



An
Bord
Pleanála

Inspector's Report

PL06F.246924

Development	36 No. residential units adjoining Boroimhe housing estate to the west and the Texaco service station on the old N1 to the east.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F16A/0045
Applicant(s)	The Clarke Family Partnership
Type of Application	Permission
Planning Authority Decision	Grant
Appellant(s)	Boroimhe Management Company
Observer(s)	DAA
Date of Site Inspection	20 September 2016
Inspector	Patricia Calleary

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1.0 **Site Location and Description**

1.1. The appeal site, with a stated area of c.0.99 Ha is located on lands at Forferstown North, Swords, County Dublin. It comprises an inverted 'L' shaped plot and adjoins the existing Boroimhe Hazel housing estate to the west. It is bounded to the north by the L2300 (Boroimhe distributor road) and Boroimhe Oaks and Maples housing estates are located to the north of that road. There is a Texaco service station on the old N1 (R132) located east of the site and undeveloped lands (zoned greenbelt/GB) lie to the south. The site is enclosed by panel / palisade fencing / mature trees around all sides with some gaps along the eastern boundary adjacent to the Texaco service station. The wider area is characterised by residential development to the west, Airside retail park to the east and Dublin Airport lies approximately one kilometre to the south.

2.0 **Proposed Development**

2.1. The proposal would comprise a residential scheme consisting of a total of 36 residential units, i.e. 30 two storey houses (23 three-bedroom type, 7 four-bedroom type) and a 3 storey apartment block comprising 6 two bedroom apartments. It would also comprise Class 2 open space at two locations, boundary treatment and site works with new vehicular and pedestrian access from the Boroimhe distributor road. It would connect to existing public infrastructure (foul sewer, water and surface water). The proposed scheme would read as a separate entity to the existing Boroimhe Hazel residential development with a high wall dividing both for the most part, except where the open space to the south would adjoin the existing open space within Boroimhe Hazel without any dividing boundary. At this location, it is also proposed to provide a new pedestrian link to connect the new development with the existing footpath in Boroimhe.

2.2. The Planning Application was accompanied by the following documents: **Town Planning Report, Engineering Report, Inward Noise Impact Assessment**. The further information response was accompanied by **drainage details** (including a soil infiltration test for the design of a soakway) and a **construction management plan**.

3.0 **Planning Authority Assessment**

3.1. **Decision**

The Planning Authority issued a decision to grant permission subject to 22 conditions, the following of note:

- Condition 3: Comply with noise control specifications;
- Condition 6: Confirm with Irish Water that adequate waste water treatment capacity exists;
- Condition 7: Acoustic screen wall along the site boundary of all residential units addressing the adjoining service station;
- Condition 21: S.48 Development Contribution.

3.2. **Planning Authority Report**

Following initial assessment by the Planning Authority, a request for additional information issued on matters of stormwater, parking, boundary treatment, clarity on site layout plan, construction management, details of acoustic barrier. On receipt of this information, the Planning Officer's assessment can be summarised as follows:

- Site Zoning – RS (Provide for residential development and protect and improve residential amenity);
- Scheme provides appropriate integration of proposed area of public open space to the south of the site with an existing open space serving Boroimhe Hazel which would benefit both residential areas;
- Current scheme is substantially reduced from that previously proposed under F06A/1598 (PL06F.225741) where 91 houses were permitted;

- Objective EE51 of the current development plan for Fingal is relevant. It seeks to resist new provision for residential development and other noise sensitive uses within the Inner noise zone. Submission from DAA noted and an Inward Noise Impact assessment recommends mitigation measures including an acoustic barrier to the rear of properties backing onto the service station;
- Map Objective 46 of the Draft Development Plan for Fingal 2017-2023 (Inner Airport Noise zone) referenced;
- Noting the infill nature of the site, the planning history and the findings of AWN Consulting and observations of DAA, considers the scheme would be appropriate;

The issues raised by third parties were noted and stated to have been considered in the assessment of the application.

A recommendation to **grant permission** issued.

