



An
Bord
Pleanála

Inspector's Report PL06F.248515.

Development

Construction of 101 houses and a childcare facility. Demolition of and replacement with a new extension to Kinsaley House (A protected structure). Demolition of other agricultural buildings.

Location

Kinsaley House, Chapel Road,
Kinsaley, Co. Dublin.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F16A/0464.

Applicant(s)

Crekav Trading GP Limited.

Type of Application

Permission.

Planning Authority Decision

Grant Permission.

Type of Appeal

First Party versus conditions.

Third Party versus decision.

Appellant(s)

1. Crekav Trading GP Limited.
2. Patrick and Anne-Marie Foy.
3. Anne and John Tarpey.

Observer(s)	4. John and Rachel Tarpey. 1. Darragh O'Brien T.D. 2. Dublin Airport Authority.
Date of Site Inspection	4 August 2017.
Inspector	Stephen Rhys Thomas.

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1.0 Site Location and Description

- 1.1. The appeal site is located at Kinsaley Village, approximately 1.5 kilometres west of Portmarnock and 2.5 kilometres north of the suburban outskirts of Dublin City. Dublin Airport is 4.5 kilometres to the west. The site is situated along Chapel Road, the character of the road is rural with narrow grass verges and mature trees and hedgerows. The lands around Kinsaley Village are agricultural combined with the demesne lands of large country houses, Emsworth, Abbeyville House, Kinsaley House, Bohomer and St Doolagh's Park. A church in ruins and graveyard are located to the north of the appeal site. The Sluice River flows north of the site on the opposite side of the public road.
- 1.2. The appeal site comprises the demesne lands of Kinsaley House and the paddocks associated with more recent farm buildings. The stated area of the site is 6.5 hectares. Large Agricultural fields are located to the east and south of the site, the former Teagasc Horticultural Research Centre to the west. There are three single storey dwellings on large garden plots to the north west of the appeal site. Field boundaries comprise hedgerows with mature trees. The site rises upwards from the public road to the north of the site and is generally level towards the south of the site. The change in level is most notable in the vicinity of existing dwellings, where gardens have been levelled by cutting into the field boundary of each site. A powerline traverses the south western corner of the appeal site.
- 1.3. Kinsaley (Kinsealy) Village is characterised by a focal point at the church, hall and St Olave's Retail Centre at the junction of Malahide Road and Chapel Road. The former Teagasc Horticultural Research Centre, Malahide/Portmarnock Educate Together National School and Garden Centre are located along Malahide Road. Most new housing in Kinsaley has been constructed north of Chapel Road at Emsworth Park, Coopers Wood, Abbey Well and Saint Olave's.

2.0 Proposed Development

- 2.1. A 10 year permission was initially sought for 101 dwellings comprising:
 - 8 two storey two bed houses.
 - 62 two storey three bed houses.

- 30 two storey four bed houses.
 - Renovation of a stone barn as a single dwelling unit.
 - Renovation and extension of Kinsaley House as a single dwelling.
 - Childcare facility.
- 2.2. Demolition of an existing extension to Kinsaley House and agricultural buildings comprising two sheds, two stable blocks, hay shed and a two storey block of flats.
- 2.3. Other site works include: undergrounding an existing 10kv overhead powerline, new ESB substation, children's play area and a temporary construction access route off Chapel Road.
- 2.4. As a result of revised plans submitted as further information the development boundary of the site includes lands at the Malahide Road/Chapel Road junction. The amended proposal before the Board is now for the signalisation of the R107 (Malahide Road/Chapel Road junction), 99 new dwellings, a renovated existing dwelling and a single storey crèche, the detail is as follows:
- 4 type C dwellings, four bedrooms two storey semi-detached and terraced.
 - 5 type D dwellings, four bedrooms two storey end of terraced.
 - 3 type D1 dwellings, four bedrooms two storey detached.
 - 9 type E dwellings, three bedrooms two storey semi-detached and terraced.
 - 18 type E1 dwellings, three bedrooms dormer style semi-detached.
 - 10 type F dwellings, three bedrooms two storey terraced.
 - 9 type G dwellings, three bedrooms dormer style semi-detached and detached.
 - 14 type J dwellings, two bedrooms dormer style semi-detached and terraced.
 - 10 type K dwellings, three bedrooms dormer style semi-detached.
 - 7 type L dwellings, four bedrooms dormer style detached.
 - 7 type L1 dwellings, four bedrooms dormer style semi-detached.
 - 1 type B dwelling, two bedroom two storey converted barn.

The application was supported by a Planning Application Report, Architectural Visual Assessment, Traffic Impact Assessments, Appropriate Assessment Screening Report, Design Statement, Engineering Services Report, Ecological Impact Assessment and Giant Hogweed Survey, Acoustic Report and Recommendations, Aboricultural Implication Assessment and Method Statement, Conservation Assessment Report, Archaeological Impact Assessment, Partial Shadow Analysis and a Construction Waste Management Plan.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 43 conditions, the conditions (4 and 5) the subject of the first party appeal are set out in full for clarity; other relevant conditions are set out below:

- Condition 2, restricts the development to 95 dwellings and a crèche.
- Condition 3, restricts planning permission to 6 years.
- Condition 4 - Units on plots 59-62 (4 type E1 houses) shall be omitted. The applicant shall be invited to submit a planning application at a later stage for dormer or single storey housing in this location which lessen the overbearing impact on dwellings on plots 51-54.

Reason: In the interests of protecting the future residential amenity of inhabitants of dwellings on plots 51-54.

- Condition 5 - The unit on plot 50 (1 type D1 house) shall be omitted. The applicant shall be invited to submit a planning application at a later stage for a house which would be set the northern elevation 2m further to the south at this location which would lessen overbearing impact on dwellings to the north as a result of ground level changes in the vicinity.

Reason: In the interests of protecting existing residential amenity of the inhabitants of dwellings to the north.

