



An
Bord
Pleanála

Inspector's Report ABP-300045-17

Development	Construction of 14 dwellings, consisting of 6 no. five bedroom dormer dwellings with integrated garage, 4 no. four bedroom two storey dwellings, 4 no. three bedroom bungalows and associated site works.
Location	Lands west of 1-10 The Orchard, Oldtown, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0357
Applicant(s)	Sean McCusker
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	<ol style="list-style-type: none">1. Conor Moran2. Patricia Brennan
Observer(s)	None
Date of Site Inspection	31 st January 2018
Inspector	Niall Haverty

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 3.191 ha, is located on lands to the west and south west of 'The Orchard', an existing cul-de-sac housing development of detached dormer style dwellings in Oldtown, North County Dublin. The site is irregular in shape and currently forms part of a larger apple orchard, together with lands to the north of 'The Orchard' estate which are also indicated as being within the applicant's control. The site is relatively level, with a slight fall from south west to north east. The site is bounded to the east by sports grounds (Wild Geese GFC), and to the north, south and west by agricultural lands. As well as the apple orchard within the appeal site, the boundaries of the appeal site are generally comprised of dense hedgerows and trees.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of 14 dwellings, consisting of:
- 6 No. five-bedroom two storey dormer-style dwellings with integrated garage.
 - 4 No. four-bedroom two storey dormer-style dwellings.
 - 4 No. three-bedroom bungalows.
 - Associated site works.
- 2.2. The proposed houses generally have nap plaster finishes, tiled roofs and concrete cills, while the five-bedroom houses also feature a projecting brick-clad gable element and bay window on the front elevation, which is similar in design to the existing houses in The Orchard estate.
- 2.3. The planning application, as supplemented by the further information submitted, included an Engineering Report, Outline Construction Management Plan, Habitats Directive Screening and Ecological Assessment, Arboricultural Report, Landscape Report, construction access drawings, taking in charge map.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Fingal County Council decided to grant planning permission, and the following summarised Conditions are noted:

- C7(i): No construction traffic shall use The Orchard estate road. Access shall be via a temporary access as indicated on MTW drawing 2941-MV-002. This temporary access road shall be decommissioned within one month of completion of the development.
- C7(ii): Construction Plan providing details of the traffic management for construction vehicles using the temporary access to be provided.
- C8: Landscaping, tree protection and boundary treatment requirements.
- C10: Area of open space to be reserved for such use, and landscaped prior to occupation of any dwellings.
- C11: Site compounds and storage to be agreed. No storage on open space.
- C17: Ecological recommendations contained in Appendix 1 of Habitats Directive Screening and Ecological Assessment to be complied with.
- C24: Contribution in lieu of 0.09 ha of public open space.
- C25: Bond.
- C26: Development contribution.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's final report can be summarised as follows:

- Proposed development accords with the zoning objective for the site.
- Size of dwellings, rooms, separation distances, and quantum of private amenity space accord with Development Plan requirements.
- Provision of 14% of site as public open space accords with Objective DMS57B. No Class 1 public open space has been provided and a levy should be applied in lieu of its provision.

- Proposal accords with Sustainable Residential Development in Urban Areas and Quality Housing for Sustainable Communities guidelines.
- The site comprises the majority of Development Area 1 as set out in the Oldtown LAP and is acceptable in terms of the number of dwellings.
- Layout and design of proposed development is in accordance with the Village Design Framework Plan and LAP.
- While much of the vegetation is to be removed, the applicant has incorporated a significant amount into the proposal.
- Provision for future linkage has been provided to the south of the site in the form of a footpath which could tie into a future proposal for Development Area 2.
- Applicant has not submitted an Urban Design Statement; however, the proposal accords with the various design criteria as set out under DMS03.
- There are no serviced sites proposed within the scheme, however this is not a mandatory objective of the LAP.
- No undue impacts on residential amenity are anticipated.
- Proposed development would not unduly impact on visual amenity. Design, scale and layout are consistent with LAP and VDFP.
- The Oldtown LAP provides that Development Area 1 is to be served by 2 vehicular access, one to the south of the GAA grounds and one to the north of The Orchard housing development. The access to the south is through Development Area 2 and is outside of the applicants control.
- During the preparation of the Oldtown LAP a strip of land to the north of The Orchard, i.e. the location of the access proposed under PL06F.214070 (Reg. Ref. F07A/0593) was rezoned to RV to allow for access for Development Area 1.
- Both planning applications on the site were made under the previous LAP.
- Fingal Development Plan provides that access to the application site would be from the location north of The Orchard. Local Objective 20 pertains.