3.3. Internal Technical Referrals

- Transportation – Acceptable subject to conditions;
- Water Services (Surface water). Following receipt of further information, considers proposal is acceptable subject to conditions;
- Housing Department – No report received;
- Parks Division – Broadly acceptable subject to conditions (discussion);

3.4. Prescribed body referrals

- Irish Water – No objection;
- DAA (2 reports on file)– Site located within the inner Noise Zone of Dublin Airport – Proposed development does not appear to accord with Objective EE51 of the current development plan or with the Dublin ‘Agglomeration Environmental Noise Action Plan 2013’. Should permission be granted,

requests that a condition be included requiring that appropriate noise mitigation measures be implemented and maintained;

- Irish Aviation Authority: States no observations;
- Transport Infrastructure Ireland (TII) – No response;
- Irish Aviation Authority – No response.

3.5. **Third Party Observations**

Five third party submissions were received from individual residents of Boraimhe Hazel and Boraimhe Management Company c/o Brock McClure Planning and Development Consultants. The principal issues raised in the collective appeals include matters of residential amenity, objection to pedestrian linkages, insufficient open space proposed and objecting to the use of existing privately managed open space to serve the proposed new scheme. Issues of noise, traffic hazard (proximate to service station) and overspill/ loss of parking facilities were also raised.

4.0 **Planning History**

A number of planning history files are referenced in the planner's report. Those considered to be most relevant are listed under as follows:

Appeal site

- **PL06F.225741/F06A_1598** – **Permission granted** for a residential development.

Lands to west (Boraimhe Head)

- **F04A/0888** – **Permission granted** for development consisting of 83 houses and 16 no. apartments followed by an extension of duration for a two-year period under F04A/0888/E1;
- **F05A/0320** – **Permission granted** for amendments to F04A/0888.

5.0 Policy Context

5.1. Fingal Development Plan 2011-2017

- **Zoning** - The site is zoned **Residential 'RS'** – 'To provide for residential development and protect and improve residential amenity'. The vision of this zoning objective is to 'Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity';
- **7.4 Residential Development** – has a host of relevant objectives on housing mix, densities, daylight, sunlight and overshadowing and specific development management standards;
- **Objective OS02A and OS02B**– Require a minimum 10% of a proposed development site area be designed for use as public open space;
- **Inner Airport Noise Zone (Objective EE51 and EE54 as set out under);**
- **Objective EE51** – Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone;
- **Objective EE54** - Restrict development which would give rise to conflicts with aircraft movements on environmental or safety grounds on lands in the vicinity of the Airport and on the main flight paths serving the Airport, and in particular restrict residential development in areas likely to be affected by levels of noise inappropriate to residential use;
- **Objective Swords 3:** Actively promote and support the early development of Metro North linking Swords with Dublin Airport and Dublin City Centre.

5.2. **Fostertown LAP**

The appeal site lies to the south and outside of the development boundary of the current Fosterstown LAP. The LAP Map shows the Metro Route located to the east of the site.

5.3. **Draft Fingal Development Plan 2017-2023 (Stage 2)**

Sheet No.8 (Swords) zoning and specific objectives shows the proposed New metro North traversing the appeal site.

- **Objective DM119 states:** Ensure that the route of the proposed new Metro North and its stops are kept free from development....;

Other relevant objectives include:

- **Objective DA07** - Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone.....;
- **Objective DA10** - Restrict development which would give rise to conflicts with aircraft movements on environmental or safety grounds on lands in the vicinity of the Airport and on the main flight paths serving the Airport, and in particular restrict residential development in areas likely to be affected by levels of noise inappropriate to residential use.
- **Map based Objective 46** – restrictions on dwellings within the inner noise zone (no dwelling shall be permitted within the predicted 69 dB $L_{Aeq, 16 \text{ hours}}$ noise contour); Comprehensive noise insulation required for any house permitted; Noise assessment required.
- **Zoning** - The site is shown zoned **Residential 'RS'** – 'To provide for residential development and protect and improve residential amenity'.

5.4. **National Policy and Design Guidance**

In my assessment of this case, I had due regard to the following documents:

- Sustainable Residential Development in Urban Areas (DEHLG 2009);
- Urban Design Manual: A Best Practice Guide (DEHLG 2009);
- Quality Housing for Sustainable Communities (DEHLG Best Practice Guidelines 2007).