- Condition 6, requires a phased approach, Kinsaley House, Barn and crèche shall be completed prior to the commencement of the 42nd new residential unit. Condition 10 also refers to open space and haul road phasing.
- Conditions 7 and 8 concern traffic signalisation at the Malahide Road and Chapel Road junction.
- Condition 41 requires a Special Contribution of €142,706.00 to facilitate junction improvements at Malahide Road/Chapel Road.
- Conditions 9 and 12 concern the works proposed to a protected structure.
- Condition 16 refers to house design changes, primarily to do with roof profiles, adjustment to the location of some dwellings and glazing requirements (also included in condition 17). Note that changes are recommended to unit 50, though condition 5 requires its omission.
- Conditions 15 and 19 refer to boundary treatments.
- Condition 24 refers to future connections to an adjoining site.
- Conditions 25 and 26 refer to water services.
- Conditions 28, 29 and 38 refer to ecological habitats and the archaeological potential of the site.
- Condition 36 refers to Part V housing requirements.
- The remaining conditions are standard in nature and refer to the construction phase of development and development contributions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial planning report can be summarised as follows:

- An outline of the relevant existing and draft County Development Plan policies and objectives that affect the site.
- Recognition that an LAP has not been prepared for the area, but the conservation objectives associated with Kinsaley House are considered important enough to allow the proposed development to proceed. However,

the renovation of the protected structure should occur in the first phase of development.

- The Planner calculates that the residential density of the site is 15.69 dwellings per hectare (102 dwellings across 6.5 Hectares). Whilst a low density it is appropriate, given the village location and the setting and context of the protected structure.
- The renovation of Kinsaley House is acceptable; concern is raised in relation to the location of the pumping station in the vicinity of the original house entrance.
- In terms of the site layout, minor adjustments are required to some house designs and position in order to take account of the sloping site. In addition, back garden depth is highlighted as deficient.
- More information is required in relation to the design, capacity and location of the foul sewerage pumping station.
- Certain information is lacking with regard to pylons on site and the ESB substation.
- The site is unlikely to have any impacts upon a Natura 2000 site and is below the mandatory threshold for Environmental Impact Assessment.

The Planner's report echoes the concerns and requirements of the reporting sections of the Council with regard to ecological issues, conservation and heritage, public open space, public lighting and transportation issues.

Additional information was requested in relation to 31 items, including:

- a) Pumping station details, that includes legal interest in land, impact upon the original entrance to Kinsaley House, strategic reasons for location in the context of the wider LAP lands.
- b) Phasing plan, that includes the renovation of Kinsaley House and barn conversion in the initial phase.
- c) A revised TIA, that takes account of the entire LAP lands and proposals that ensure that the junction of Malahide Road and Chapel Road are mitigated until an appropriate solution is delivered.

- d) Engagement of a qualified and experienced conservation consultant to comment on works to Kinsaley House.
- e) Numerous layout and house design changes to take account of residential amenity, surface water drainage, traffic, cycle way connectivity and open space concerns.
- f) Details with regards to the undergrounding the powerline across the site, ESB substation, public lighting.
- g) Details that concern ecological and archaeological issues across the site.
- h) Submission of a flood risk assessment and details that concern surface water outfall to the Sluice River.
- i) A Project Construction Waste Management Plan is requested.
- j) Information is required to demonstrate that habitable rooms will not be unduly impacted upon by aircraft noise associated with Dublin Airport.

Given the extent of the further information received, the planning authority required the applicant to re-advertise the proposed development.

The final Planner's report notes the reduction in total units to 99 (not including the renovation of Kinsaley House and stone barn) and addresses the information submitted by the applicant. For the most part all the items of additional information have been satisfactorily addressed subject to conditions, save for the following outstanding issues:

- Amendment by condition to the design of units on plots 50-53, 12, 20, and 59-62.
- The restriction of the permission to 6 years to ensure the timely provision of housing.

Permission was subsequently granted subject to 43 conditions, in accordance with the recommendation of the Planner.

3.2.2. Other Technical Reports

Transportation Planning Section. The report states that the site is within the 50km/hr speed limit zone and the scheme provides adequate in-curtilage parking. However, the crèche set down area was not acceptable and requires re-design. To

reduce undesirable reversing manoeuvres, the turning head adjacent to the playground should be reconfigured. Internal road gradient is high, justification is required. Clarification is required in relation to shared surfaces. The Traffic Impact Assessment (TIA) fails to adequately take account of the wider LAP lands and the proposed measures will impact on traffic flows. These items were required as additional information.

Parks Department. Further information was required in relation to a number of issues: The proposal lacks street trees. Clarity is required with respect to SUDS, specifically the provision of swales and compliance with CDP objectives in relation to open space and SUDS. Play spaces and open space should accord with CDP objectives. Boundary treatments should be redesigned, specifically at the interface with public open spaces. Clarity on the exact location of the ESB substation is required. Given the quantity of trees to be removed from the site a comprehensive re-planting scheme is required. Public lighting scheme is required. More details in relation to the proposed temporary construction road and access are required.

Conservation Officer. There are two conservation reports. The initial report outlines the setting and context of Kinsaley House. The development is appropriately designed to ensure the setting of the 18th century house. The proposal to demolish an existing extension and replace with a contemporary design extension is acceptable. The renovation of a stone barn and other works to buildings in the vicinity are also acceptable. Despite general acceptance of the proposal, further information was required in relation the following:

- Comments from an experienced conservation consultant is required with regard to greater detail on interventions to the protected structure: glazing, ventilation etc.
- Given the existence of bats on site, the experienced conservation consultant should advise on the appropriateness or not of such measures outlined in the Ecological Statement.
- The proposed planting scheme and removal of some trees should be considered in the context of screening new housing from the protected structure.

- The renovation of Kinsaley House must take place in the first phase of development.
- The protected structure should be protected during construction works.
- An archaeological assessment should be prepared.
- The location of the proposed pumping station may impact upon Kinsaley House and the existing historic entrance to the house. Provide a rationale for omitting the historic entrance to the house from the overall scheme.

Heritage Officer. There will be no impact to a Natura 2000 site. Giant Hogweed, an invasive species is present on site, a management plan for its eradication should be developed. A further survey in relation to bats on the site is required, specifically in relation to any lighting proposals. Pollution measures included in the Ecological Impact Assessment Report should be integrated into the Construction Management Plan.

Planning and Strategic Infrastructure Department – Water Services Section.

The report states no objection to the development subject to technical conditions to do with: surface water outflow, the surface water detention basin, fuel/oil separator and attenuation volumes.