- The Orchard development has been taken in charge since 2014, thus post-dating the LAP. As the road is now a public road, its use to serve the 14 proposed dwellings is acceptable and preferable to having two access points in close proximity.
- Heritage Officer concurred with findings of the Ecological Report and the Appropriate Assessment Screening.
- Details in respect of construction traffic are unclear. A construction plan should be submitted detailing construction traffic management measures.
- Proposed taking-in-charge map is considered acceptable.
- Proposed 1.8m high fence to side of houses 1, 2 and 9 should be replaced with 1.8m high stone-faced wall. Timber post and rail fence should be provided at interfaces with existing hedgerows.

3.3. Other Technical Reports

3.3.1. **Water Services:** No objection, subject to conditions.

3.3.2. **Transportation Department:** No objection, subject to conditions.

3.3.3. **Parks Planning Section:** No objection, subject to conditions.

3.4. Prescribed Bodies

3.4.1. **Irish Water:** No objection.

3.5. Third Party Observations

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

- Strip of land to north of The Orchard no longer needs to be zoned RV1.
- Any access through The Orchard should be limited to 14 houses.
- Taking-in-charge issues.
- Traffic calming required along new access road, due to lack of houses along its length.

4.0 Planning History

4.1. Appeal Site

4.1.1. **ABP Ref. PL06F.224687 (Reg. Ref. F07A/0593):** Permission refused for 28 No. dwellings and associated works. The Board's reasons for refusal were as follows:

1. It is the policy of the Oldtown Local Area Plan 2004 (section 8.3) to permit a maximum of 100 new dwellings within the development boundary of the village within the period of the plan. Having regard to the extent of development that has been permitted under planning permissions granted to date, it is considered that the proposed development, notwithstanding the residential zoning objective for the site, would conflict with this Local Area Plan policy and would exceed the phasing of population growth of Oldtown as envisaged in the Local Area Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The current Oldtown Local Area Plan indicated a link to the proposed development lands from the Naul Road to the south. The proposed vehicular access to north east of the Orchard estate would be located on lands outside the defined village boundary and would result in a development which, though geographically close to the village centre, would be poorly connected to it. The proposed development would conflict with the provisions of the Local Area Plan as set out in section 8.3, in respect of strengthening and augmenting the village core and would be premature pending the determination by the planning authority of road layout for the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to the location of the proposed access point onto the public road, in close proximity to the entrance to the existing Orchard housing development, and to the substandard sight lines available at the proposed junction, it is considered that the proposed development would endanger public safety by reason of a traffic hazard.

4.1.2. **ABP Ref. PL06F.214070 (Reg. Ref. F04A/1846):** Permission refused for 28 No. dwellings for one reason:

1. The current Oldtown Local Area Plan indicated a link to the proposed development lands from the Naul Road to the south. The proposed sole vehicular access through the Orchard estate to the north east would result in a development which, though physically close to the village centre, would be poorly connected to it. The proposed development would materially contravene the provisions of the Local Area Plan in respect of strengthening and augmenting the village core and would be premature pending the determination by the planning authority of road layout for the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

4.2. **Surrounding Area**

4.2.1. I am not aware of any recent relevant planning history in the surrounding area.

5.0 **Policy Context**

5.1. **Fingal Development Plan 2017-2023**

5.1.1. The appeal site is zoned 'Rural Village', RV, under the Fingal Development Plan 2017-23. This zoning objective 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.

