.
- They consider that the principle of developing this site is in keeping with best practice set out in the DoEHLG 2007 '*Quality Housing for Sustainable Communities Practice Guidelines* and the 2009 *Guidelines for Planning Authorities on Sustainable Residential in Urban Areas*.
- They consider that permission should be granted as it is in keeping with the proper planning and development of the area.

#### *Second Reason for Refusal*

- They have submitted a revised Site Layout Plan which does not materially depart from the original layout and reserves a strip of ground or wayleave upon which a coastal walkway can be accommodated.
- The coastal walkway will back onto the rear gardens and boundary treatments of the new dwellings proposed but will be exposed to the proposed flood prevention measures and beyond.
- The proposed modifications allow for maximising the benefit of providing the coastal walkway and improving Strategic View V12 through greater public accessibility and permeability and the subsequent enjoyment of the shoreline as a visual amenity.

#### *Third Reason for Refusal*

- They have regard to views and consider that this proposal does not impact on views or on protected view V12 and are of the opinion that the revised plans have provided a substantial improvement relative to the preservation of views of Dundalk Bay. Appendix 3 includes photographs to show the lack of views relative to the site.
- Appendix 4 includes approved maps and drawings for a dwelling permitted on a visually prominent location that immediately abuts Dundalk Bay –

Reg.Ref. 14/320 refers. This view is also protected under V12 and no reference was made to this issue.

- The proposed walkway as shown on the revised plans in Appendix 2 will greatly enhance views and recreational amenity.
- They consider that there has been some inconsistency in the protection of Strategic views and in the application of Policy CH4 and that this reason for refusal is flawed.

#### *Fourth Reason for Refusal*

- This is an application for outline permission and they provide that the subsequent application for full permission will show details of design and layout and compliance with the relevant policy and guidelines. Also that pre-consultation with the Council will be carried out.
- The use of Policy HC9 of the Development Plan is immaterial to justify refusal of permission to the indicative layout proposed in this outline application.
- This reason was not cited when the Council refused the extension of duration in Reg. Ref.13/349.
- The Fourth reason for refusal is both premature and immaterial and should be dismissed as such.

#### *Fifth Reason for Refusal*

- Appendix 5 includes an addendum to the AA Screening Report submitted with the original application. It concludes the proposed Gabion/Reno mattress will have no negative impact upon the quality and qualifying interests of the designated conservation areas or the integrity of the protected species or habitats and species within. They are satisfied that this issue has been comprehensively addressed and is no longer relevant as a legitimate reason for refusal.

## 7.0 RESPONSES

### 7.1 Planning Authority Response

The response to the grounds of appeal from Louth County Council includes the following:

- They stand by their original assessment that the subject site could not be considered to be an infill site due to its size, configuration and current use and has the potential to establish its own identity. They consider that the core strategy has been correctly applied.
- They consider that while the revised drawings submitted with the appeal represent an improvement, they are materially different to those lodged with the Council and the layout remains unacceptable. It would visually detract from the scenic amenities of the coast line and coast line walk.
- They consider that the broad design and layout issues are a matter for consideration at outline permission stage and that the proposed density and layout is substandard and such fundamental design considerations would not reasonably be deferred to a permission consequent application.

### 7.2 First Party Response

EHP Services have submitted a response to the Council's response to their grounds of appeal. This has regard to each of the reasons for refusal and includes the following:

- The applicant is satisfied that the appeal site meets the definition of both an infill and backland site as per the 2009 Sustainable Residential Development Guidelines.
- The site has not been used for agriculture for many years and is now derelict and constitutes residual backland.
- They do not agree with the Council's view that the Core Strategy applies when this is an infill site and is not identified on the phasing map and is not part of the phasing strategy.

