



An  
Bord  
Pleanála

## Inspector's Report PL06F.247032

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<b>Development</b>	Construction of 129 houses with a site for a future crèche/childcare facility and all associated works.
<b>Location</b>	Lands known as Site 1 on planning permission Reg. Ref. F15A/0294, Rush, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F16A/0221
<b>Applicant(s)</b>	WCS Project Management Limited
<b>Type of Application</b>	Planning Application
<b>Planning Authority Decision</b>	GRANT
<b>Type of Appeal</b>	First and Third Party
<b>Appellant(s)</b>	<ol style="list-style-type: none"><li>1. WCS Project Management Limited</li><li>2. Rush Community Development Committee</li></ol>
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	26 <sup>th</sup> October 2016
<b>Inspector</b>	Niall Haverty

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 5.878 ha, is located on Brook Lane in Rush, Co. Dublin. It is irregularly shaped and is bounded by Sea Brook estate to the west, Brook Lane to the south, agricultural lands to the east and agricultural lands/Woodland Park estate to the north.
- 1.2. The appeal site is c. 190m north of Upper Main Street at its closest point, and is c. 90m west of Kenure Park. The site is relatively level, albeit with a slight fall from north to south and currently comprises uncultivated grassland. The site is bisected by a ditch/watercourse that runs from north to south and connects to the Brook Stream, which emerges from a culvert under Brook Lane and passes through the south eastern corner of the site.
- 1.3. A small fenced compound accommodating a temporary wastewater treatment plant serving the adjacent Seabrook estate to the west is located in the south western corner of the site, with access from Brook Lane. Brook Lane is unlined and only has a footpath on its southern side in the vicinity of the appeal site.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the construction of 129 houses, consisting of:
  - Five blocks of two storey, three bedroom terraced houses (20 houses).
  - One block of two and a half storey, four bedroom terraced houses (3 houses)
  - One detached and 36 semi-detached two and a half storey, four bedroom houses (37 houses).
  - Three detached and 66 semi-detached two storey, three bedroom houses (69 houses).
- 2.2. The development also incorporates a site for a future crèche/childcare facility.
- 2.3. It should be noted that this planning application only relates to the houses themselves. The associated roads, footpaths, services, landscaping etc. do not form of the proposed development, having previously been permitted by Fingal County Council as part of a larger scale infrastructural development under Reg. Ref. F15A/0294.

2.4. The planning application was accompanied by an 'Environmental Impact Report', Flood Risk Assessment, Construction Management Plan, Traffic Generation Report and Planning Statement.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. Fingal County Council decided to grant planning permission and the following Conditions are relevant to this appeal:

- C3: Planning application for childcare facility to be made prior to commencement of development.
- C4(i): Design of 13 specified houses to be amended to provide more active elevations.
- C5: Revised Construction Management Plan to be submitted with details of protection for watercourses.
- C8(i): Prior to occupation, temporary foul pumping station permitted under Reg. Ref. F15A/0294 to be discharging to Portrane/Donabate WWTS and 90 houses in Seabrook and 46 houses in Brookford are to be connected to the temporary pumping station. Decommissioning of existing temporary WWTP and pumping station to be complete.
- C11: Development shall not commence until road works permitted under F15A/0294 have commenced. No units to be occupied until road works complete.
- C21: Pre-development archaeological testing to be undertaken.
- C23: Contribution of €338,776 in lieu of 5773 sq m of public open space.
- C24: Financial contribution of €1,182,530.
- C25: Bond of €516,000.

## 3.2. Planning Authority Reports

3.2.1. The report of the area planner can be summarised as follows:

- Gross density of 22 dwellings per hectare is acceptable.
- Proposed development complies with Development Plan requirements for rooms sizes, storage, separation distances and private amenity space.
- Proposed development complies with relevant Guidelines for residential development.
- Location of crèche is acceptable. Details to be agreed prior to commencement.
- Provision of east/west street is outside the control of the applicant and it is not feasible for the applicant to provide.
- EIS is not necessary but EIS for the overall LAP lands is outstanding.
- Concur with conclusions of 'Environmental Impact Report', that the proposed development will not result in any significant negative impacts on the environment.
- Design and layout of proposed houses is generally acceptable. Mix of house types and sizes is acceptable.
- No significant overlooking or overshadowing.
- Overlooking of public open space to north of application site is not problematic.
- The design of a number of dwellings at junctures within the development should be revised to provide more active elevations.
- Provision of Class 2 open space is marginally below Development Plan requirement, but is deemed acceptable. No Class 1 open space is proposed, and the shortfall in total open space provision should be charged at the Class 1 rate.
- Blue line boundary for the proposed development accords with the red line boundary for Reg. Ref. F15A/0294 and Conditions linking to the delivery of the existing permission are reasonable and acceptable.

- Wastewater will be pumped via permitted temporary pumping station to Portrane WWTP. Irish Water have indicated that Rush network upgrades will be complete by end of 2018.

### 3.3. Other Technical Reports

- **Water Services Section:** No objection subject to Conditions.
- **Transportation:** No objection subject to Conditions. Units should not be occupied until permitted road infrastructure is completed.
- **Heritage:** Construction Management Plan should be revised to include measures to prevent pollution of watercourses.
- **Housing:** Proposal for satisfying Part V is acceptable.