5.1.2. Chapter 5 described Oldtown as follows:

“Oldtown is a small attractive rural village located approximately 10km north of Swords and 6km east of Asbourne, in Co. Meath. The R122 regional road passes through the village connecting Oldtown southwards to Swords, and northwards to The Naul. The Daws River meanders through the village. Oldtown is a key village centre in the Hinterland area and is part of a network of rural villages which function as small service centres for their surrounding agricultural hinterland. It has a distinctive village character and strong identity

with traditional buildings and a defined street network. This is reflected in the ACA designation for the village.

The heart of the village has undergone considerable redevelopment over recent years with the addition of stone faced terraced townhouses enhancing the streetscape. Oldtown Local Hall, a distinctive corrugated structure is located in the village centre. The Wild Geese GAA club grounds and clubhouse are located just north of the village.

Oldtown Village is located within a reasonable walking distance of Ballyboghil via the R129. Fingal County Council will support the development of new initiatives such as an off road-walking trail between these two attractive villages, both for the enjoyment of local people and as an attractor for visitors to the area, promoting greater community interaction and local economic development. Oldtown has a population of approximately 450 people. A Local Area Plan for Oldtown was adopted on 11th June 2012.”

5.1.3. The following Local Objectives relate to the appeal site:

20. Provide for vehicular and pedestrian access to the RV lands to the rear of The Orchard housing estate.
21. Provide for pedestrian access from new development through the RV lands to the village core.

5.1.4. The following Objectives are noted:

- **PM18:** Implement the existing Village Design Frameworks prepared as part of the Local Area Plans for Ballyboghil, Garristown, Naul, Oldtown, Rivermeade and Rowlestown.
- **RF16:** Ensure Rural Villages are developed in accordance with adopted Local Area Plans and accompanying Village Development Framework Plans.
- **RF17:** Promote local distinctiveness and character through Village Development Framework Plans prepared as part of the Local Area Plan for each of the Rural Villages. The VDFPs will set out comprehensive guidelines for the urban design for all the villages.

5.1.5. Development management standards for residential development are set out in Section 12.4 of the Development Plan.

5.2. Oldtown Local Area Plan 2012-2022

5.2.1. The Oldtown Local Area Plan was adopted in 2012 and subsequently extended until 2022.

5.2.2. Section 4.7 sets out a series of general village design principles. These include:

- A 'Site Design Statement' shall accompany all planning applications within the village boundary, the components of which are detailed in the Village Development Framework Plan for the village.
- The layout and architectural design of new buildings whether innovative, contemporary or more traditional in form shall respect the existing village scale and form.
- The scale and type of new building shall respect the character of the local vernacular architecture, two storey and single storey construction, the use of indigenous materials, simple design, moderate building depth, gabled pitched, slated roofs, vertical door and window openings, cement plaster, rough cast render, wet dash or stone to external wall finishes.
- Suburban type development shall be avoided.
- The public realm shall be formed by quality buildings and paving and landscaping shall be characterised by a high standard of quality finishes and treatments.
- All new street and estate names shall be in Irish or bilingual and shall reflect meaningful local names or references.
- New development shall provide for pedestrian linkages to open spaces, the village centre and public buildings.
- High quality boundary treatment shall be required in all development proposals, including the retention of existing stone walls and hedgerows where practicable and the use of natural stone walling, trees and hedgerows where appropriate.
- New development shall seek to preserve and retain existing quality trees, hedgerows which are of amenity value.

- All development shall be carried out in accordance with the highest environmental standards, having regard to water and air quality, noise standards and the protection of flora and fauna.

5.2.3. Section 5.1 relates to Development Area 1, which extends to 4.7 ha with a yield of circa 14 units. It states:

“This development area is located to the north of the village on lands previously cultivated as an orchard. It is bounded to the east by the Wild Geese GAA grounds and a small housing development known as The Orchard. A cluster of circa 14 no. detached family homes is proposed, taking vehicular access off the Keogh’s Cross road. These sites could be developed as private serviced sites. The retention of a significant amount of existing trees on the sites offers an attractive concept of “living in an orchard”. A pedestrian link through Development Area 2 back to the village centre and National School is also proposed.