The final report of the Water Services Section finds no objections with the further information submitted and outlines conditions which should be attached to a grant of permission.

Environment Department. The report outlines technical requirements during the construction and operational phase of development. Specifically, requirements to do with pollution avoidance and waste management are recommended as conditions.

Environment and Water Services Department. The report requires improvements to the existing surface water outfall network and that works are carried out in accordance with relevant standards.

Housing Section. The report outlines that the housing section would accept houses on a phased basis due to infrastructural issues associated with the site. Further Part V negotiations will follow on foot of a permission.

Community, Culture and Sports Division of the Council. The report states no objections to the proposed development.

Environmental Health Officer. The report outlines requirements with regard to childcare facilities, specifically with regard to food preparation and ventilation.

Air Pollution and Noise Control Unit. The report outlines technical air and noise pollution requirements with regard to the construction and operational phase of the development. The final report raises no objections.

3.3. **Prescribed Bodies**

Irish Water. The sewer network and pumping station shall be successfully commissioned prior to the occupation of any units, together with standard connection conditions.

3.4. **Third Party Observations**

Dublin Airport Authority (DAA). The DAA recognise that the site is located in the Outer Airport Noise Zone and notes the Fingal County Development Objective DA07. The DAA required additional information in relation to the existing and predicted noise environment, demonstrate internal noise levels are appropriate to habitable rooms and appropriate noise mitigation measures.

A large number of third party submissions were received in relation to the initial proposal, and the subsequent amended proposal, the issues are similar to those raised in the grounds of appeal.

An observation from ARUP Consultant Engineers representing the appointed receivers of a large development site to the west is critical of the revised junction design at Malahide Road/Chapel Road.

4.0 **Planning History**

Appeal Site. There are a number of planning permissions that pertain to the appeal site, however, they are not relevant to the appeal.

Adjacent site.

PA reference F16A/0511 and An Bord Pleanála reference PL06F.248584.

Demolition of 'Springfield' and construction of 82 no. residential units and a childcare facility. Concurrent appeal, no decision.

5.0 Policy Context

5.1. Development Plan

Fingal Development Plan 2017-2023, is the operative development plan.

Table 2.9 Fingal Settlement Strategy 2011-2017, classifies Kinsaley as one of four Villages within the Metropolitan Area. The future development of Fingal's villages needs careful consideration. In the Metropolitan Area growth in villages such as Coolquay, Kinsaley, Rivermeade and Rowlestown will be managed to ensure these centres do not expand rapidly, putting pressure on services and the environment and creating the potential for unsustainable travel patterns.

To support the principle of sustainable placemaking, Kinsaley has an urban place designation of Village Centre (RV). The appeal site is within the RV zoning, that seeks to protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved local area plan and the availability of physical and community infrastructure.

The site is subject to **Local Objective 71** - That any development of this area will include the integration of the Protected Structure on site (Kinsaley House) within the first phase of development.

Kinsaley House is entered on the record of protected structures reference number 464 and described as an early 18th century five-bay two-storey house

The appeal site is also within the Dublin Airport Outer Public Safety Zone.

Local Objective 67 - Facilitate a traffic impact assessment of the junction of Chapel Lane with the Malahide Road and, subject to an identified need and resources being available, carry out improvement works to same.

Local Objective 69 - Facilitate a traffic impact assessment of the junction of Baskin Lane with the Malahide Road and, subject to an identified need and resources being available, carry out improvement works to same.

Objective MT23 - Carry out a feasibility study for the provision of the following cycle / pedestrian routes, subject to the necessary environmental appraisals: Old Portmarnock to Teagasc Kinsaley.

The Development Plan includes chapters on relevant topics including housing, urban design, infrastructure, movement/transport, cycle pedestrian routes, landscape and development management standards. Relevant extracts include:

Rural Villages Policy –

- Promote attractive and vibrant villages.
- Ensure sustainable expansion and development at a level appropriate to and integrated with the existing village.
- Meet the socio-economic and civic aspirations of the community, whilst at the same time affording maximum environmental protection.
- Preserve the villages' distinctive character, heritage, amenity and local identity.

Section 12.5 Design Criteria for Rural Village and Rural Clusters - Village development shall be guided by the adopted Local Area Plans and Village Development Framework Plans.

The appeal site is not located within flood zones A or B of the Strategic Flood Risk Assessment for Fingal.

5.2. **National Guidelines**

Design Manual for Urban Roads and Streets (DMURS), issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government 2013.

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) - Department of the Environment, Heritage and Local Government 2009.

Traffic and Transport Assessment Guidelines National Roads Authority May 2014.

5.3. Natural Heritage Designations

The Baldoyle Bay SPA and Baldoyle Bay SAC are located approximately 1.6 kilometres to the south east of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

The proposed development is the subject of a first party appeal which concerns certain conditions and third parties who oppose the granting of permission.

6.1.1. First Party versus conditions.

The first party appeal for the removal of conditions 4 and 5 and the update of condition 2 to 100 houses and a crèche is made by Marlet Property Group Ltd on behalf of Crekav Trading GP Limited. The main points can be summarised as follows:

Condition 4

- The planning authority's assessment of the impacts associated with plots 59-62 on plots 51-54 was not based upon the analysis of the appropriate cross section. A revised site section drawing number ABP-sc(00)05) has been submitted as part of the appeal. Overlooking will not occur as separation distances are 22 metres. There will be a 3.1 metre difference in ground level between plots, this is as a result of dealing with a sloping site. Tree planting along rear boundaries will alleviate perceptions of overbearing appearance. Overshadowing was discounted by the planning authority as a material issue.
- Condition 4 runs contrary to government policy to deliver housing units – Rebuilding Ireland: Action Plan for Housing. The requirement to submit an additional planning application to amend certain units will be time consuming, threaten the financial viability of the project and hold up the delivery of homes.

Condition 5

- The unit on plot 50 will not impact upon the dwellings, Woodford and Churchview to the north. The separation distance between plot 50 and

existing dwellings is between 38.9 metres and 74.2 metres. The finished floor levels between the proposed dwelling and Woodford is 4.6 metres and 5.5 metres. Given the separation distances involved and the existing mature planting, overbearing appearance will not be a factor. In addition, given the deflected elevations, overlooking is not a concern.