### 3.4. Prescribed Bodies

- **Dept. of Arts, Heritage and the Gaeltacht:** No objection subject to Conditions regarding pre-development archaeological testing.
- **Irish Water:** No objection subject to conditions. Units should not be occupied until temporary pumping station is operational, houses in Seabook and Brookford have been diverted, and existing treatment plant and pumping station serving these estates have been decommissioned.

### 3.5. Third Party Observations

3.5.1. Five third party observations were made. The issues raised were generally as per the third party appeal, as well as the following issues:

- Construction stage impacts, particularly noise and aspergillus.
- Yellowhammers, a red list bird species, as well as kestrels and owls are found on the appeal site.

## 4.0 Planning History

### 4.1. Subject Site

#### 4.1.1. Reg. Ref. F15A/0294:

Planning permission was granted to WCS Project Management Ltd. for infrastructural site development works including demolition, roads, footpaths, cycleways, drains, sewers, watermains, surface water attenuation areas, below ground pumping station, utilities, landscaping works, boundary treatment and all ancillary infrastructure and site development works to facilitate future housing development. The development also included widening of c. 356m of Park Road (south of St Maurs GAA Club) and construction of a section of the north/south urban road. The development also included removal of an existing temporary wastewater treatment plant and connecting its existing sewers to the proposed foul sewer system. The application included a non-statutory 'Phase 1A Conceptual Framework/Masterplan'.

The appeal site formed part of the overall 8.53 ha site and was referred to as Site 1. Sites 2 and 3 are located north of the appeal site. Site 3 is the subject of a current appeal, as set out below.

### 4.2. Neighbouring Sites

#### 4.2.1. Reg. Ref. F16A/0148 / ABP Ref. PL06F.246808

The Planning Authority decided to grant planning permission to WCS Project Management Ltd. for 22 houses on lands known as Site 3 under Reg. Ref. F15A/0294. This decision is currently the subject of two third party appeals (ABP Ref. PL06F.246808).

#### 4.2.2. Reg. Ref. F16A/0024

Planning permission was granted to IDV Developments Ltd. Partnership for 30 houses, 2 apartments and 2 duplex units on a 1.15 ha site to the east of the appeal site, within the Kenure Rush LAP boundary.

## 5.0 Policy Context

### 5.1. Fingal Development Plan 2011-2017

5.1.1. The zoning objective for the appeal site is primarily RA, to provide for new residential communities in accordance with approved LAPs and subject to provision of necessary social and physical infrastructure. Portions of the site along Brook Lane and along the watercourse are also zoned OS, to preserve and provide for open space and recreational amenities. An indicative north south road proposal is indicated passing through the site.

5.1.2. Relevant Objectives include:

- RD07: Ensure residential units comply with minimum requirements for unit size, room sizes, storage, etc.
- OS02: Minimum public open space provision of 2.5 ha per 1,000 population.
- OS02B: Minimum 10% of site to be public open space. Council has discretion to accept financial contribution in lieu of open space.
- OS25: SuDS areas do not form part of open space provision, except where it contributes to design and quality of open space.
- OS35: Minimum 22m between directly opposing rear first floor windows to ensure privacy/minimise overlooking.
- UD11: Require new residential developments in excess of 100 units to provide a piece of public art.

### 5.2. Kenure Rush Local Area Plan 2009-2015

5.2.1. The site is located within the boundary of the Kenure Rush Local Area Plan 2009-2015, which relates to 31 ha of residentially zoned lands. The life of the LAP has been extended to February 2019.

5.2.2. Relevant provisions of the LAP include:

- Specific objective that no planning permissions shall be obtained on the LAP lands until the planning authority is satisfied that all lands reserved to be

developed as Class 1 public open space lands are available to serve the development area.

- Temporary waste water treatment plants will not be acceptable in any circumstances.
- No residential development shall take place within the plan lands until such time as the wastewater treatment plant at Portrane becomes fully operational and the required network upgrades to facilitate residential development are completed.
- Detailed phasing requirements for each phase of development are set out in the LAP. The proposed development will be part of Phase 1 (1 – 250 units).
- EIS for the development of the entire plan lands shall be prepared and submitted, as determined by the Planning Authority.

## **6.0 The Appeals**

6.1. A first party appeal against a development contribution Condition and a third party appeal were lodged by WCS Project Management Ltd. and Rush Community Development Committee, respectively. Their grounds of appeal can be summarised as follows.

### **6.2. Grounds of First Party Appeal**

- Applicant is appealing Condition 23 which imposed a development contribution of €338,776 in lieu of 0.5773 ha of public open space on the basis that the terms of the Fingal Development Contribution Scheme 2016-2020 have not been properly applied.
- Excessive contributions may render development unviable.
- The open space has been incorrectly calculated by the Planning Authority and there is no shortfall in provision.
- There are no projects listed in Appendix 2 of the Development Contribution Scheme which would benefit the proposed development or its future residents.