- The revisions to the site layout are indicative only and constitute minor changes. They consider that the proposed design and layout is in character with other residential development in the area – Appendix 1 refers.
- They consider that the proposal does not detract from the scenic amenities of views of the coastline but enhances them through the creation of public access.
- Applications for outline permission deal only with the principle of development and further details are more appropriate to permission consequent.
- The density applied is reflective of the pattern of development in the area and in accordance with the 2009 Guidelines.
- The layout makes the best use of the site in terms of topography and levels.
- The open space provides connectivity for the residents of Wavecrest Drive.
- The proposal will improve connectivity between the site and the range of amenities available in the town.
- The identity of the site is also informed through the use of similar housing patterns and contemporary architectural forms.
- The proposed vehicular access and hammer head turning areas comply with DMURS requirements.
- They contend that the scheme will comply with the highest standards of design and planning policy and guidelines.

## 8.0 **OBSERVATIONS**

An Observation has been received from a number of local residents and their concerns include the following:

- The proposal is at variance with the integrity of the adjoining foreshore of Dundalk Bay, SAC and pNHA.

- This should not be considered as an infill site that would comply with the core strategy, rather it should be considered a major high density housing estate in a lower density area. It is not comparable with residential development on adjoining sites.
- The proposed wayleave relative to the access to the coastal walk has not been adequately demonstrated in compliance with Policy RA6 of the Dundalk & Environs DP.
- A large panoramic view of Dundalk Bay can be had from the roadway and the site. They also have regard to the right of way for the coastal walk at the rear of the site.
- This outline permission application is to allow the site to be sold on so a full planning application can be considered *de novo*.
- The site is liable to flooding and overtopping by tides in recent years. They note the reference to the provision of the gabion wall and are concerned as to the impact of more hard surface areas relative to housing.
- They have regard to the issue of derelict land and the history of planning refusals on this site.
- Traffic congestion will be greatly increased by the provision of this new housing. The site is in the vicinity of one of the most dangerous road bends in the village that has witnessed many accidents.
- The proposed relocation of the existing junction at Wavecrest Drive will create a virtual cross roads with the entrance to Seaford Gardens.
- The proposed boundary treatment including boundary walls are considered to be visually detrimental to the character of the area and in the context of the village setting.
- This is the last remaining open area on the sea shore in this area of Blackrock and constitutes a mini nature reserve and will have an adverse impact on the Dundalk Bay SAC and SPA Natura 2000 sites.

## 9.0 ASSESSMENT

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

### 9.1 Principle of Development and Planning Policy

The Council's first reason for refusal relates to non-compliance the overall phasing strategy for a sustainable approach to residential development. The Core Strategy as noted in Variation 1 of the Dundalk and Environs Development Plan represents best practice for future residential development within Dundalk and its environs area and provides a phasing strategy. This includes in S.2.8: *By prioritising brownfield and infill lands and phasing residentially zoned lands, consolidation of the existing urban form of Dundalk will be achieved and, forward beyond 2016, the sequential release of lands from Phase 1 and onto Phase 2 can then be utilised appropriately.* While the reason for refusal notes that the site is on Residential 1 lands outside the urban core area or phase 1 of the Core Strategy, the First Party refutes this and considers the site to be suitable for infill development. They contend that the Council in deciding not to identify the appeal site within any one of the particular phased areas of development was satisfied that the scale and nature of development proposed would constitute infill/backland development. Also that it is one of the few undeveloped sites within the village boundaries of Blackrock.

It is of note that the Core Strategy Land Use Map A and the Phasing Map B (copies included in the Appendix) do not show this site within either the lands zoned *Residential 1* or the phased land areas. The site is not included in priority lands for development in Table 2.3.

The Council consider that the subject site (area 1.05ha) could not be considered to be an infill site due to its size, configuration and current use and has the potential to establish its own identity and character. Section 6.6.7 of these Development Plan provides: *Infill development is a small scale development located in gaps between existing buildings. Backland development is small scale development located to the rear of existing buildings.* Section 2.5 of the Plan has regard to The Guidelines for

Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009). Section 5.9 of these Guidelines refers to infill residential development and includes: *Potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships.* These also provide: *In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.*

It is at issue for consideration as per the Council's refusal as to whether the proposal would be contrary to Policy CS2 (quoted in the Policy Section above), as it is not located on Residential 1 or Phase 1 lands. The First Party consider that it constitutes an infill site and as such is exempt from the phasing restriction of this policy. As shown on Map 1 it is outside and to the south of the zoning for Blackrock Village Centre. It is however located within walking distance and within the existing established residential development to the south of the Village. The site while not in agricultural use remains greenfield and undeveloped but does not appear to be derelict or brownfield. It does appear more as a sizable backland site with limited road frontage to the R172 and it is also outside of the village centre of Blackrock. Therefore, I would consider that phasing strategy as per Policy CS2 applies and the proposed development would not comply with this policy.