- The condition is contrary to government policy and will cause delays to housing delivery.

The appellant concludes that either conditions 4 and 5 should be removed or if retained, can be dealt with as a point of detail under section 34(5) of the Planning and Development Act 2000 (as amended).

6.1.2. **Third Parties versus Decision**

A total of three third party appeals were received from properties immediately adjacent or close to the appeal site. The appellants broadly support the principle of well-designed residential development. The appeals present common themes comprising: lack of an LAP for Kinsaley, boundary treatments, traffic/infrastructure, density, impacts to residential amenity such as overlooking and overbearing appearance. Each third party appeal is summarised below:

Patrick and Ann-Marie Foy:

- In order to ensure the privacy associated with their property, tree planting associated with the boundary of 'Woodford' should be commenced as soon as site works begin. In addition, tree specimens should be taller and more mature in order to tackle their concerns of lack of privacy. This could be addressed by an additional condition of planning permission.
- The house design of plots 51-54 should be amended to single storey dwellings in order to reduce any possibility of overlooking.
- There is a need to assess the wider consequences of the proposed development on traffic congestion in the area. The Malahide Road is a busy route and there are already traffic tailbacks at the Feltrim Road junction to the north. Portmarnock Train station is not a viable alternative as there are no pedestrian or cycle facilities from Kinsaley to the station.

- The core strategy of the County Development Plan states that the village of Kinsaley will provide 125 houses over 10 years. In addition to a recent permission of 82 dwellings at Chapel Road, the Council have ignored their own core strategy. Taken together with recently constructed development, the proposal will bring the total number of houses on zoned land to 300 and up to 400.

John and Rachel Tarpey, appeal submission prepared by O'Neill Town Planning:

- The appellant's property is located adjacent to the appeal site and comprises their residence 'Churchview' and a childcare business. There are concerns that the construction phase of the development will impact upon the childcare business.
- Given the proximity of proposed dwellings, there will be negative impacts to their home in relation to overlooking and lack of privacy. The only measure to alleviate this overlooking and loss of privacy issue is to remove houses along the western boundary of the site and replace with public open space.
- There will be a lack of car parking spaces in the area as a result of additional traffic.
- The appellant sets out the County Development Plan (CDP) background to the village setting of the appeal site. The core strategy of the CDP states that the village of Kinsaley will provide 125 houses over 10 years. Taken together with recently constructed development, the proposal will bring the total number of houses on zoned land to 300. Permission should be refused for the proposed development because it will materially contravene the core strategy of the CDP. In addition to the absence of a sustainable road network, poor social infrastructure and lack of other public services including transport.
- The planning authority should have regard to Objective Z04 that deals with transitional zones. Such an assessment would have resulted in a more sensitive approach to the appellant's landholding.
- The appellant notes that the Council's planning report highlights the prematurity of the development pending the preparation of an LAP. The

overall development is unsustainable even though it allows the requirements of Local Objective 71 to be met.

John and Anne Tarpey:

- The resultant traffic generated from the proposed development and recently granted permission for 82 dwellings to the west will create problems for Chapel Road.
- The proposed dwellings will be appropriately 3 metres higher than the appellant's dwelling and lead to issues of overlooking.
- The construction phase of the development will lead to inconvenience such as an increased number of vehicles and road closures due to service connections.

6.2. Applicant Response

The applicant's response to the third party appeals can be summarised as follows

- The applicant consulted with **Patrick and Anne-Marie Foy** of 'Woodview', during the planning application stage and gathered data on the relevant ground levels. The data provided the evidence for the drawings submitted as additional information. Subsequently, changes to the layout were advised to the Foy's.
- In response to the Foy's concerns regarding the maturity of trees required along their boundary, the applicant is prepared to plant a mature boundary at this location.
- With regard to traffic congestion, specifically at the junction of Malahide Road and Chapel Road, the proposed development will fund an upgrade. The TIA submitted as additional information addressed in the context of the build out of zoned lands at Kinsaley. The results of the TIA show that a junction upgrade will solve issues. The proposed junction upgrade will be delivered in conjunction with conditions 7 and 8. In addition, the layout provides a future cycle way/pedestrian link which will ultimately provide connections to Portmarnock Railway Station.

- The impacts arising from plot numbers 51-54 relate only to the residential amenities afforded to future occupants. Any residential amenity impacts to existing dwellings to the north from plot 50 are not relevant given the separation distances involved.
- In relation to density, the applicant notes that the CDP core strategy refers to the delivery of 2,791 residential units over 80 hectares of zoned land within the Dublin Gateway's 'other settlements', of which Kinsaley forms part. The proposed development represents a sustainable village extension. The applicant reiterates the various design principles utilised to arrive at the final layout.
- The applicant responds with similar arguments already outlined above, in relation to the appeal of **John and Anne Tarpey**, 'The Bungalow'. However, given the location of the appellant's property further to the north west, there are no residential amenity impacts.
- The applicant responds with similar arguments to that of the Foy appeal, in relation to the appeal of **John and Rachel Tarpey**, 'Churchview'. With reference to the Tarpey's onsite childcare business, the applicant intends to follow best practice construction methods and operations. In addition, the applicant states that an increased number of homes may well provide additional business for the appellant. There will be no loss of car parking along Chapel Road or in Kinsaley Village.
- The applicant notes the absence of an LAP for Kinsaley but reiterates the content of their appeal submission by citing the need for housing and the improvements to road and sewerage infrastructure the development will provide.
- The applicant outlines accordance with the CDP core strategy and outlines the rationale for the low residential density of the site, which cannot be considered to be over-development of the site.

6.3. Planning Authority Response

The planning authority have prepared a response in relation to the first party appeal, summarised as follows:

- The planning application was assessed against the County Development Plan 2011-2017 and 2017-2023. The findings of the Planner's Report achieves the balance between the development of new housing as an extension of Kinsaley Village, safeguarding the future of a protected structure and preserving residential amenities of existing property.
- The rationale for conditions 4 and 5 remains unchanged by the cross section drawing submitted by the applicant.
- In the event that the planning authority's decision is upheld, it is requested that conditions 23, 42, 41 and 43 are included in the Board's decision.