### 6.3. Grounds of Third Party Appeal

- Development should not proceed until the full sewage system for the whole of Rush is in place and connected to the Donabate Portrane Rush and Lusk treatment plant and the infrastructural works permitted under Reg. Ref. F15A/0294 are fully put in place.
- Proposed roads will not alleviate traffic on existing substandard roads. Provision of bus infrastructure and parking for duplex units is inadequate.
- Financial contribution in lieu of public open space is unacceptable. Class 1 and 2 open space should be provided within proposed development. Open space should be sited away from the access road in the interest of safety.
- Houses 124 – 129 will have rear gardens facing onto green of Woodland Park resulting in safety and privacy issues.
- Traffic Management Plan does not reflect true figures for car movements.
- The provision of terraced housing is unnecessary and unacceptable in an area where there is no shortage of land for housing.
- Brook Stream often floods, blocking access to the Brook Road.
- Piecemeal nature of the development is in violation of the Kenure LAP.

### 6.4. First Party Response to Third Party Appeal

6.4.1. MacCabe Durney Barnes submitted a response to the third party appeal on behalf of the applicant, which is summarised as follows:

- Wastewater treatment has already been addressed and determined under Reg. Ref. F15A/0294. Development will not take place until temporary pumping station is in operation and discharging to the Portrane WWTP. The proposed houses will not discharge to sea.
- Diversion of 136 existing houses to the Portrane WWTP as a result of the proposed development will improve the wastewater situation in advance of the connection of the entirety of Rush to the WWTP.

- Construction of north/south road and permitted upgrade of Park Road will benefit all residents in the area, and allow for the remainder of the north/south road to be developed in the future. Road works will be completed prior to occupation of units.
- Provision of housing facing the north/south road is consistent with DMURS and provides active, vibrant road frontage with passive surveillance.
- Busses do not require laybys, and bus stops can be arranged along the north/south road as demand requires.
- No duplex units are proposed, and the development complies with car parking requirements.
- Traffic assessment is robust and utilises TRICS data from 2007 to 2015.
- Provision of public open space is in excess of Development Plan requirements.
- There will be no impact on open space or houses in Woodland Park.
- LAP requires a range of house types, and this what the proposed development provides. Only a small number of terraced houses are proposed.
- Site is not at risk of flooding. Riparian corridors will provide additional surface water attenuation.

#### **6.5. Third Party Response to First Party Response**

- Proposed development is in violation of LAP, as wastewater infrastructure is not in place, and neither the FCC/Irish Water works or the permitted infrastructural development have commenced yet.
- Design of north/south road as a street with cars exiting into traffic will be no benefit to the wider area and will not serve as a relief road.
- Road works permitted under Reg. Ref. F15A/0294 should be completed prior to commencement of this development, not just commenced.

- The only exit onto Skerries Road is via Palmer Road. The east/west road must be provided.
- Public open space provision is inadequate and linear park is not wide enough. Buy out option for shortfall is unacceptable.
- Traffic impact assessment undertaken in connection with the LAP is out of date, doesn't account for new housing, Tesco etc. and traffic survey was undertaken in July and is not representative of normal traffic.
- Photographs provided of flood events on Brook Lane.

## 6.6. Planning Authority Responses

### 6.6.1. Response to Third Party Appeal

- No further comment.

### 6.6.2. Response to First Party Appeal

- Total public open space requirement is 11,287.5 sq m based on occupancy rate of 3.5 per unit. 10% of overall site area to be provided as public open space on site (5,878 sq m).
- No Class 1 public open space is proposed. Usable Class 2 public open space was calculated to be 5,514 sq m. Incidental areas, verges etc. were excluded, as was the green corridor/riparian strip in accordance with the Development Plan (p. 260 refers). Slight shortfall is considered acceptable.
- The areas referred to in the appeal do not comprise usable public open space.
- Contribution for shortfall of 5,773 sq m of public open space was calculated on the basis of 25% Class 2 and 75% Class 1, as per Objective OS02B.
- Calculations of amount payable under Condition 23 are in strict compliance with Objectives OS03 and OS04.
- Balleally Park/former landfill is closest capital project listed in Appendix 2 of Development Contribution Scheme. LAP identified additional lands for Class 1 open space which could be facilitated with this contribution.

- Requests that Conditions 23, 24 and 25 (financial contributions and bond) be included.

#### 6.6.3. Response to First Party Response to Third Party Appeal

- First party's response regarding wastewater management is considered accurate and development does not contravene LAP.
- First party's response to road issues raised by third party is considered accurate and development is in accordance with Development Plan and LAP.
- The extent of overlooking of the public open space in Woodlands Park is not considered problematic or injurious.
- Traffic Impact Assessment prepared for the LAP took existing and future development into account. Provision of 129 houses does not trigger the need for a new TIA.
- The site is not at risk of flooding.

#### 6.7. **First Party Response to Planning Authority Response**

- Neither Objectives OS02 or OS02B state that applicant must provide Class 1 open space.
- 13,361 sq m is provided and there is no shortfall that would trigger a contribution.
- LAP gives more appropriate guidance to riparian strips than Development Plan. LAP refers to a requirement for riparian strips to be provided as Class 2 public open space/amenity space. Requiring the provision of such open space but not classifying it as public open space doubles the open space requirements and affects viability of scheme.
- In assessing infrastructure application Reg. Ref. F15A/0294, the Planning Officer and Parks Department considered that riparian strip could be a linear park and could be classified as Class 1 open space.
- If the Planning Authority wishes to apply a levy for Class 1 open space, it must amend the section 48 Contribution Scheme or introduce a supplementary Contribution Scheme.