## 9.2 Issues relative to Outline Permission

Regard is had in the Planner's Report to the extensive planning history concerning the provision of residential development on the site, however this application is being considered *de novo*. An outline permission is being applied for at this stage, which provides for the principle of development subject to a subsequent permission consequent. The First Party suggest that issues of design, layout and proposed variety of house type are more appropriate to an application for permission rather than outline permission and that any request for these kind of details is premature. The principle of development is the issue on this site rather than a more detailed design and layout of the proposed house types in this outline permission.

The Council response provides that in considering and accepting the principle of development in an outline permission the design considerations are fundamental to

determining the appropriateness of a development, particularly residential which normally confirms the number of units, together with the broad layout of the development.

Regard is had to the Development Management Guidelines 2007. This includes relative to residential development in S.7.13: *It is particularly important that conditions relating to basic services, significant design criteria, financial contributions, security for completion, road reservations and other such fundamental matters are attached, where appropriate, to outline permissions for housing development. If this is not done, difficulties may arise at the permission consequent stage.* It is noted that the Public Notices provide that while outline permission is being sought for the proposed housing, permission is being sought for the Site Development Works associated with the above.

### **9.3 Density, Design and Layout**

The proposed layout as submitted with the application indicates that 11 no. houses are to be provided on the site. The Site Layout Plan includes one detached house set back on the narrow section of the site facing the R172, two semi-detached pairs and 6 no. large detached houses at the rear all facing and with access from the proposed central cul-de-sac road. It is provided that the open space area at the centre of the site will also be open to the residents of Wavecrest Drive allowing for more inclusiveness and connectivity. The rear garden areas of these houses and boundary treatment Planning would back onto the coastal walk. The plans as originally submitted show no permeability to this amenity.

The Council's reason no.4 of their refusal considers that the proposal would not comply with the Guidelines relative to best practice standards for design and layout and with HC9 of the Dundalk and Environs DP. Their response to the appeal considers that while the revised drawings showing the proposed modifications to the site layout submitted to the Board would represent an improvement that they are materially different to those previously before the Council. It is considered that revised layout, which includes rear garden spaces backing onto the coastline and proposed walkway, remains unacceptable and there is concern that this would visually detract from the scenic amenities of the coast line and coastal walkway.

It is of note that the Observers are concerned that the proposed density is too high for this area. The First Party response considers that the density is reflective of that of the surrounding area. This is a lower density area characterised by single and two storey houses. In view of the more scenic coastal site location it is considered that if the Board decide to permit that it would be preferable to revise the layout and to reduce the number of houses proposed on this site and to provide for a greater unit mix and emphasis on quality open space especially on that part of the site that is more vulnerable to flooding. This should also allow for connections to the coastal walk to form an integral part of the layout.

#### **9.4 Access and Traffic**

The site fronts onto the R172 (Blackrock Coast Road) and vehicular access is to be via the existing access road from the R172 into Wavecrest Drive. It is proposed to widen and realign and move this junction further south so that it will operate as a shared entrance for Wavecrest Drive and for the proposed development. This is as shown on the drawings and the 'Infrastructure Design Details' Report submitted with the application. A letter has been submitted from the landowner confirming consent to facilitate the proposed works. The Report provides that this will improve visibility at the junction from Wavecrest Drive and be in accordance with the requirements set out in DMURS for a simple priority junction along a bus route in a 50km/hr speed limit zone. As shown on the layout plan a cul-de-sac internal access road is proposed.