6.4. Observations

Dublin Airport Authority (DAA). The DAA recognise that the site is located in the Outer Airport Noise Zone and notes the Fingal County Development Objective DA07. The DAA advise that in the event of a grant of permission, condition 20 of the Decision to Grant of Fingal County Council should be carried forward.

Deputy Darragh O'Brien raises concern at the scale of the development in the context of the village and rural setting. There is also concern in relation to the impact of the development on the existing roads infrastructure. Specifically, the junctions at Baskin Lane and Chapel Road with the Malahide Road.

Fingal County Childcare Committee. The childcare committee states that the natural increase in population and demand for childcare places has increased in the Kinsaley DED area. The demand for childcare spaces in Kinsaley may therefore exceed supply.

6.5. Further Responses

A further response has been submitted by O'Neill Town Planning on behalf of John and Rachel Tarpey of 'Churchview. The appellant reiterates their concerns as submitted in the initial grounds of appeal, together with a request that conditions 4

and 5 be retained if permission is granted. The appellant supports the issues raised by other third parties and confirms their belief that the proposed development goes against the core strategy of the County Development Plan.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The Board may wish to note a current appeal on lands adjacent to the appeal site, An Bord Pleanála reference PL06F.248584 refers.

7.2. The key issue before the Board as I see it, is the lack of key infrastructure in the vicinity of the site and the lack of a clear vision or strategy for Kinsaley Village. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Planning Context and Core Strategy
- Infrastructure
- Residential Amenity
- Construction Phase
- First Party Appeal against Conditions
- Other Issues
- Appropriate Assessment

7.3. Planning Context and Core Strategy

7.3.1. Third party appeals have raised the issue of a lack of a Local Area Plan (LAP) for Kinsaley Village. Concern is expressed that the proposed development would contravene the County Development Plan because the land use zoning requires the production of an LAP.

7.3.2. The appeal site is located in the grounds of a protected structure, Kinsaley House. The house and farm comprises agricultural farmland on the eastern approach to Kinsaley Village. In the past, the nucleus of the original village was little more than a terrace of single storey cottages, a small school and church at the intersection of the

Malahide Road and Chapel Road. The wider context is rural with large country houses and demesne lands. The village has been transformed over time, most significantly north of Chapel Road, with new housing estates at Emsworth Park, Coopers Wood, Abbey Well and Saint Olave's.

- 7.3.3. There is no current Local Area Plan (LAP) for Kinsaley. Pre-draft consultation for a Kinsealy LAP was initiated in 2013, but no plan was published. In addition, references are made to a 2006 LAP, but I have no information to hand in relation to that document. With reference to the Fingal County Development Plan 2017-2023, the relevant land use zoning applicable to the appeal site is the Kinsealy RV zoning objective. The RV zoning seeks to protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved local area plan and the availability of physical and community infrastructure. In addition, the site is subject to a Local Objective 71 to ensure any development in the area integrates the protected structure Kinsaley House in the first phase of development. There are also local objectives to improve junctions at Malahide Road/Chapel Lane (67) and Malahide Road/Baskin Lane (69).
- 7.3.4. It is clear that the current Development Plan zoning objective for the appeal site and the wider environs of Kinsaley requires the production of an LAP to guide development. The planning authority granted permission for the proposed development in the context of the new Development Plan. In addition, I note that the zoning objective seeks the growth of Kinsaley alongside the availability of physical and community infrastructure. Development Plan objectives are viewed in the context of the overarching Core Strategy; Section 2.5 sets out housing and population targets. Table 2.8 sets out the residential capacity for the settlements in the county, Kinsaley is classified as a Consolidation Area and grouped together with Charlestown & Meakstown, Santry & Ballymun, Balgriffin & Belcamp, and Baskin. The land supply for these settlements is 80 hectares and the potential number of units is 2,791 across a timeframe greater than the lifetime of the Plan and constrained by lack of physical and community infrastructure. The Core Strategy warns that future development of Fingal's villages needs careful consideration. So that rapid expansion does not result in pressure on services, the environment and the creation of unsustainable travel patterns.

- 7.3.5. The absence of an LAP for the area is regrettable and prevents a coordinated approach to the sustainable expansion of Kinsaley Village. In addition, the zoning objective for the site seeks protection and promotion of the village, whilst the core strategy provides capacity for additional housing. There are also policy statements in relation to rural Fingal which provide cautionary advice to the growth of villages. It is evident to me that there is no clear or detailed strategy for the growth of Kinsaley.
- 7.3.6. On balance, I consider that despite the lack of an LAP for Kinsaley Village, there are a number of site specific Local Objectives that allows consideration for development of the appeal site. However, the consideration of this and other individual planning applications is carried out without an overall plan to coordinate development. The proposal before the Board will achieve the integration of a protected structure, Local Objective 71. In addition, the junction of Chapel Lane with the Malahide Road will be improved, Local Objective 67. Given the foregoing, I do not consider that the decision of the planning authority to grant permission materially contravened the County Development Plan. However, I am concerned that the complete lack of a coordinated planning approach to Kinsaley will result in unsustainable travel patterns and put pressure on existing services, such as they are.

7.4. **Infrastructure**

- 7.4.1. **Traffic** - Third parties have raised concerns with regard to the proposed development and its impact upon the existing traffic congestion associated with Kinsaley Village, specifically traffic volumes at the Chapel Road/Malahide Road junction. There are also concerns that there is a lack of pedestrian or cycle connections between the site and Portmarnock Train station. There is not a viable alternative to car based transport. The impact upon car parking in the village is also highlighted as is a lack of pedestrian facilities in the area.
- 7.4.2. As requested by the planning authority, the applicant submitted a revised Traffic Impact Assessment (TIA) to take account of most zoned land at Kinsaley and specifically address junction deficiencies at Malahide Road and Chapel Road. The revised TIA made a number of assumptions; new junction design in accordance with the Design Manual for Roads and Bridges (DMRB), notes a Development Plan Road Proposal to bypass Kinsaley and excludes zoned land west of the Malahide Road. With reference to junction design and signalised layouts, each scenario was

modelled to take account of negligible pedestrian demand and no regard was had to the Design Manual for Urban Roads and Streets.