## 6.8. Observations

6.8.1. No submissions/observations are on file from any other party.

## 7.0 Planning Assessment

7.1. I consider the key issues in determining the appeals are as follows:

- Compliance with Planning Policy.
- Wastewater Management.
- Residential amenity.
- Design and layout.
- Roads and Traffic.
- Flood Risk.
- Condition 23: Public Open Space.
- Requirement for Environmental Impact Assessment.
- Other Issues.

## 7.2. Compliance with Planning Policy

7.2.1. The proposed development accords with the zoning objectives for the site, in that it seeks to provide residential units on a site which is zoned for residential development in accordance with a LAP. Furthermore, I am satisfied that the proposed houses comply with Development Plan requirements for house size, room size, storage space, private open space and car parking. The issue of public open space provision is addressed separately, with regard to the first party appeal against Condition 23.

7.2.2. With regard to density as set out in the LAP, the site is split between an area of high density (39-50 dpha) to the south east with the remainder designated as medium density (32-37 dpha). The proposed gross density is c. 22 dwellings per hectare. The applicant has not indicated the net density, but having regard to the sizable riparian area and the public open space to the front of the site, I expect the net density to be at the lower end of the medium density range. The LAP seeks to

provide a broad mix of densities and unit types and I consider the proposed development with its mix of detached, semi-detached and terraced houses to be broadly acceptable in this location. Lands to the east, closer to Park Road and the town centre are also zoned for high density development, and will allow for a future level of increased density as development of the LAP lands progresses.

7.2.3. The LAP sets out detailed requirements for the precursors to, and phasing of, development. In particular, it is an Objective of the LAP that no development will be permitted until the Planning Authority is satisfied that all lands to be developed as Class 1 public open space are available. Similarly, the LAP states that no development will be permitted until the wastewater treatment at Portrane and network upgrades are completed. There is also a requirement for the school site to be made available to the Department of Education prior to commencement of Phase 1.

7.2.4. Having regard to the lack of progress in implementing the LAP to date, the development of a Phase 1A Masterplan which incorporates this site and the scale of the proposed development (129 units) relative to the overall Phase 1 (250 units) and the wider LAP area (1000 units), I do not consider that the proposed development would jeopardise the delivery of phased infrastructure. Several of the LAP's required infrastructural elements, such as the north/south road, the green corridor along the watercourse and crèche will be delivered on foot of the proposed development and I consider it reasonable for the school site (which is outside the control of the applicant) to be addressed as part of subsequent development proposals. The issues of wastewater treatment and the Class 1 open space are dealt with separately below.

7.2.5. It is also an Objective of the LAP that no housing shall be occupied until a Management Plan for the Outer Rogerstown Estuary is adopted by the Council. I note that it is also an Objective of the Fingal Development Plan 2011-2017 to prepare and implement this Management Plan. It appears that the Management Plan has yet to be prepared and adopted by the Planning Authority. Given the length of time that has passed since it became an Objective of the Planning Authority to prepare this Management Plan, I do not consider it reasonable to restrict occupation of the proposed houses on this basis.

### 7.3. Wastewater Management

- 7.3.1. The foul and surface water drainage networks associated with the proposed 129 houses have already been permitted by the Planning Authority as part of a larger infrastructural development (Reg. Ref. F15A/0294) and do not form part of the proposed development. The permitted works and temporary pumping station located on the appeal site will allow for the proposed development to be connected to the Portrane, Donabate, Rush and Lusk WWTP. It will also allow for 136 existing houses in the adjacent Seabrook and Brookford estates to be connected to the WWTP, rather than discharging their wastewater to sea.
- 7.3.2. This element of the development is controlled by Condition 8(i), which requires the permitted temporary foul pumping station to be discharging to the WWTP, and the 136 existing houses to be connected to the pumping station, prior to occupation of the proposed houses.
- 7.3.3. The third party appellant contends that no further development should occur until all works to connect Rush to the new WWTP are complete.
- 7.3.4. As noted above, the LAP states that there should be no residential development until the WWTP is operational and all network upgrades completed. It should be noted that the Planning Authority has confirmed that the WWTP is now operational, and the remaining works relate to the network upgrades to connect Rush to the WWTP. The LAP also states that temporary WWTPs will not be acceptable in any circumstances.
- 7.3.5. Having regard to the water pollution issues that have arisen in Rush as a result of wastewater discharging to sea, these provisions are reasonable and appropriate. However, what is intended in this instance is to connect the development to a permitted temporary pumping station, not a temporary WWTP. Based on information on file, the works to connect the entirety of Rush to the WWTP are due to be completed by the end of 2018, and subject to a Condition similar to that imposed by the Planning Authority (i.e. that the development shall not be occupied until it is discharging to the WWTP), I consider that the proposed development is acceptable in terms of wastewater management. It will also result in a reduction in the amount of effluent discharging to sea by diverting the existing 136 houses in advance of the completion of the Rush wastewater upgrade project.