It is an objective of this LAP that proposed development shall accord with the following development parameters:

- The loss of the existing orchard trees shall be mitigated by retaining a 10m margin of trees at the edge of the site, incorporated into individual gardens and small stand of existing trees in a central open space -creating a sense of “houses in an orchard”
- Houses shall be either, two storey, single storey or dormer in design.
- A minimum of 4 no. single storey dwellings, suitable for the elderly, shall be provided.
- All development shall be designed and orientated to minimise overlooking or visual intrusion to existing properties adjoining/nearby.
- The scale and finishes shall accord with the village design principles set out at 4.7 above.
- Pedestrian/cycle access routes, permitting a high degree of permeability, shall be provided, throughout the development area, linking this development area with the Development Area 2 adjoining to the south and onwards to the village centre, and to the local National School.

- Boundary treatment to all individual house sites shall include the use of native hedgerows and tree species. Details shall be agreed at planning application stage.
- Two vehicular access points are proposed, one south of the GAA grounds and one north of The Orchard, along the Keogh's Cross road.
- Provision of adequate off-street parking.

5.2.4. In respect of density, Section 5.5 states:

“This LAP proposes low density development, similar to those pertaining in the village. Whilst these are lower than the generic densities suggested in the DOECLG guidelines, the recommended densities are considered appropriate for the village of Oldtown which is a rural village where the car is the dominant form of transport and where employment, community and education and retail facilities within the village are limited. The densities proposed, recognises Oldtown's essential function to provide for local needs, its remoteness from public transport corridors, the need to avoid commuter driven development, together with the detailed site assessment undertaken in the Oldtown Village Development Framework Plan.”

5.2.5. Section 6.1 states that the LAP proposes a variety of house types comprising a mix of single and two-storey, detached and semi-detached housing, including houses designed for the elderly of the community. Proposals for sheltered housing will also be considered.

5.2.6. Section 6.2 states that within Development Areas 1, 2, and 3, consideration will be given to the coordinated development of private serviced sites through proposals for outline permission and site development works, effectively providing 'ready to go' serviced sites. Such sites would then be subject to individual planning applications to determine house type. It also states that all development proposals shall have regard to the development parameters set out at section 5 and the guidelines set out in the VDFP and that it is a general objective of the LAP to facilitate the development of private serviced sites within each of the residential development areas.

5.2.7. Section 16 states that development in Development Areas 1 & 2 is considered to be appropriate in Phase 1, to facilitate the co-ordinated development of interlinking roads and access points.

5.2.8. The following general Objectives are noted:

- Prohibit proposals necessitating the removal of extensive amounts of trees, hedgerows and stone walls.
- To protect existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character, and ensure that proper provision is made for their protection and management in any future development proposals.
- Discourage the felling of mature trees to facilitate development, encourage tree surgery rather than felling, where possible.
- To ensure that any development, which impacts on a townland boundary, roadside hedgerows or hedgerows which form links with other habitats and form wildlife corridors, should first seek to retain or replace with native species. The overall goal should be to have no net loss of the tree and hedgerow resource.
- Provide “pocket parks” in Development areas 1 & 2 as indicated on the LAP map and the Village Development Framework Plan.
- To promote and facilitate a series of pedestrian/cycle routes throughout the village linking existing and new residential areas to strategic and new open spaces, to the National School, Community Hall.
- The design and layout of the proposed open spaces including pedestrian routes shall have regard to the layouts and guidelines for proposed open spaces and pedestrian accessibility as set out in the Village Development Framework Plan for the village, appended to this LAP.

5.3. **Village Development Framework Plan**

5.3.1. The VDFP states that the northern entrance to Oldtown is the most attractive one of Oldtown, its enclosure by mature hedgerow is unspoiled, and continues right up to

the pub and Main Street, a clear distinction between countryside and village. The guidelines set out for the North Entry are as follows:

- This is a quiet, beautiful entry road, albeit with poor visibility. It has an attractive curve at entry to the village centre, which helps to slow traffic going into the village. The hedgerows and mature trees should be protected to maintain this entry of the highest quality.
- Further speed reduction may be effected with signs and possibly road platforms just before entry into the village.