The junction to Seaford Gardens is on the opposite side of the R172 (Coast Road). There is a bend on the R172 to the south. The site is within the 50km/h speed limit. There is concern from local residents that this application would provide for c.22 new cars with the inclusion of a new road junction replacing the existing Wavecrest Drive junction. This proposal would increase the level of traffic entering and exiting the junction when combined with the existing traffic from Wavecrest Drive. Also the new road junction is relocated c.11m further south closer to the junction with Seaford Gardens, creating a virtual crossroads and will greatly increase the traffic hazard already existing taking into consideration the dangerous bend at the Old Barracks at Southend. The First Party response provides that the proposed new vehicular entrance and hammer head turning areas comply with the DMURS requirements.

There is a footpath on the opposite side of the R172 Coast Road, but none on the side of the subject site to connect to the village. The Report does not address this issue but provides that the existing footpath along the northern side of the access road into Wavecrest Drive shall be upgraded and retained and that a new footpath shall be provided along the southern side of the realigned entrance road. This shall continue through the open space area to give a direct access to the southern portion of the site. Details have also been submitted showing details of proposed public lighting within the site. It is noted that the Council's Infrastructural Section recommended that that further information be submitted on a number of road design issues, including traffic calming and street lighting. It is considered that if the Board decided to permit that these are details which could be dealt with at permission consequent stage.

#### 9.5 **Impact on the Character and Amenity of the Area**

Reason no.3 of the Council's refusal has regard to the impact on views. Policy CH4 of the Dundalk and Environs Development plan seeks to: *Protect important natural and man made features, landscape and strategic views within the plan area and require designers to submit a visual impact assessment to take into consideration the protection of landscapes and views in the design of new developments.* Table 8.1 and Map 2 of the Plan identifies specific views for protection and there is concern that this will have a negative impact on the seaward Strategic View V12: *Views out to sea from the Cockle Hill Road.*

The First Party are of the opinion that there is no substantive view of Dundalk Bay or its shoreline from the public road through the appeal site which is of any amenity value. They consider that the revised Site Layout proposals submitted with their Appeal will offer a more open and accessible view to the site and the shoreline than is presently available. It is noted that this proposal will be visible from the coastline and adjoining coast road and it is considered important that the design and layout of any development on site be such that would not impact adversely on scenic views. In view of the site location depending on the above I would not consider that impact on protected views would be a reason for refusal scheme on this site.

The Observers have regard to the right of way for the coastal walk at the rear of the site and note that a public footpath/right of way existing from the village as far as the

old lifeboat house established in 1905, albeit partly eroded and blocked in places. Regard is had to Policy RA6 which referred to in reason no.2 of the council's permission. This seeks to: *Open up the Castletown River and Dundalk coastline for recreation and amenity purposes subject to the protection of designated Natura 2000 sites and Ramsar sites and ensure where necessary that any proposed development is subject to an Appropriate Assessment screening as required for under the Habitats Directive.* It is noted that the revised plans submitted with the appeal show that it is now proposed to have a pedestrian walkway through the site to the coastal walk. This permeability is considered to be preferable and it is recommended that if the Board decide to permit that this element of the revised scheme be included.

## 9.6 Drainage issues

The 'Infrastructural Design Details' Report submitted with the application includes regard to Water Supply, Foul Wastewater and Surface Water drainage. It is proposed to connect to existing services. Drawings have been submitted showing the proposed internal drainage network. The Report notes that in view of the poor percolation characteristics that the use of standard deep infiltration techniques (i.e. soakaways or soakage trenches) in order to discharge surface water run-off is not a viable option in this case. It is proposed to discharge surface water run-off from the site via an outfall pipe (located in the north east corner of the site) directly into the proximate Dundalk Bay. While volume control measures shall not be provided it is proposed to incorporate SuDS features into the SW design and details are given of these. This includes installing an oil interceptor on the SW network prior to the discharge into the Bay.

It is proposed to provide on-site attenuation storage to provide for periods when extreme rainfall events coincide with extreme tidal flood events by constructing a detention basin within the open space area and details are given of this, Fig 4.4 of the Report refers. This Report includes a number of Appendices providing infrastructural design details.