6.0 **The Appeal**

6.1. **Grounds of Appeal**

An appeal was received from Brock McClure Planning Consultants acting for Boroimhe Management Company No.4 (c/o RF Property Management). The principal grounds of appeal can be summarised as follows:

- Proposal would fail to comply with the intent of the RS land use zoning objective, as the proposed development would neither protect nor improve the amenities of the established houses;
- Previous permitted development under PL06F.225741(F06A/1598) for 91 houses did not propose to link to the private amenity space of Boroimhe Hazel;
- Regarding F04/0888, lack of compliance information submitted by the applicant or pursued by the PA has now impacted on the decision to grant permission on the appeal site;
- Planning Authority incorrectly based their decision on verbal information from their parks department wherein it was stated that the open space is in the control of the Local Authority when in fact all green areas are maintained by a private management company and are not taken in charge by the Local

Authority. Residents of Boroimhe Hazel pay a private management fee to maintain the common open space;

- Linked green areas (new/appeal site and adjoining existing Boroimhe) would result in a loss of amenity space and hence a loss of privacy and safety for existing residents and the connection with the proposed development would have insurance implications;
- Should the Board be minded to grant permission, request that a boundary wall be constructed along the boundary of Boroimhe Hazel;
- Poor quality piecemeal open space proposed in the development and fails to address the requirements of the DECLG guidelines for Residential Developments and Objective OS20 of the County Development Plan.

6.2. **First Party Response**

The Board received a response from Manahan Planners on behalf of the first party.

- Zones of attraction are north and east and the existing residents could walk through the new development to access the bus service and the petrol station and its local shop. There is no desire line for future residents to enter the existing residential estate;
- Issue of permeability and connectivity between housing estates is important for the delivery of proper planning. Having regard to the objections however, link was reduced to a minimum;
- Proposal to centralise the amenity/open space is the correct approach as it would make the space more useable;
- Issues raised by the appellant regarding maintenance of their open space are not relevant to assessment of the planning merits of the scheme;
- It is the intention that in time, a request would be made seeking the open areas to be taken in charge by the Local Authority but that this issue is not particularly relevant in assessing the planning merits of the scheme;

- Site Layout of F04A/0888 presented – states that it supports the intention to amalgamate the open areas to create a more functional open space for existing and future residents;
- Map from Fingal County Council enclosed shows areas of open space which Fingal County Council have already or intend to take in charge, including open space in question;
- Proposed development would be compatible with the zoning objective (RS1) and the surrounding residential character;
- Proposal would not be contrary to Objective EE51 within the inner noise zone for Dublin Airport having regard to its zoning and planning history.

6.3. **Planning Authority Response**

The Planning Authority submitted a response to the appeal which is summarised under:

- Class 2 public open space within the scheme is provided in two areas and the combined quantum of space is sufficient to cater for the scheme;
- Scheme not reliant upon the availability of open space in adjoining estates to fulfil requirements;
- Providing open space adjacent to existing is logic and would result in improved amenity levels for existing and future residents of the area;
- Proposal represents a small infill residential development which would integrate satisfactorily with existing adjoining developments;
- Requests Condition No.21 (S.48 Development Contributions) to be included if PA decision is upheld.

6.4. Observation

6.4.1. An observation was received by the Board from the **Dublin Airport Authority (DAA)**, the contents which are summarised under.

- The development of the parallel runway system at Dublin Airport has been possible by a plan-led approach dating back to the 1960s. The first of these parallel runways was delivered in 1989 and the second will commence this year;
- There are conflicting objectives in the current Fingal Development Plan, i.e. RS v EE51 and EE54 and equally conflicting objectives in the draft Fingal Development Plan 2017, i.e. RS v DA07, DA10 and map based Objective 46;
- DAA does not endorse any encroachment of residential development within the Inner Noise Zone in the interests of the sustainable development of the airport and sustainable residential development;
- Permitting such development would set a negative precedent and undermine the decades of land use planning that has supported the sustainable growth and development of Dublin Airport.