5.3.2. Section 2.71 states that the “Development Areas show designed schemes which are quite realistic in their visual presentation. They should be viewed as a snapshot in time; an image of what might be, to facilitate long term planning of amenities and infrastructure, and to act as a vehicle for illustrating and promoting the guidelines in Section 3. These reflect a longer term strategy to achieve a sustainable development process in the village, with each scheme or zone being evaluated at the time of submission against these development criteria”.

5.3.3. Section 2.73 relates to Development Area 1 and states:

“At a larger scale, the layout of this previous orchard area is designed to connect with pathways from ‘The Orchard’ housing area, bringing a safe route to the School, and extending pleasant walking routes around the village. The original orchard trees from the aerial photograph are visible. It is proposed to incorporate private serviced sites for 14 dwellings within this area. The delineation of plots makes it possible for each serviced site to be designed to keep some of the mature trees as boundary, whilst using the best orientation for the houses. The central area will provide an attractive open space, well supervised for local play and recreation.”

5.3.4. Section 2.73 goes on to state that Area 1 has an area of 4.7 Ha, with a potential density of 2.9 units/Ha, resulting in a potential yield of 14 private serviced sites.

6.0 The Appeals

6.1. Grounds of Appeal

6.1.1. Two third party appeals were made by Patricia Brennan and Conor Moran, residents of 'The Orchard', the residential development to the east of the appeal site. The grounds of appeal can be summarised as follows:

- The Orchard estate has not yet been taken in charge by Fingal County Council.
- Temporary road will impact on residential amenity, traffic safety, health and safety of children playing in rear gardens. Existing roads in the area are unsafe.
- The allusion in the MTW report that there is an existing worn track to the rear of Nos. 1 to 4 The Orchard is not the case. Only the applicant's 4x4 and tractor can utilise this.
- The use of a banksman as proposed in the MTW report has no authority under the Road Traffic Act to regulate traffic on any public road.
- Documents were not made available on the public file in time for comment.
- Applicant has an existing access via a gate c. 300m north of the proposed temporary access. Appellant cannot understand the necessity of creating another access.
- Appellant understands that applicant has been offered access to appeal site via Clonmethan farm to the west. This would link the development to the village core.
- Services in the area cannot accommodate further development. There are unfinished developments, unfinished houses, no shopping or medical facilities and no parish priest.
- Planning history of refusals on the appeal site.
- Residents have moved from opposition of the development to accepting the proposal in principle, subject to certain reasonable conditions and assurances about construction traffic and protection of amenity.

- At pre-application meetings with the applicant's representative, residents were assured that construction access would be as far as possible from the estate.
- Due to drawings not being uploaded, residents did not become aware of proposed construction traffic route until after the decision was made.
- Proposed new access point is technically deficient as confirmed by the Roads Department. Sightlines are deficient in both directions and it is close to the entrance to The Orchard.
- Permission was previously refused by both Fingal County Council and the Board due to substandard sightlines and traffic hazard.
- A small strip of land to the north of 1-6 The Orchard was added in the RV1 area in the last Development Plan to provide an alternative access to the development instead of access via The Orchard. In pre-planning the applicant sought to accommodate an additional 5 houses in this area.

6.2. Applicant Response

6.2.1. The applicant's response to the appeals can be summarised as follows:

- Local Area Plan has been prepared for the village since permission was previously refused. The site is designated as Development Area 1 with a specific objective to provide 14 houses, and this designation overcomes the reason for refusal in 2007.
- Although LAP indicates an access to the zoned lands to the north of The Orchard estate, access would be better served using the existing access road through the estate. The applicant retained a right of way over that roadway when the land was sold to the developer of that estate.
- At a pre-planning meeting, the FCC Engineer confirmed that use of the existing road would provide the safest and best solution, but that the applicant should discuss this with residents and not use the road for construction traffic.
- Prior to preparing the planning application, the applicant met with and wrote to the residents of The Orchard. Taking their views into account, it was proposed

to utilise a temporary construction access to the north of the estate, through the applicant's orchard. The applicant invited a condition in this regard.