## 9.7 Flooding issues

The Core Strategy as provided in Variation 1 also has regard to Flood Risk Assessment in S.2.10. This is in the context of 'The Planning System and Flood Risk

Management – Guidelines for Planning Authorities (2009) which allows for development provided that a number of key criteria are met. It has regard to the source-pathway-receptor model and to the scales used for flood risk assessment. Reference is had to strategic and site specific flooding. Flooding is an issue relative to this site and it is noted that the extension of duration permission was refused in Reg.Ref.13/349 relative to concern that the subject development does not satisfy the justification test on this vulnerable site. In view of the history of flooding on the eastern part of this site regard needs to be had to detailed risk assessment. There is concern relative to the impact of hard surfaces in that the flooding that occurred in recent years would be naturally absorbed into the greenfield site. It is noted that this site is vulnerable to pluvial and tidal flooding and therefore a justification test is necessary.

Regard needs to be had to the core principles and to the Justification Test to include impact on drainage and of surface water runoff i.e. is it justified to site the proposed development on this site if it is prone to flooding in the first place. If this can be justified Appendix B has regard to Addressing Flood Risk Management in the Design of Development.

A Flood Risk Assessment has been submitted with the application. This notes that the site is separated from the high water mark by a strip of grasslands which formerly functioned as a 'Saltings'. There is a defined and sudden drop in levels of c.1m along and between the site and the saltings. The Preliminary Flood Risk Assessment Mapping indicates that while the site would not be at risk from either fluvial or pluvial flooding, the eastern portion of the site would be susceptible to flooding under the 1 in 200 year coastal flood scenario. Details are also given relative to the Neagh Bann CRFRAM Study/Flood Maps which show that only the south eastern portion of the site is susceptible to flooding. Regard is had to Historical Flood Event Data in the OPW maps showing the area of Blackrock Village which does not show flooding on lands to the south of the village. The change of levels i.e the drop in levels from west to east and the further drop to the saltings is noted in the Topographical Survey and a visual inspection and site survey were carried out.

In view of the potential for tidal flooding of part of the site under extreme flood events a Stage 2 Assessment was carried out. The AFA Flood Maps for Blackrock South

provide information on flood depths under 10%, 0.5% and 0.1% AEP Tidal Flooding Events. Flooding of the south eastern portion of the site is predicted for the latter as shown on Figs. 4.1 and 4.2 of the Report. They provide that this closely resembles the extent of flooding shown on the FEM FRAMS Map and confirms that flooding shall be confined to the lower south east corner of the site. Map 4.4 of the Report provides a Classification of the Site into Flood Zones A, B and C i.e highest to lowest probability of flooding.

Choosing Land Uses is referred to in Section 3.1 of the Flood Risk Guidelines 2009 which provides that the most vulnerable uses (such as housing) should be located in areas of lower flood risk. Fig. B2 of Appendix B shows the optimum location for residential development being in the C zone. In the current layout it is of note that c.1 house is shown in the A zone and 2/ 3no. houses are shown located in the B zone. The Flood Risk Report submitted provides that in essence c.27% of the site is within the flood risk zone and 8no. units shall lie outside – Fig. 4.5 refers. Section 5.0 provides Proposals for the Management of the Flood Risk. It is recommended as a primary flood management measure, that existing levels within the site are increased above 4.22m and that the FFL of the new dwelling houses are set at a minimum level of 4.72m in order to provide a minimum of 0.5m freeboard above the extreme flood level as per the recommendations set out in the Greater Dublin Strategic Drainage Study. Also that the existing land/sea interface along the eastern boundary of the site be protected against tidal action using gabion revetment similar to that shown on Fig.5.1.

Regard is had to the Justification Test carried out and referred to in Section 6 of this Report. This provides that the proposed raising of existing ground levels shall not cause flooding elsewhere. The Report provides that the proposed boundary treatment works shall minimise the risk of flood waters entering the site and the raising of the FFL shall further minimise this risk to the houses. They consider that taking into account the proposed flood management measures that the proposed development as an infill site in an area zoned residential complies with policy and is deemed to fully satisfy the criteria set out in the Justification Test.