6.4.2. During the appeal, the Board invited comments from the **National Transport Authority (NTA)** due to the proximity of the site to the planned metro project. A response was received which included the following points of note.

- A preferred route design for the new Metro North scheme is expected by the end of 2017.
- The appeal site is of significance from the perspective of Metro North as the scheme will transition from underground to either elevated or at-surface construction in the general area of the site making it a critical construction point on the scheme.
- A comprehensive series of options is required to be undertaken to inform the final scheme design and hence it would be **premature to grant permission**

at this location in the absence of finalising a preferred route for the metro project.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. I consider the key issues arising in this case can be assessed under the following headings:

- Principle of the Development
- Design and Layout
- Open Space
- Inner Airport Noise Zone
- Metro North – **New Issue**
- Appropriate Assessment

I outline my considerations on each of those issues as presented under.

7.2. **Principle of the Development**

7.2.1. The appeal site is located within Swords development boundary which itself serves as the administrative capital of the county and is identified as a second tier (Metropolitan Consolidation towns) of the GDA settlement hierarchy. It is considered a key town for population growth as well as economic and retail activity within Fingal's settlement strategy. The site is located in an area zoned RS (Provide for residential development and protect and improve residential amenity) within the current Fingal Development Plan 2011-2017. The plan places emphasis on consolidating the existing zoned lands and on maximising the efficient use of the existing and proposed infrastructure (p.18).

7.2.2. Having regard to the policies and objectives of the current development plan for Fingal in relation to the delivery of residential development for Swords, I consider the principle of the development of housing on appropriately zoned lands is acceptable.

7.3. **Design and Layout**

7.3.1. A revised layout was received by the Planning Authority at further information stage which dealt with discrepancies along the site boundary. The amended proposal provides for a layout of c.36 units per hectare. Vehicular access would be from the Boroimhe distributor road and there would be a second pedestrian only access onto the distributor road. A pedestrian link is proposed through the class 2 open space located adjacent to Boroimhe Hazel which would connect to the existing footpath at this location. Apart from where the 2 open spaces would be linked, the existing and proposed layout would be separated by a high block wall and would read as a separate scheme.

7.3.2. I would agree with the Planning Authority that the layout including access arrangements are acceptable, having regard to the irregular shape and infill nature of the site. I would also agree that the connectivity and permeability between the existing and proposed scheme, while limited, would also be acceptable having regard to its characteristics and taking the views of third parties on board.

7.4. **Open Space**

7.4.1. There are 2 public open spaces proposed in the scheme, one which extends to 700 sq.m located to the north of the site along the roadside. The second is located adjacent to the grassed area/open space within the existing Boroimhe Hazel. This extends to 400 sq.m and would be directly linked to the adjoining open space without a boundary. This element of the scheme is central to the concerns raised in the third-party appeal. The appellants object to this arrangement of open space on the grounds of the existing green area being privately owned by Boroimhe management company and for the use of the residents of the existing houses at Boroimhe Hazel, who it is stated, pay a management fee to maintain this space. The appellant considers that the proposal for linking both green areas (new/appeal site and adjoining existing Boroimhe) would result in a loss of amenity space and hence a loss of privacy and safety for existing residents and the connection with the proposed development would have insurance implications;

- 7.4.2. The Planning Authority refer to discussions with the Local Authority's parks department who contend that the existing open space is in the charge of the Local Authority. In addition, the applicant submitted maps from Fingal County Council showing areas of open space which Fingal County Council have or intend to take in charge and this clearly includes the open space referred to.
- 7.4.3. Having considered the arguments made in the context of proper planning and sustainable development, I am of the view that this element of the scheme would serve to provide an improved amenity for the existing and future residents of both developments. The links proposed would provide improved permeability which is preferable in planning terms. Whether there is sufficient legal interest to deliver it, is a matter which falls outside of the planning considerations of this case. Collectively the open areas proposed would amount to 1100 sq.m which would equate to 11% and comply with the development management standard requirement of 10% open space.
- 7.4.4. Overall, I consider the provision of public open space to be satisfactory in terms of quantum and quality. It would help promote and deliver the principles of good permeability and connectivity which are advocated in the three national guidance documents: *Quality Housing for Sustainable Communities – Best practice guidelines*, *Sustainable Residential Development in Urban areas* and *Quality Housing for Sustainable Communities*.