#### **7.4. Residential Amenity**

- 7.4.1. The third party appellant has expressed concern over potential overlooking of houses at Woodland Park and overlooking of the public open space associated with that estate. Having regard to the alignment of the proposed houses and the depth of their rear gardens, which will ensure a separation distance greater than 22m between all opposing houses, I am satisfied that there will be no undue overlooking of existing or proposed houses or any loss of privacy. With regard to overlooking of public open space, I do not envisage any safety issues, and am of the opinion that passive surveillance of public open space is beneficial in preserving a safe environment in such spaces.
- 7.4.2. The separation distances between the existing houses in Woodland Park and Sea Brook and the proposed houses will also ensure that no significant level of overshadowing or loss of daylight is likely to occur.
- 7.4.3. Subject to construction being undertaken in accordance with an agreed Construction Management Plan, and implementation of the infrastructural works permitted under Reg. Ref. F15A/0294, I am satisfied that the proposed development will not seriously injure the existing residential amenities of the area and will offer future residents of the proposed houses a high level of residential amenity.

#### **7.5. Design and Layout**

- 7.5.1. The layout of the houses has already been permitted under Reg. Ref. F15A/0294. I consider this layout and the design of the houses to be broadly acceptable, although I concur with the Planning Authority's concern regarding the design of a number of end houses, which present relatively blank side elevations to public open space or on prominent corners. In the interests of visual amenity and ensuring a high level of passive surveillance and active streetscapes, I recommend that the Planning Authority's Condition requiring the design of these specified houses to be modified to provide a more active side elevation through the use of a double height bay feature, or similar, be included in any grant of permission.



## 7.6. Roads and Traffic

- 7.6.1. The third party appellant contends that the proposed north/south road will not serve the intended traffic alleviating function of the Rush Inner Relief Road due to the presence of houses and vehicular accesses facing onto it. They also state that the provision for buses and the provision of car parking spaces is inadequate. The appellant states that the development should not commence until the works to Park Road permitted under Reg. Ref. F15A/0294 are completed and the east/west street is upgraded to take full traffic.
- 7.6.2. A Traffic Generation Report was submitted with the application, and the applicant contends that the permitted road layout is in accordance with the Design Manual for Urbans Roads and Streets and that two parking spaces have been provided for each house in accordance with Development Plan requirements.
- 7.6.3. Traffic generation calculations, based on TRICS data demonstrate that the total vehicle generation will be 64 in the AM peak and 73 in the PM peak. On the basis of the calculations submitted, I am satisfied that the proposed development will not generate a significant level of traffic or result in increased traffic congestion in the area.
- 7.6.4. The permitted north/south road is 6.0m wide, with segregated cyclepaths and footpaths on either side. Approximately one fifth of the road features houses on both sides, with the remainder only having houses on one side, or no houses on either side. I consider that the design and width of the road is sufficient and it is in general compliance with the provisions of DMURS, by acting as an active street integrated within the urban fabric, rather than a segregated high speed road. The relatively short length of road with house entrances on both sides will ensure that no undue disruption to traffic flow is caused by vehicles access/egress from properties.
- 7.6.5. Brook Lane is currently unlined and does not have a footpath on the northern side in the vicinity of the appeal site. Permission is in place under Reg. Ref. F15A/0294 to provide a footpath and connect Brook Lane to the north/south road. I concur with the Planning Authority's Condition that road improvement works should commence before the proposed houses commence, and that the houses should not be occupied until these road improvement works have been completed.

## 7.7. Flood Risk

- 7.7.1. The third party appellant states that the Brook Stream regularly floods, blocking access through Brook Lane. A number of photographs were provided of the flooded roadway.
- 7.7.2. A Flood Risk Assessment was submitted with the planning application. The Assessment states that the proposed development is within Zone C and is not at significant risk from fluvial or tidal flooding. This is supported by the relevant OPW flood maps. The Assessment acknowledges that localised flooding has occurred on Brook Lane but claims that this is due to blockages in a culvert and non-functioning road gullies. The Assessment states that the risk of flooding will be reduced through the reduction of run-off to greenfield levels and the upgrading of surface water infrastructure.
- 7.7.3. There is a c. 5m drop in level across the site from north to south (i.e. towards Brook Lane). Having regard to these levels, and having reviewed the Flood Risk Assessment, I concur with the applicant that the site is not at significant flood risk from fluvial or tidal sources, and that flooding events at this location which have been caused in the past by inadequate infrastructure will be alleviated through the upgrading of surface water infrastructure and the provision of surface water attenuation within the site.

## 7.8. Condition 23: Public Open Space

- 7.8.1. Condition 23 states that “*the developer shall pay €338,776.00 in lieu of 0.5773 ha (5,773 sq m) of public open space*”. The first party appeal argues that there is no requirement to provide Class 1 open space and that there is no shortfall of public open space. They contend that none of the projects listed in the Development Contribution Scheme 2016-2020 will benefit the proposed development or future residents and they request that this Condition be omitted.
- 7.8.2. The requirements for public open space provision are set out in Section 7.5 of the Development Plan. Under the heading ‘Hierarchy and Accessibility’, it states that for all developments with a residential component a mix of public open space types should be provided where achievable. Table OS1 sets out the different types and size ranges for each type of public open space.