- The location of the construction road is along the line the LAP indicated as an access road for any new development, and was discussed with the FCC Engineer. The applicant does not know why the submitted drawing was not uploaded to the Fingal web page.
- The position of the construction road seems to be the one issue vexing the two appellants.
- The applicant owns all of the orchard lands to the north of The Orchard estates, and has no difficulty moving the road further north, leaving a buffer zone of apple trees between the rear gardens of houses 1 – 6, should the Board deem that to be desirable.
- The tractor pathway all around the north of the orchard is used for spraying and servicing the trees. A natural break in the trees occurs c. 60m north of the rear boundaries of houses 1 and 2 and this could serve as the line of the temporary construction road, leaving a buffer without interfering too much in the working of the remaining orchard (sketch drawing included).
- The possibility of an access through Clonmethan farm, which the appellant referred to, was explored a number of years ago but the Council confirmed that adequate sight lines could not be achieved.
- The roads and services within The Orchard estate have been taken in charge since October 2014 (taking-in-charge schedule included).
- 9,800 sq m of public open space is proposed throughout the development. Condition 24 which requires a payment in lieu of open space seems incongruous as there is no shortfall.
- The design reflects the principles and policies of the LAP.
- Temporary road will be required for 18 months at most and is unlikely to cause much nuisance.

6.3. **Planning Authority Response**

6.3.1. The Planning Authority's response can be summarised as follows:

- Transportation Planning Section determined that the proposed development with access through The Orchard is considered acceptable.
- Planning history is pertinent as it related to access arrangements. Both refusals were under the previous Oldtown LAP.
- The estate has been taken in charge, postdating the LAP, where access was indicated further north. As the road within The Orchard is now a public road, it is considered that the proposed access arrangement to serve 14 houses is acceptable and preferable to having two access points in close proximity.
- Condition 7 requires construction traffic not to use the Orchard estate and that a construction plan be submitted detailing traffic management for the temporary construction access road.
- It is not anticipated that the construction traffic associated with the development of 14 houses would result in significant negative impacts on residential amenity.
- Proposed development does not unduly impact on the amenity of neighbouring property and does not detract unduly from the amenity of the surrounding area.
- In the event that their decision is upheld, the Planning Authority requests that conditions 24, 25 and 26 be included.

6.4. **Observations**

6.4.1. None.

6.5. **Further Responses**

6.5.1. None.

7.0 Assessment

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

- Principle of proposed development.
- Access and traffic.
- Residential and visual amenity.
- Other issues.
- Appropriate assessment.

7.2. Principle of Proposed Development

7.2.1. The appeal site is zoned RV, and I consider the proposed development to be broadly consistent with the provisions of the Oldtown LAP and the associated VDFP in terms of the number of units and their layout and design. With regard to the development management standards set out in the Development Plan (i.e. unit size, room size, public and private open space etc.), I consider that the proposed houses comply with all relevant standards.

7.2.2. I note that the LAP states that Development Area 1 “could” be used to provide serviced sites. None are proposed, but I consider that the LAP is non-prescriptive in this regard, and that the net provision of 14 low density houses within a landscaped setting arranged around public open space is consistent with the overall development vision set out in the LAP and VDFP. I also note that the proposed development provides four single storey dwellings, which is consistent with the LAP requirement to provide a minimum of four single storey dwellings, suitable for the elderly.

7.2.3. The principle point of deviation between the proposed development and the LAP/VDFP is the nature of the vehicular access point to the appeal site. As noted by the appellants, there is a planning history of refusals on the appeal site. The Planning Authority notes that these refusals were under the previous Oldtown LAP, and that as a result of the adoption of the more recent LAP and the taking-in-charge of the road through The Orchard, the previous access-related refusal reasons are no longer applicable.

7.2.4. The access issue is addressed in detail below, but other than this, I consider the proposed development to be acceptable in principle.