- 7.4.3. The conclusions reached by the TIA, point to deficiencies in the existing junction layout and capacity issues. Consequently, to the west of the appeal site a signalised junction is proposed that will alleviate current problems, facilitate the proposed development and an adjacent development of 82 dwellings. However, with partial build out of the zoned lands (300 units), maximum capacity is reached during the morning peak period. The TIA concludes that proposed junction upgrades will initially alleviate queuing issues, however, a long term solution can only be achieved with the construction of a relief road for Kinsaley Village.
- 7.4.4. The Malahide Road/Chapel Road junction redesign approved by the planning authority has raised issues for an adjacent landowner. Specifically, a planning application submission from a landowner adjacent to the redesigned junction raised concerns about the safety of proposed improvements. The landowner states that a safer approach to the design of the junction could include a portion of their lands. In addition, the proposed signalisation of the junction does not take into account any development on lands to the west of the Malahide Road.
- 7.4.5. As the TIA has demonstrated and together with the concerns of the planning authority and appellants, there is little doubt that traffic congestion is a problem for Kinsaley Village now. Any future residential development will inevitably add to current problems. Without adequate pedestrian facilities, there is very little alternative for current or future residents to avail of, in terms of walking, cycling and accessing bus or rail services. I have not seen detailed road improvement proposals for the wider area, other than Local Objectives regarding junction assessment and improvement works and broad Roads Proposals on the County Development Plan maps. There is no Local Area Plan to coordinate and plan for road and footpath improvements.
- 7.4.6. Kinsaley Village is very poorly served by pedestrian facilities. There are no footpaths from the appeal site to the Village. A footpath exists from the vehicular entrance to Coopers Wood, 100 metres to the west and on the other side of the road from the appeal site. A single footpath is then provided along the northern side of the road towards the church and neighbourhood centre at St Olave's. Though the appeal site

is located approximately 1.7 kilometres from Portmarnock DART and Suburban Rail Station, there is no suitable or safe walking or cycling route. With reference to the existing Malahide Road/Chapel Road junction, a signalised pedestrian crossing has been installed across the Malahide Road opposite the church, it was not operating on the day of my site visit. In addition, I observed frequent queuing events at all approaches to Malahide Road/Chapel Road junction during my site visit which was conducted in the morning and afternoon period, outside peak commuting hours.

- 7.4.7. To the front of the appeal site, Chapel Road is rural in character with mature trees and hedging to the back of narrow grass verges. The site is located within the 60kph speed zone. I did not observe a signposted 50kph zone on the Chapel Road approach to the village centre. I perceived traffic speeds and volumes on Chapel Road to be high.
- 7.4.8. Drawings indicate an intention to connect the appeal site to Greenbelt zoned lands to the west via a cycleway/footpath. However, there has been no consideration of a pedestrian or vehicular linkage with a current appeal site for 82 residential units to the north west, ABP reference PL06F.248584 refers. The proposed development does not provide a public footpath to the front of the site. Even if a footpath were to be provided along the site frontage, it would be dislocated from the village centre and remote from other pedestrian facilities.
- 7.4.9. The planning authority are satisfied that the deficiencies of the Malahide Road/Chapel Road junction can be addressed by conditions 7, 8 and 41. The imposition of these conditions are not subject to the appeal. The restrictions placed on the applicant concerning the delivery of an improved junction will tackle traffic congestion but they will not resolve wider infrastructural deficits such as the lack of safe pedestrian facilities.
- 7.4.10. In my opinion, the signalisation of the Malahide Road/Chapel Road junction will alleviate traffic problems in the short term. However, I am not satisfied that the lack of pedestrian facilities has been addressed by either the applicant or the planning authority. The County Development Plan is clear that the promotion of vibrant communities should be in accordance with the availability of physical and community infrastructure. The lack of a coordinated approach to planning the future of Kinsaley Village will result in the lack of infrastructural basics, such as footpaths. This sort of

approach to the growth and development of Kinsaley would be at odds with the core strategy of the Development Plan.

- 7.4.11. **Wastewater Provision** – A water services report prepared by the applicant outlines how the development will be serviced with regard to wastewater. It is the applicant's intention to phase development, with the first 50 units to be served via existing infrastructure, subject to a capacity upgrade at Floraville Pump Station and remediation works to foul lines. The remaining units will coincide with plans for a strategic sewerage pumping station on the applicant's land. I have seen correspondence from Irish Water (IW) that agrees with this approach and IW state that plans are progressing in relation to a strategic pumping station for all the Kinsaley Village zoned lands and a planning application will follow in due course.
- 7.4.12. I have not seen any detailed plans for a new strategic pumping station for Kinsaley Village; a planning permission has neither been sought or granted. There is no information on this file which provides an official timeline for delivery of a strategic pumping station. Irish Water have stated that there are issues in the local network and a new pumping station will address these and replace the existing Floraville Pumping Station.
- 7.4.13. Given the lack of any official information with regard to the timeframe for a strategic pumping station for Kinsaley Village, it would not be appropriate, in my view, to grant permission with a condition that ties the completion of half of the development to the construction and commissioning of strategic infrastructure for which there are no permitted plans. The Board should note that Irish Water raise no objection in principle to the applicant's overall development proposal. In addition, should the Board consider infrastructure and wastewater services a new issue, cross circulation to relevant parties may be warranted.
- 7.4.14. In summary, there are no approved plans for either the traffic signalisation of the Malahide Road/Chapel Road junction or the provision of a strategic sewerage pumping station for Kinsaley Village. These are significant infrastructural deficiencies that cannot be ignored and may require third party involvement. I do not see how the delivery of key infrastructure can be satisfactorily timed with the construction and occupation of a large proportion of new housing without a coordinated planning approach. Specifically, when the completion of the proposed housing development is

not envisaged by the applicant for up to ten years. For infrastructural deficit reasons, I consider that permission should be refused.