- 7.8.3. Objective OS02 requires a minimum public open space provision of 2.5 hectares per 1000 population, based on an occupancy rate of 3.5 persons for dwellings with three or more bedrooms. Both the first party and the Planning Authority agree that this gives rise to a total public open space requirement for the proposed development of 11,287 sq m.
- 7.8.4. Objective OS02B also requires a minimum 10% of a proposed development site area be designated for use as public open space. It states that the Council has the discretion to accept a financial contribution in lieu of any remaining open space requirement required under Objective OS02, for the purpose of the acquisition or upgrading of small parks, local parks, urban neighbourhood parks and/or recreational/amenity facilities, subject to the open space or facilities meeting the 'accessibility from homes' standards specified in Table OS1. It also allows for a financial contribution for the provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities is not achievable. Again, this is subject to the Regional Park meeting the 'accessibility from homes' standard specified in Table OS1. The Objective states that where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1.
- 7.8.5. Objective OS05 requires the monetary value in lieu of open spaces to be in line with the Development Contribution Scheme. In this regard Fingal County Council's Development Contribution Scheme 2016-2020 states that the contribution in lieu of open space will be levied at the following rates:
1. *“Class I Open Space - €100,000 per acre to purchase land based on the value of amenity land, plus €100,000 per acre for development costs.*
  2. *Class II Open Space - €250,000 per acre to purchase land in residential areas, plus €100,000 per acre for development costs.*
- These rates may be reviewed by the Council from time to time having regard to market conditions. **The contributions collected will be used for the provision of open spaces, recreational and community facilities and amenities and landscaping works – see Appendix 2.**” [Emphasis added.]*

- 7.8.6. Appendix 2 of the Development Contribution Scheme lists both specific park sites, such as the 'Balleally Park/Former Landfill' referred to by the Planning Authority in their response to the first party appeal as well as generic works such as 'recreational hubs/all weather pitches', 'playgrounds/MuGA's general', 'pitch drainage/improvements' and 'neighbourhood park improvements'. I note that the zoned Class 1 open space shown on the LAP to the north of the appeal site is not a listed project in Appendix 2.
- 7.8.7. The Planner's Report calculates the open space requirement on a 75% Class 1 / 25% Class 2 basis, and I concur with the first party that this is not a correct interpretation of the Development Plan Objectives. In my opinion there is no specific requirement in the Development Plan to provide Class 1 open space as part of a development proposal, but there is a specific requirement for a financial contribution in lieu of any shortfall in open space provision to be calculated on the basis of 75% Class 1 / 25% Class 2. The fundamental issue is therefore whether there is a shortfall in total public open space provision or not.
- 7.8.8. As noted above, both the first party and the Planning Authority agree that the total public open space requirement is 11,287 sq m. The Planning Authority calculated the proposed provision of public open space as being 5,514 sq m, based on two pocket parks. They discounted the remaining areas on the basis that they are not usable. Conversely, the first party contends that there is a total provision of 13,361 sq m, based on the inclusion of all open areas.
- 7.8.9. In considering whether a shortfall arises, I refer to the Development Plan, which states that while public open space should exceed 10% of the development site area, the development site area cannot include lands zoned, *inter alia*, 'OS' (open space). The riparian strips of land along the north/south drain and the Brook Lane frontage are zoned OS under the Development Plan and should therefore be excluded from the site area in calculating the open space requirement. I estimate the OS zoned portion of the site to be c. 1.05 ha, which would mean that c. 4,828 sq m (i.e. 10% of 5.878 ha – 1.05 ha) of public open space is required in addition to the OS zoned lands.
- 7.8.10. With regard to the riparian areas along the north/south watercourse, these are designed as a surface water attenuation storage area. While the site layout plans

submitted with the planning application indicate the watercourse as a wide undulating feature of variable width, separate landscaping plans indicate it as a narrow blue line, which increases the apparent amount of adjacent amenity space. I note that Objective OS25 states that SuDS areas do not form part of the public open space provision, except where it contributes to the design and quality of the open space. In such cases, the Objective states that a maximum of 10% of open space provision shall be taken up by SuDS. The Development Plan also notes in respect of Green Corridors (linear open spaces along paths, watercourses etc.) that such spaces do not form part of the public open space provision.

7.8.11. Having regard to all of the above, I consider that the Planning Authority was correct in not including the riparian areas in its calculation of public open space. The summary table below sets out my interpretation of the public open space requirement and provision and the financial contribution payable in lieu.

<b>Summary Table</b>		<b>Notes</b>
Application site area	5.878 ha	
Area zoned OS	c. 1.05 ha	Estimated
Development site area	c. 4.828 ha	Dev. Plan states that development site area cannot include OS zoned lands.
Total public open space requirement under Obj. OS02	11,287 sq m	2.5 ha per 1,000 pop, based on 3.5 persons per dwelling.
Public open space requirement under Obj. OS02B	c. 4,828 sq m	10% of development site area (i.e. excl. OS zoned lands)
Provision of public open space	5,514 sq m	FCC calculation, excludes riparian areas and narrow/unusable areas
Obj. OS02 shortfall	5,773 sq m	i.e. 11,287 – 5,514
Obj. OS02B shortfall	None	Overprovision

<b>Amount payable in lieu</b>	<b>€338,776</b>	(75% of 5,773 sq m @ €200,000 per acre) + (25% of 5,773 sq m @ €350,000 per acre)
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7.8.12. The Class 1 public open space shown on the LAP maps to the north of the appeal site is outside of the control of the applicant. It is a requirement of the LAP that this Class 1 open space be provided prior to completion of Phase 1 and the Planning Authority's response to the appeal states that the monies from Condition 23 could be utilised in acquiring this land. However, this open space is not specifically included as a project in Appendix 2 of the Development Contribution Scheme, although it could conceivably be considered to fall within the generic headings such as 'recreational hubs/all weather pitches' etc.