7.3. Access and Traffic

7.3.1. The access to the existing residential development known as The Orchard is located within the 50 km/hr zone for the village and I noted on my site inspection that a chicane has been installed on the local road to the south of The Orchard as a traffic calming measure, reducing a length of the road to a single lane, with yield signs on approach from both directions. The speed limit changes to 80km/hr immediately to the north of The Orchard.

7.3.2. With regard to construction phase access arrangements to the appeal site, I consider that the proposal correctly avoids the use of the existing road through The Orchard development. This existing road is a quiet cul-de-sac and I consider that its use as a construction traffic route would be detrimental to residential amenity and public safety.

7.3.3. I note that the Transportation Planning Section had no objection to the proposed development subject to conditions requiring the use of the temporary construction access and its decommissioning on completion of the development, and the submission of a construction plan to include details of traffic management proposals for construction vehicles using the temporary access.

7.3.4. The appellants' concerns regarding construction traffic generally relate to the proximity of the temporary access route to the rear of their properties and resultant impacts on residential amenity and safety. I note in this regard that a number of the properties have low-level post and rail timber fences to the rear of their properties, while others have hedging or c. 1.8m high solid fencing.

7.3.5. The applicant, in their response to the appeal, has suggested a potential alternative construction access route further to the north, along the line of an existing track through the orchard. However, I noted on my site inspection that the sightlines achievable at this more northern location are extremely poor in both directions and would require extensive earthworks and removal of hedgerows to facilitate access.

7.3.6. The rear elevations of the existing houses at The Orchard are located a minimum of c. 18m from the proposed construction access road. Subject to good practice

construction management, such as the use of acoustic hoarding, dust suppression procedures and controls on construction hours, I do not consider that the proposed temporary construction access route would have an undue negative impact on residential amenity. The proposed development relates to 14 No. houses and associated development, and the construction phase will therefore be limited in duration (the applicant states a maximum period of 18 months). Subject to the removal of the construction access and the reinstatement of the lands and roadside hedgerow following completion of construction, I consider the construction access proposal as set out in the drawing submitted in response to the request for further information (MTW drawing No. MV-002, dated 4th September 2017) to be generally acceptable.

- 7.3.7. With regard to the access point onto the public road, as a result of the sightlines being less than required I consider that the use of a banksman to control construction vehicles accessing/egressing the site and the provision of advance signage warning road users of the construction entrance would be required. In this regard I note that an Outline Construction Management Plan was submitted to the Planning Authority in response to the request for further information. This outline Plan was somewhat perfunctory, and I therefore consider that the measures listed above should form part of a comprehensive and detailed construction management plan to be submitted to the Planning Authority for agreement prior to commencement of development.
- 7.3.8. With regard to operational phase vehicular access arrangements, I note that the Planning Authority has confirmed that The Orchard estate has been taken-in-charge since the LAP was adopted. The road serving the estate is therefore now a public road. I consider that continuing this road to serve an additional 14 houses would be preferable in the interests of both traffic safety and orderly development, to opening up another access point on the local road in very close proximity to the existing access point to The Orchard. In this regard I note that the existing access point is within the 50km/hr zone for Oldtown village, while any new access point further north would be on a portion of the road where the speed limit is 80 km/hr, and where extensive removal of hedgerows and trees would be required to provide adequate sightlines. Such a permanent entrance would, in my opinion, result in traffic conflict

and result in a traffic hazard notwithstanding Local Objective 20 of the Fingal Development Plan 2017-2023 and the provisions of the Oldtown LAP/VDFP.

- 7.3.9. With regard to the residential and visual amenity enjoyed by existing residents of The Orchard, I note that houses 1 – 6 currently enjoy an open aspect to the rear, overlooking part of the remaining orchard, which contributes to the semi-rural character of the development, and as noted above, a number of the houses feature low level post and rail fencing. I therefore consider it preferable for vehicles accessing the new houses to do so from the front of the existing houses, rather than to the rear, which would entail the introduction of a new permanent road and likely boundary walls, lighting etc. to the rear of the existing houses which in my opinion would have a greater impact on their setting and residential amenity.
- 7.3.10. Finally, with regard to pedestrian linkages, the proposed development includes a footpath from north to south, which extends to the site boundary with the future Development Area 2. The lands within Development Area 2 are not within the control of the applicant, and therefore the ultimate connection to the village centre will not occur until a later date. Notwithstanding this, I consider the proposal to be consistent with Local Objective 21 of the Development Plan, and the provisions of the LAP/VDFP insofar as it is possible within the applicant's landholding.