7.5. **Inner Airport Noise Zone**

- 7.5.1. The appeal site is located within the inner airport noise zone. Objective EE51 of the current Fingal Development Plan seeks to '**actively resist new provision for residential development**' (and other noise sensitive uses) within this zone. Less restrictive policies arise in the outer airport noise zone.
- 7.5.2. The DAA submitted an observation on the appeal in which they submit their resistance to new noise sensitive development within the Inner Noise Zone. They consider that should the development be permitted, it would set an undesirable negative

precedent and would undermine the decades of land use planning that has supported the sustainable growth and development of Dublin airport.

- 7.5.3. An Inward Noise Assessment report was submitted with the application. It drew on the Dublin Airport Environmental Impact statement prepared in support the Northern Parallel Runway (December 2004). The study found that a worst-case aircraft noise level of 63dB $L_{Aeq, 16 \text{ hours}}$ is expected at the site (as per the use of Option 3b of the Northern Parallel Runway EIS). Night time noise levels are not expected to increase as the conditions of the operation of the northern parallel runway outline are such that the use of the runway would be limited to daytime use. It is submitted in the noise assessment report that the grant of permission which ultimately issued restricted the operation of the runway further and accordingly the residential development now proposed would lie outside of the 69dB $L_{Aeq, 16 \text{ hours}}$ contour line.
- 7.5.4. The conclusion of the noise assessment is that residential development could be accommodated once appropriate mitigation measures are put in place. These measures relate to improved acoustic performance of glazing and doors and the use of passive ventilation. Specifically, with the mitigation in place, internal intrusive noise levels are not expected to exceed the design goals of 35 db $L_{Aeq, 16 \text{ hours}}$ (living and dining rooms during daytime) and 30 dB $L_{Aeq, 16 \text{ hours}}$ (bedrooms during night time). In addition, it is recommended that the boundary of the site would be treated with the installation of an acoustic screen to reduce noise transfer from the service station to the east of the site.
- 7.5.5. I accept (as stated by the DAA) that there appears to be conflicting objectives for the appeal site. On one hand, the site is zoned RS (residential) but it is also located where Objective EE51 applies, which clearly provides for **restricting new residential development provision in the inner airport zone**'. On balance, however, I consider that having regard to the planning history of the site (where 91 houses were permitted in 2016), the in-fill nature of the site where it is surrounded by existing residential development, residential development can be accommodated while respecting the development proposals of Dublin Airport, particularly the planned development of the northern parallel runway. In arriving as this view, I have had full regard to the submissions made by the DAA including the submission

received by Fingal County Council on 22 March 2016, wherein it recommended that if permission were granted that appropriate noise mitigation measures be required. I recommend that should the Board be minded to grant permission that appropriate noise conditions should attach.

- 7.5.6. While accepting the concerns raised by the DAA in relation to the development within the Inner Airport Noise zone, I consider that residential development can be accommodated in this instance, having regard to the established surrounding residential development and the findings of the noise assessment report including recommendations for appropriate noise mitigation measures.

7.6. **Metro North – New Issue**

- 7.6.1. Sheet 8 (Swords) of the current Fingal Development Plan shows the line of Metro North running to the east of the appeal site in a North East – South West direction. Sheet 8 (Swords) of the **draft** Fingal Development Plan 2017-2023 shows the line in a different location, traversing the appeal site itself. I have included extracts of these maps within the appendix which accompanies my report. Both the current and draft development plan include policy and objectives which support the delivery of the metro project. Objective Swords 3 of the current plan supports the early development of Metro North linking Swords with Dublin Airport and the city centre. Within Chapter 12 (Development Management Standards) of the draft plan, **Objective DM119** states: *Ensure that the route of the proposed new Metro North and its stops are kept free from development.*
- 7.6.2. The National Transport Authority (NTA) were invited by the Board to comment on the appeal and a response was received on 20 October 2016. The Authority advised that a preferred route for the new Metro North scheme has not yet been identified and is expected by the end of 2017. The Authority further advised that the appeal site is of significance from the perspective of Metro North delivery as the scheme will transition from underground to either elevated or at-surface construction in the general area of the appeal site making it a critical construction point on the scheme.