7.5. Residential Amenity

- 7.5.1. There are three dwellings located off the north western boundary of the appeal site. Each of the property owners have cited issues to do with overlooking and overbearing appearance in their grounds of appeal. In broad terms, residents believe that the proximity of dwellings along the western boundary of the appeal site will result a loss of privacy through overlooking and a sense of overbearing appearance. I take each of these residential amenity issues in turn and assess with regard to each property.
- 7.5.2. It should be noted that the planning authority omitted House type D1 on plot 50 and required design amendments to other units in order to preserve the existing residential amenities of neighbouring residents and ensure a satisfactory level of amenity for future residents. Moreover, the applicant insists that further information design amendments addressed all residential amenity concerns and that all units should remain. The applicant on appeal, has submitted additional cross sections which detail separation distances and the relationship between changes in level. I consider that the drawings submitted by the applicant are sufficient to allow me to assess the potential for adverse impacts upon residential amenity as it relates to existing and proposed dwellings.
- 7.5.3. **Overlooking** – The occupants of ‘Churchview’, a single storey bungalow on a large garden plot to the north west of the appeal site object to the proximity of proposed housing and are concerned that an undue level of overlooking will result.
- 7.5.4. The first floor windows associated with house type J (plots 4, 5, 6 and 7) along the shared boundary with ‘Churchview’ appear to serve bathrooms and a landing. The floor plans submitted by the applicant show bathrooms and a landing window along the rear elevation. However, when the floorplans are related to the overall layout, there appears to be a mismatch. I take this to be a drawing error and should be corrected by the applicant. Bearing that in mind, I see no reason to consider that overlooking will result from these windows, if obscured glazing is fitted. I note that the nearest unit (plot 4) is 15.9 metres from the shared boundary and in excess of 25

metres from the rear elevation of 'Churchview'. In addition, I note that the garden level of plot 4 match those associated with the garden levels of 'Churchview'. Given the separation distances involved and the use of obscured glazing, overlooking will not occur. In relation to proposed housing on plots 50-54, these units are in excess of 70 metres away. Despite being located on higher ground I anticipate no issues of overlooking.

- 7.5.5. The property known as 'Woodford' is located along the northern boundary of the western end of the appeal site. A roadway and significant amount of planting is proposed along this boundary. I note that the applicant in their response to third party appeals has conceded that proposed tree planting along boundaries could be of more mature trees greater in height. The difference in height of finished floor levels between 'Woodford' and plot 52 is 4.1 metres and the separation distance is 45 metres. Notwithstanding the change in levels, given the separation distance of 45 metres and significant tree planting I do not consider that any adverse levels of overlooking will result.
- 7.5.6. The property known as the 'Bungalow' is located beyond 'Woodford', along Chapel Road. The 'Bungalow' is located a considerable distance from planned housing and to the north of existing houses. I anticipate no adverse residential amenity impacts to this property.
- 7.5.7. I find that the separation distance of 22 metres between opposing first floor windows set out in the County Development Plan has been maintained or exceeded by the applicant in the design and layout of the proposed housing scheme. I consider that overlooking of adjacent residential development has been satisfactorily dealt with.
- 7.5.8. **Overbearing appearance** – Proposed housing in the vicinity of 'Churchview' are between 7.2 metres and 8.8 metres in height. The closest dwelling, house type C on plot 1 is 8.8 metres in height and located 12.5 metres from the gable of 'Churchview' and 7 metres forward of the building line of the existing bungalow. On the layout plan plot 1 is shown as having a hipped roof profile, however, the hipped roof profile is not replicated on plans initially submitted with the application. The applicant should be required to clarify the roof profile of house type C on plot 1. There are no adverse impacts to residential amenity as a result of this house type and at this location.

- 7.5.9. Proposed houses on plots 4-7 were amended by further information and are located between 30 and 50 metres from the rear elevation of 'Churchview'. These houses range from 7.2 to 7.6 metres in height. I note that ground levels rise from the rear elevation of 'Churchview' to the boundary with the appeal site. Even so, given the separation distances involved and the moderate height of proposed dwellings, I do not anticipate any adverse impact to the residential amenities of either 'Churchview' or 'Woodford', from plots 4-7 as a result of overbearing appearance.
- 7.5.10. House type E1 is dormer in style, located on plots 51-54 and 7.94 metres in height, the separation distance from 'Woodford' is over 45 metres. I note that the ground level rises from the rear elevation of 'Woodford' to the boundary of the site, the difference in finished floor levels (proposed and existing dwelling) is shown on drawing number ABP-sc(00)05 as 4.59 metres. The difference in the uppermost portion of the rear garden and the proposed road level is given as 2.93 metres. Again, given the proposed separation distances, existing and planned boundary treatments and taking into account the change in ground level, no adverse overbearing impact will affect 'Woodford' or 'Churchview'. Likewise, house type D1 on plot 50 is sufficiently distant from both properties so as to have little or no overbearing impact.
- 7.5.11. In summary, proposed houses are located in excess of 25 metres from the rear elevation of existing dwellings. A significant distance has been maintained between existing properties and proposed dwellings to ensure the maintenance of residential amenity. Existing boundary planting will be strengthened with additional and more mature tree planting. In addition, the proposed houses are of a moderate height, scale and design. Given all of these factors, I do not anticipate that the residential amenities of existing properties in the vicinity will be adversely impacted upon.

7.6. Construction Phase

- 7.6.1. The third party appellants have raised concerns at the construction phase of the development. Disruption will result from the increase in construction traffic and the connection of piped services on the public road. There are specific issues in relation to the operation of a childcare business at 'Churchview'. The applicant has prepared a revised Project Construction and Demolition Waste Management Plan (PCDWMP) that addresses issues such as working hours, noise and dust control.

7.6.2. The degree and duration of inconvenience to local residents will require careful planning and consideration on the behalf of the developer. In this regard construction practices in accordance with the revised PCDWMP should ensure residential amenities are not adversely impacted upon during the construction phase of the development. The construction phase of the development can be adequately dealt with by appropriate conditions.

7.7. **First Party Appeal**

7.7.1. The applicant has appealed against condition 4 and 5.

7.7.2. Condition 4 omits four units on plots 59-62 and invites either a single or dormer style dwellings as a future planning application. This is to protect the residential amenity for future residents in terms of overbearing appearance. The applicant contends that the planning authority did not base their analysis on an appropriate cross section drawing. A cross section has been submitted as part of the grounds of appeal, drawing number ABP-sc(00)05 section K-K.