7.9. The Planning Authority also notes that the Balleally Park/Former Landfill project listed in Appendix 2 of the Development Contribution Scheme will serve future residents of the development, and is within the 'accessibility from homes' requirement of the Development Plan.

7.10. In conclusion, I consider that there is a shortfall in public open space provision. The proposal complies with the 10% public open space requirement under Objective OS02 but is below the 2.5 ha per 1,000 population requirement under Objective OS02B. I therefore recommend that a condition requiring a financial contribution in lieu of this shortfall be attached to any grant of permission. Having regard to the LAP requirement to deliver the Class 1 open space to the north of the site as part of Phase 1, I consider that this contribution could be utilised for this purpose. However, since this open space is not explicitly listed in Appendix 2 of the Development Contribution Scheme, I consider that the contribution should be imposed as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended.

#### 7.11. Requirement for Environmental Impact Assessment

7.11.1. With regard to the issue of Environmental Impact Assessment, the relevant threshold of development in this instance is class 10(b)(i) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). This class relates to the

construction of more than 500 dwelling units. Since the proposal relates to the construction of 129 dwelling units, the development is sub-threshold and does not require a mandatory EIS.

- 7.11.2. In considering any requirement for a sub-threshold EIS, I have had regard to the criteria for determining whether a development would or would not be likely to have significant effects on the environment as set out in Schedule 7 of the Planning and development Regulations 2001 (as amended). I have also had regard to the 'Environmental Impact Report' submitted with the planning application, which generally follows the format of an EIS, and which I consider to give an adequate overview of the potential impacts arising from the proposed development. I concur with the Report's conclusion that the proposed development will result in no significant negative impacts on the environment.
- 7.11.3. Considering the scale and extent of the proposed development, the proposals for managing the construction process and mitigating pollution and nuisances, the location of the site in a residentially zoned area which is adjacent to existing residential development and not particularly environmentally sensitive and the resultant lack of potential significant effects on the environment, I consider that an EIA of the proposed development is not required.
- 7.11.4. I note that the Rush Kenure LAP refers to a requirement to prepare an EIS for the entire LAP area. Considering that the proposed development is sub-threshold and that the majority of the LAP area is outside the applicant's control, I consider that the approach taken by the applicant in this instance of preparing a comprehensive 'Environmental Impact Report' that addresses all aspects of the environment is acceptable in this instance. However, I would note that this is the initial Phase 1A of the LAP implementation and any future planning applications within the LAP area will have to be cognisant of the EIA issue and potential cumulative impacts that could arise.

## 7.12. Other Issues

- 7.12.1. Social Housing Provision: The proposed development comes within the provisions of Part V of the Planning and Development Act 2000 (as amended) for the provision of social housing. The applicant states that they have consulted with the Planning

Authority and a report from the Fingal County Council Housing Department states that the applicant's proposal as set out in Section 16 of the planning application form is acceptable. However, no information is on file regarding the nature of this proposal. I recommend that a standard Condition requiring agreement with the Planning Authority should be imposed.

7.12.2. Creche/Childcare Provision: The proposed development includes a site for a future crèche/childcare facility, but the facility itself does not form part of the proposed development. The Childcare Facilities Guidelines for Planning Authorities 2001 require one childcare facility for each 75 dwellings, and it is a requirement of Phase 1 of the LAP that pro-rata childcare provision be made. The proposed site for the facility appears to be suitable, and includes dedicated car parking as well as set down areas for parents to utilise. Given that there are existing childcare facilities in the area, I do not consider it necessary to tie the provision of the on-site facility to the construction or occupation of the houses by way of Condition. The designated site will allow for the childcare facility to be delivered in a timely manner in due course as demand arises.

7.12.3. Public Art: Objective UD11 of the Development Plan requires new residential developments in excess of 100 units to provide a piece of public art to be agreed with the Planning Authority. I recommend that a Condition be attached in this regard in the interests of complying with the Objective and visual amenity.

7.12.4. Archaeology: The Dept. of Arts, Heritage and the Gaeltacht made a submission requesting that pre-development archaeological testing be undertaken. The site is identified as being of significant archaeological potential, and while the assessment undertaken for the Environmental Impact Report did not identify any archaeological features or remains, I recommend that a suitable Condition requiring pre-development testing be attached.