It was further stated that a comprehensive assessment of options is required to be undertaken to inform the final scheme design. In conclusion, the Authority advised that it would be premature in their view to grant permission at this location in the absence of finalising a preferred route for the metro project.

- 7.6.3. Given the strategic and crucial importance of this new metro north project and taking into consideration the views of the NTA, I consider that the housing development cannot be recommended ahead of the preferred route identification for the new Metro North project. Accordingly, I consider the development should be refused because it would be pre-mature pending the outcome of the preferred route design. This issue is a new issue and therefore the Board may wish to invite comment on the NTAs observation from the appeal parties prior to bringing the appeal case to a conclusion.

7.7. **Appropriate Assessment**

- 7.7.1. The scheme relates to an infill plot of land which has the benefit of residential land use zoning. The development is proposed to connect to public wastewater and surface water infrastructure. No details of Appropriate Assessment screening have been submitted with the application.
- 7.7.2. The site is not located within or directly adjacent to any Natura 2000 site. There are 17 European sites (8 no. SPAs and 9 no. SACs) within 15km of the site which is the likely zone of impact of the proposed development. The nearest site is Broadmeadow/Malahide Estuary SAC (site code 000205) and SPA (site code 004025) c. 3km to the north east. The qualifying interests include tidal mudflats and sandflat, Atlantic salt meadows, Salicornia mud, Marram dunes and fixed dunes in addition to an internationally important population of Brent Goose and nationally important populations of twelve other bird species. The conservation objectives for the referenced sites seek to maintain or restore the favourable conservation status of habitats and species of interest. I consider that the key issue in this AA screening stage is the threat to the features of interest during the construction stage, arising from sediment run-off or pollutants, noise effects, loss of supporting habitats,

invasive species from disturbance /compaction of soils. Indirect effects on water quality could also result from discharges to the estuary or to the Ward River in whose catchment the appeal site is located. The possible effects of the proposal on the conservation status of the designated sites include loss/reduction of habitat, disturbance of key species, habitat or species fragmentation, reduction in species density and decrease in water quality and quantity.

- 7.7.3. I am mindful that the site is an infill site in which would be serviced by a foul sewer network. Surface water including attenuation is proposed prior to connecting to the public services. The site is well separated from the adjacent Natura 2000 sites. Standard precautionary pollution control measures are proposed which would serve to block pathways and avoid potential adverse effects on habitats. Interference with water quality in the estuary can be avoided by specifying through a planning condition, that development/or occupation of the dwellings will only occur after the Swords waste water treatment plant is upgraded which per Irish Water's website is planned to be complete in Winter 2016. I consider, should the Board be minded to grant permission, that such a condition should attach.
- 7.7.4. I consider, that it is reasonable to conclude on the basis of the information on the 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 European Sites Broadmeadow / Malahide Estuary SAC (site code 000205) and SPA (site code 004025) c. 3km to the north, or any other European site, in view of the site's conservation objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.8. **Conclusion and Recommendation**

Further to the above assessment of matters pertaining to this appeal, including the consideration of the submissions made in connection with the appeal and my site inspection, I recommend that permission be **refused** for the reasons and considerations outlined below.

Reasons and Considerations

Metro North is a crucial element of the planned national transport infrastructure for which a preferred route has yet to be identified. The Fingal Development plan 2011-2017 includes policy to support its delivery. The National Transport Authority have advised that the appeal site is positioned at a significant location in the context of the new Metro scheme as it is in the general area where the scheme would likely transition from underground tunnel to either elevated or at-surface construction. Notwithstanding that the appeal site is considered suitable in all other aspects in the context of proper planning and sustainable development, the Board has concluded that it would be premature to grant permission for the development pending the finalisation of the preferred route for the metro project.

Patricia Calleary

Senior Planning Inspector

25/10/2016

Appendix: Maps, Photographs and links to Policy