### 9.7.1 Conclusion as regards the Justification Test

Section 5.1 (Box 5.1) of the Flood Risk Management Guidelines provides a Justification Test for development management. In this case in view of the history of the site and the land use zoning it is provided that alternative sites have not been considered. Also it has not been ascertained that the proposed development will reduce overall flood risk or increase it elsewhere. It is also noted that part of the development area of the site is within the floodplain and Zones A and B.

Section 10.4.3 of the Dundalk and Environs DP refers to the Sequential Approach to Flood Risk. Policy EN 5 seeks to: *Apply a presumption against permitting development within areas at risk of flooding and within flood plains subject to the application of the sequential test and or justification test to site selection.* Section 2.10 of Variation 1 of the Dundalk and Environs DP provides that: *A Strategic Flood Risk Assessment (SFRA) has been carried out for the lands within Phase 1 and 2 of the Core Strategy, based on the best information available at the time of writing.* As noted in the Policy Section above this is not a site earmarked for residential development in the phasing in the Core Strategy. I would consider that in the context of the Justification Test that alternative sites have not been looked at or that the precautionary principle i.e avoiding the risk in an area where at least 27% of the site is within zones A and B is vulnerable to flooding has been applied. In this respect regard is had to S.3.1 in the 2009 Flood Risk Guidelines i.e: *Development should only be permitted in areas at risk of flooding when there are no alternative, reasonable sites available in areas at lower risk that also meet the objectives of proper planning and sustainable development.*

On the basis of uncertainty relative to these issues, I would recommend that the proposed development is premature and that on this basis permission should be refused. However if the Board decide to pursue further information, I would recommend that the applicant be asked to submit a more detailed analysis relative to the issues raised and mitigation measures.

### 9.8 Appropriate Assessment

An AA Screening Report has been submitted with this application. This notes that a desk top study and site inspection was carried out to establish existing habitats and floral and faunal species within and provides details of the findings. This includes photographs and notes that the ground within which the subject site lies is a heavily improved species poor agricultural grass type. Details are provided of the underlying Geology and Hydrology of the area. The well-developed surface water drainage

network in the area forms part of the Neagh-Bann International River Basin District. It provides that there is no evidence of field drains within the site running to the adjacent Dundalk Bay shoreline so attenuated surface water is likely released through the existing ground water regime. Regard is had to the OPW (CFRAM) mapping system and it is noted that there is no history of sustained and/or recurrent flooding in the area. Fig. 7 shows an Enlarged OPW Tidal Flood Probability Map relative to the site.

It is of note that this application seeks outline consent for the construction of 11 no. dwelling houses on this site. S.2.2.4 of the AA Screening Report includes a Project Description. This includes the following and Table 1 sets out the key components at construction and operation stages:

- New vehicular entrance and internal circulation road
- Raising Ground Levels
- Removal of existing boundary treatments and planting and construction of new site boundaries
- Construction of flood barrier/gabion mattress to beach end
- Installation and connection to infrastructural services – main, foul, storm water etc.

The application site is not designated for any nature conservation purpose or identified as a site of any particular floral or faunal species of conservation interest. The subject site is located adjacent to a no. of designated SACs and SPAs and Table 2 sets out the sites within a 15km radius of the site – Appendix 1 of the Report includes a Map showing these sites.

The subject site is located in immediate proximity to Dundalk Bay SPA, SAC, pNHA. Also to be assessed are potential interconnections with ‘downstream’ designated conservation areas such as Carlingford Lough SPA & pNHA; Carlingford Shore SAC; Dunany Point pNHA and Clogherhead SAC & pNHA. A description is provided of these Natura 2000 sites with particular regard to those in the Dundalk Bay area and details are given of the Qualifying Features and Conservation Objectives. Appendix 2 of this Report includes the full site synopsis text from the NPWS.