## 8.0 **Appropriate Assessment**

8.1. The closest Natura 2000 sites that could be impacted on by the proposed development are Rogerstown Estuary SAC and SPA (Site Codes 000208 and 004015) which are located c. 0.8km to the south, and Rockabill to Dalkey Island SAC (Site Code 003000) which is located c. 2.1km to the east. Other Natura sites within



15km are Skerries Islands SPA, Rockabill SPA, Lambay Island SPA and SAC, Malahide Estuary SAC, Broadmeadows/Swords Estuary SPA, Baldoyle Bay SAC and SPA.

- 8.2. An Appropriate Assessment Screening Report was submitted with the planning application. The Report only addresses the proposed development and does not consider 'in combination' effects with other projects, such as the related infrastructure development Reg. Ref. F15A/0294 and the application for 22 houses which is currently under appeal (ABP Ref. PL06F.246808). Both of those applications included separate AA Screening Reports.
- 8.3. The AA Screening Report submitted with this application concludes that the conservation objectives of the Natura 2000 sites will not be compromised provided sufficient capacity exists for the additional sewage treatment. In this regard I note that it is intended to connect the proposed development and two adjacent residential estates to the Portrane, Donabate, Rush and Lusk WWTP, and the development will therefore result in a decrease in effluent discharging to sea.
- 8.4. The appeal site is divided by a drain that connects to Brook Stream, which discharges onto Rush beach c. 1km to the east of the appeal site at a point c. 1.6km from the Rockabill to Dalkey Island SAC and slightly further by water from Rogerstown Estuary. The AA Screening states that this distance will allow for considerable dilution to any material released from the appeal site. I consider that the greatest potential for material entering the stream is during the construction process, particularly when the surface water drainage system, attenuation areas and riparian areas are being developed. The AA Screening Report states that concrete, leachate, oils and chemicals are the most damaging materials, while sediment in small quantities is more benign. It goes on to set out a number of straightforward precautions such as silt fences, silt bags, off-line culverting etc. to prevent outflows of material during construction.
- 8.5. The Construction Management Plan (CMP) submitted with the application, while generally satisfactory, states that drains and culverts will be kept free of construction material, soil and debris but does not include these particular construction stage precautions. I am satisfied that these measures can be considered to comprise part

of the proposed development and that they can be included in the CMP for the project.

- 8.6. Subject to compliance with Conditions requiring the development to be connected to the WWTP prior to occupation and the submission of an updated CMP, it is reasonable to conclude that 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 any other European site, in view of the sites Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

## 9.0 Recommendation

- 9.1. I recommend that planning permission should be granted, subject to conditions as set out below.

## 10.0 Reasons and Considerations

- 10.1. Having regard to the zoning objectives for the area and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The following changes shall be incorporated into the overall layout.
  - (a) The design of house numbers 8, 37, 69, 70, 76, 77, 82, 92, 97, 98, 105, 119 and 129 shall be revised to provide a more active side elevation through the provision of double height bay features or similar.

Details of the above changes shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

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

3. The proposed development shall not be occupied until:
  - (a) The wastewater treatment plant serving Seabrook estate and the pumping station serving Brookford estate have been decommissioned and the lands reinstated to the satisfaction of the Planning Authority in accordance with Reg. Ref. F15A/0294.
  - (b) The temporary foul pumping station and associated infrastructure serving the proposed development, Seabrook estate and Brookford estate, as permitted under Reg. Ref. F15A/0294, is operational and discharging to the Portrane, Donabate, Rush and Lusk Wastewater Treatment Plant.
  - (c) The road infrastructure, footpaths and cyclepaths permitted under Reg. Ref. F15A/0294 have been completed to the satisfaction of the Planning Authority.

**Reason:** In the interests of public health, environmental protection and traffic safety.

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

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

5. Water supply and drainage arrangements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

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

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.

Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

7. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, kerbs, traffic calming measures and footpath dishings shall comply with the detailed standards of the planning authority for such works.

**Reason:** In the interest of amenity and traffic and pedestrian safety.

8. Public lighting shall be provided in accordance with a scheme to be agreed in writing with the planning authority prior to the commencement of development. Such lighting shall be provided prior to the occupation of any house.

**Reason:** In the interest of amenity and public safety.

9. Site development and building works shall be carried out between the hours of 0800 hours to 1900 hours Monday to Friday inclusive and between 0800 hours and 1400 hours on Saturdays and not at all on Sundays or Public Holidays. Deviation from these times shall be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

10. The construction of the development shall be managed in accordance with a revised Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;

- (d) Details of on-site car parking facilities for site workers during the course of construction;
- (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) Measures to obviate queuing of construction traffic on the adjoining road network;
- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains, as outlined in the Appropriate Assessment Screening Report submitted with the application.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

**Reason:** In the interest of amenities, public health and safety.

11. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

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

**Reason:** In the interests of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

13. The developer shall provide for a piece of public art, the detailed design of which shall be submitted to the planning authority for written agreement prior to commencement of development.

**Reason:** In the interest of visual amenity and to comply with objective UD11 as set out in the Fingal Development Plan 2011-2017.

14. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part

V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

15. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

16. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter

shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

17. The developer shall pay the sum of €338,776 in lieu of 0.5773 ha of public open space (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, towards the cost of acquisition and development of the Class 1 public open space within the Rush Kenure LAP lands. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

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Niall Haverty  
Planning Inspector

9<sup>th</sup> November 2016