7.7.3. Drawing number ABP-sc(00)05 shows a cross section between plot 52 and 61. The level change between the finished floor levels of each dwelling will be 3.1 metres. The change in height between opposing units is managed by stepped garden levels. The dividing boundary wall as viewed from the downslope units (51-54) will be 3.4 metres in height. House type E1 is 7.94 metres in height with a dormer appearance to the rear and the separation distance between opposing rear elevations is 22 metres. Even though there will be a level change between rear elevations of 3.1 metres, I do not anticipate that there will be a perception of overbearing appearance. This is due to the moderate height and dormer style of the proposed dwellings combined with a separation distance of 22 metres. In my mind, overbearing appearance will not be an issue which would adversely impact the residential amenities of future occupants, condition 4 should be omitted.

7.7.4. Condition 5 requires the omission of house type D1 on plot 50 in favour of a revised house type set back two metres southwards on the site. The revised house type should be the subject of a new planning application. The applicant seeks to retain the proposed house on plot 50 and cites the separation distance and revised planting as adequate to protect the amenities of neighbouring properties.

- 7.7.5. The proposed house on plot 50 is 7.88 metres in height and 52 metres away from the nearest dwelling to the north, 'Woodford'. The finished floor level of the proposed house on plot 50 is 4.6 metres above that of 'Woodford' to the north. There are mature trees and hedging on the boundary between the appeal site and properties to the north.
- 7.7.6. In the interests of clarity, I note that condition 5 requires the omission of house type D1 in favour of revised house type moved southwards by 2 metres on plot 50. In addition, I note that condition 16(f) requires the first floor elevation of house type D1 on plot 50 to be recessed southwards by 2 metres together with roof profile amendments. Both conditions achieve broadly similar outcomes.
- 7.7.7. In my view, the height and scale of house type D1 on plot 50 is not excessively large or imposing. The separation distance between the nearest existing dwelling will be 52 metres. In addition, there are existing trees and hedging along the boundary between properties and the applicant is willing to plant more mature trees to bolster screening. Given the separation distance between dwellings, the existing and planned boundary treatment and the moderate scale of house type D1 on plot 50, I see no reason to either omit and reposition or re-design its northern elevation. With reference to condition 16(f), roof profile changes and the indentation of the first floor southwards by 2 metres is unnecessary, given the scale of the separation distances involved. I consider that condition 5 and condition 16(f) should be omitted.

7.8. Other Issues

- 7.8.1. The Dublin Airport Authority (DAA) have lodged an observation in relation to the appeal site and its location close to Dublin Airport. In the event of a grant of permission the DAA request that condition 20 of the Decision to Grant of Fingal County Council should be carried forward. Condition 20 relates to the findings of a noise assessment report prepared by AV Acoustics and the recommendation to include noise mitigation measures in the construction of the dwellings. In light of the observations of the DAA and the findings of the noise assessment report prepared by the applicant, I consider it appropriate to require the applicant to carry out relevant actions to ensure the future occupants of the development are not adversely impacted upon by noise.

7.9. Appropriate Assessment

- 7.9.1. The nearest Natura 2000 sites to the proposed development are the Baldoyle Bay SPA (site code 004016) and Baldoyle Bay SAC (site code 000199), which are located approximately 1.6 kilometres to the south east of the appeal site. The Sluice River is located close to the northern boundary of the appeal site, across a public road. The river flows in a south easterly direction and drains to the Baldoyle Bay SAC and SPA.
- 7.9.2. The planning application was supported by an Appropriate Assessment Screening Report prepared by Scott Cawley. The report states that there are no plant species on the site that are considered rare or endangered. There are three running water ditches on the site, that could provide pathways to Natura 2000 sites. There are no habitats of value on the site. The report concludes that significant effects are not likely to arise, either alone or in combination with other plans/projects to Natura 2000 areas in the vicinity. There is no requirement for a full Appropriate Assessment of the project. In addition, the relevant Council official arrived at the same conclusion as for the requirements in relation to Appropriate Assessment.
- 7.9.3. I have examined the reports of the Council and the applicant in relation to Appropriate Assessment. Despite drafting errors in Scott Cawley's report, for the most part I am in agreement with the findings and conclusions insofar as Appropriate Assessment Screening of the project is concerned. I do note, however, the location of the Sluice River and the fact that it drains to a Natura 2000 site. The direction of flow is towards the Baldoyle Bay SPA and Baldoyle Bay SAC. Having regard to the Source-Pathway-Receptor model, there will not be a direct pathway between the proposed development and the Natura 2000 site after construction. I note that significant surface water attenuation is proposed within the site by way of underground attenuation tank with connection to existing piped services. In addition, given the distance from the Natura sites and the proposed connection to existing foul network the proposal would not have any adverse effect on the conservation objectives of these sites.
- 7.9.4. Having regard to the agricultural nature of the appeal site and the residential form of the proposed development adjacent to an established village environment, 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 European site, in view of the sites Conservation Objectives, a Stage 2 Appropriate Assessment and submission of an NIS is not therefore required.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. The proposed development is situated on land zoned RV in the Fingal County Development Plan 2017-2023, where the Core Strategy seeks to continue to develop rural villages at an incremental pace based on the delivery of social, physical and transport infrastructure and services. Having regard to the peripheral location of the site within the development limits of Kinsaley Village and to the undeveloped nature of similarly zoned, adjoining lands to the west of the site, it is considered that (a) in the absence of an agreed overall layout plan for these and adjacent lands, which would determine the need for and co-ordinate the provision of access roads, pedestrian routes, public open spaces and community facilities, the proposed development would represent a piecemeal approach to the sustainable development of the area and would, thereby, conflict with the stated policies of the planning authority.

(b) in the absence of appropriate links to the Village centre including footpaths and public lighting the proposed development would result in a substandard form of development for future residents and the creation of unsustainable travel patterns.

Accordingly, it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

2. A large proportion of the development is dependent on the delivery of a Strategic Pumping Station for all zoned land at Kinsaley, for which there is no planning permission. There is no timeline for the delivery of the pumping station for Kinsaley. It is considered that the proposed development would be premature by reference to the existing deficiency in the provision of sewerage facilities servicing the area of the proposed development and the period within which the constraints involved may reasonably be expected to cease. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

Stephen Rhys Thomas
Planning Inspector

4 September 2017