Section 2.4 of the AA Screening Report provides an Identification/Assessment of Likely effects. It is provided that the proposed development is not directly connected to nor necessary to the management of Natura 2000 sites. However potential direct, indirect or secondary impacts upon the SPA, SAC and pNHA comprising Natura 2000 are identified and assessed within the context of the proposed development. This includes that the proposal will have no direct impact upon water quality or give rise to any potential contamination of ground water sources if constructed, operated and maintained properly. As such they provide that there should be no potentially negative impact on the surrounding or 'down-stream' habitats and species of the neighbouring Natura 2000 site network. It is also provided that the proposed development will not result in the reduction of any habitat within the adjoining designated conservation areas.

Details of the proposed gabion wall flood barrier along the eastern boundary facing onto Dundalk Bay form part of the information provided within the application and a cross section of the shoreline and the subject site is illustrated in Fig.9 of the Report. They also refer to the Flood Risk Assessment carried out which they provide determines that the proposed development satisfies the Justification Test as set out in the Flood Risk Management Planning Guidelines. They note that existing surface water will be channelled through on site drainage and onto Dundalk Bay via a tidal outfall pipe. The proposed gabion wall flood barrier should be sufficient to retard the advance of any extreme high tidal event or combined fluvial/tidal flooding event. The Report concludes that no negative impacts upon any Natura 2000 site will arise and that a finding of no significant impact can be reached. They provide that the proposed development does not therefore necessitate or warrant progression to a Stage 2 AA.

The Council's Infrastructural Section Report had regard to the AA Screening Report and was concerned that additional information should be requested to fully consider the impacts of the construction of the gabion wall required for flood defences on the adjoining Dundalk Bay SAC and SPA. They provided that should it be raised in the further assessment that the impact on habitats was significant that a full Natura Impact Assessment may be required. It is also noted that comments from the NPWS have not been received regarding any potential impacts on the proximate Natura 2000 sites. The Council's Fifth reason for refusal has regard to these issues.

In addition to the grounds of appeal an AA Screening Report Addendum Report has been submitted on behalf of the applicant. Section 4 has regard to the construction of the Gabion/Reno Mattress. Fig.1 is indicative of the construction materials, methodologies and overall approximate appearance. Regard is also had to Fig. 2 which illustrates a cross section of the eastern site boundary to the shore line, the existing and proposed ground levels, boundary indicative treatments, coastal walkway wayleave and Gabion/Reno mattress details. It is noted that the construction of the Gabion/Reno mattress is a component of the overall treatment of the site as set out in the application, including raising of site levels, the ground preparations and construction of the coastal walkway wayleave, site development works and reinforced concrete retaining wall.

Section 5 provides an Assessment of Likely Impacts which provides that the proposed Gabion/Reno mattress is not directly connected to or necessary to the management of the adjoining Natura 2000 sites and is a small component of the overall development proposal. However its proximity to the Dundalk Bay Natura 2000 sites means that any constituent part of its construction, operation or maintenance could give rise to potential impacts. Details of its construction are given and it is provided in the Addendum that a condition of permission could address any concern by allowing for a mutually agreeable palette of materials suitable to a coastal environment to be agreed. Also once constructed and in operation the mattress would require infrequent maintenance. It is provided that the gabion mattress would be constructed entirely within the appeal site and that no element of the proposal's construction of physical structure would intrude onto the adjoining shoreline. I would consider that this is not entirely clear having regard to the site and shoreline cross section shown in Fig. 2 of this Report. Also S.5.4 of the Report considers that to provide a degree of adequate protection a condition of planning permission could be inserted to prevent any construction related activity to occur outside of the appeal site and/ or along the protected shoreline. It is also noted that the construction phase of the mattress would introduce elements such as noise, disturbance, movement etc to a current setting that are not currently present. They consider that the proposal is of insufficient scale and limited impact to have a detrimental influence over key indicators of the conservation value of the adjoining

SAC, SPA or pNHA. The Gabion/Reno mattress will reinforce the site's eastern periphery and reduce its vulnerability to accelerated coastal erosion.

The Addendum Report concludes that the construction, installation and maintenance of the proposed Gabion/Reno mattress along the appeal site's eastern boundary will not negatively impact upon any aspect of the integrity of adjoining Dundalk Bay Natura 2000 sites or the qualifying interests of the designated habitats and protected species within. It recommends a number of conditions as a precautionary measure to mitigate and lessen the potential for impacts affecting the adjoining designated Natura 2000 sites. The Addendum Report provides that a finding of no significant can be concluded and that therefore the progression to a Stage 2 AA is not warranted.

#### 9.8.1 **Conclusion regarding AA**

The issue to be ascertained at this stage is whether the proposed development would adversely affect the integrity of the European site in view of its qualifying objectives. Having regard to the proximity of the site and the works in particular for the Gabion/Reno mattress and the outfall discharge pipe, to the Blackrock Bay SAC and SPA and to the works proposed to allow for the changes in levels on the site to ensure that the development area is raised relative to the tidal flooding issue regard is had to the precautionary principle. I am not convinced in this case that the documentation submitted as per the Stage 1 AA Screening Report and Addendum is adequate to ascertain that the proposed development either at construction or operational stages would not affect the qualifying objectives and the integrity of the Natura 2000 sites. While mitigation measures are referred to this should be in the context of an NIS and Alternative Solutions have not been presented. There has also been inadequate information submitted to ascertain that there are no in combination effects in relation to the proposed works on other Natura 2000 sites within the area.

I would consider that as noted in the assessment of the documentation submitted there are deficiencies in the AA Screening Report submitted. In this case in view of the proximity of the works to the Natura 2000 site of Dundalk Bay and having regard to the precautionary principle a Natura Impact Statement should have been submitted. Therefore having regard to the recommendations in 'Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities'

(DOEHLG 2009), I would conclude on the basis of the information provided with the application and appeal, and in light of the assessment carried out above, I am not satisfied that it has been ascertained that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site, Dundalk Bay SPA, SAC in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

## 10.0 RECOMMENDATION

I recommend that planning permission should be refused, for the reasons and considerations as set out below.

## 11.0 REASONS AND CONSIDERATIONS

1. Under the operative Dundalk and Environs Development Plan 2009 – 2015 (as extended), and having regard to Variation no.1 Core Strategy adopted on the 29<sup>th</sup> of August 2011, the site is located in an area to the south of the Village Centre zoning of Blackrock which is not designated as a Residential 1 or Phase 1 development area. It is not considered that the proposal constitutes infill or brownfield development and the policy of the planning authority, as set out under Policy CS2 of this Plan is to apply the phasing of new residential development as per the phasing strategy set out and to refuse such developments where they would not be located in such areas. It is considered, therefore, that the proposed development involving the provision of 11no. dwellings on the site would be premature by reference to the order of priority for the development indicated in the Development Plan and would contravene the objectives and policies of the planning authority, as set out in the Development Plan, which are integral to the planning authority's approach to managing the growth of the Dundalk and Environs area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and appeal and having regard to the Stage 1 Appropriate Assessment Screening Report and Addendum submitted, the Board cannot be satisfied that the proposed

development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site Dundalk Bay SPA 004206 and SAC 000455, or any other European site, in view of the site's Conservation Objectives. In these circumstances the Board is precluded from giving further consideration to a grant of planning permission.

3. The site is located within and proximate to Dundalk Bay and is in an area at risk of tidal flooding. On the basis of the submitted documentation, the Board is not satisfied that the applicant has provided sufficient information to demonstrate compliance with the Justification Tests in 'The Planning System and Flood Risk Management Guidelines for Planning Authorities, November, 2009', or relative to the Strategic Flood Risk Assessment provided in Variation No.1 and to Policy EN5 (Flood Risk Management) of the Dundalk and Environs Development Plan 2009-2015 (as extended). The proposed development would, therefore, constitute an unacceptable risk of flooding, conflict with the said Ministerial Guidelines and be contrary to the proper planning and development of the area.

---

Angela Brereton,  
Planning Inspector,  
19<sup>th</sup> of September 2016