7.4. Residential and Visual Amenity

- 7.4.1. With regard to the potential impact on residential amenity, and having regard to the proposed site layout, design and separation distances with existing development, I am satisfied that the proposed development will not result in any undue overlooking, overshadowing or overbearing impacts. I also do not consider that the extension of the existing cul-de-sac road within The Orchard estate to serve an additional 14 houses would result in a significant negative impact in terms of traffic generation or traffic hazard. I also consider that the potential future pedestrian linkages that the proposed development would ultimately facilitate to the village core would be of benefit to residents of The Orchard. I therefore consider that the greatest potential impact on residential amenity arises during the construction phase, which I have addressed in Section 7.3 above.

- 7.4.2. With regard to boundary treatments, I note that the site layout will result in the side boundary walls of houses 2 and 9, and to a lesser extent house 1, being highly prominent within the streetscape. The applicant, in their response to the request for further information have proposed concrete post and timber panel fencing for these boundary treatments, which I consider to be inappropriate within the site context. I therefore concur with the recommendation of the Parks Planning Section, that boundary treatments between the rear gardens of units 1, 2, 8 and 9 and the adjacent public open space should comprise 1.8m high stonework wall, in the interests of visual amenity.
- 7.4.3. I also note in relation to boundary treatments that the applicant is proposing concrete post and timber panel boundaries between houses, and I recommend that these be replaced with capped and rendered blockwork walls in the interests of visual amenity. With regard to the boundary treatment along the existing hedgerows, I would share the Planning Authority's concern regarding the durability of chestnut palling fencing, and I recommend that this be replaced with post and rail fencing, in the interests of balancing the provision of a durable boundary treatment with minimising the impact on existing vegetation.
- 7.4.4. Having regard to the existing and long-established use of the site as an orchard, and the role that apple trees can play in providing bird nesting sites and nectar sources for pollinators, I find it regrettable that the applicant is proposing to fell the entire orchard. In the interests of maintaining a link with the heritage and distinctive local character of the area and in protecting the ecology of the area, I recommend that a condition should be included to require the incorporation of a number of apple trees within rear gardens and in areas of public open space. This would be consistent with the design parameters set out in the LAP and VDFP which seek to retain apple trees within individual gardens and a central open space, creating a sense of "houses in an orchard".

7.5. Other Issues

- 7.5.1. The Planning Authority has requested that in the event that their decision is upheld, that the Board include conditions 24, 25 and 26. Condition 25 relates to a bond, and condition 26 relates to a section 48 development contribution. Both conditions are considered reasonable and appropriate. Condition 24 relates to a payment of

€52,824 in lieu of 0.09 ha of public open space, but does not state the legislative basis on which it relies.

- 7.5.2. Section 9(b) of the Fingal Development Contribution Scheme 2016-2020 states that the Fingal Development Plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development.
- 7.5.3. The public open space requirement under Objective DMS57 is a minimum of 2.5 hectares per 1000 population, while Objective DMS57B also requires a minimum 10% of a proposed development site area be designated for use as public open space.
- 7.5.4. The applicant is proposing to provide c. 14% of the site as public open space, and I am satisfied that the public open space requirements of Objectives DMS57 and DMS57B have been complied with. I therefore do not consider that Condition 24 is necessary or justified, and I recommend that only a standard section 48 development contribution condition be included.

7.6. **Appropriate Assessment**

- 7.6.1. A 'Habitats Directive Screening and Ecological Assessment' was submitted in response to a request for further information. There are four Natura 2000 sites within 10km of the appeal site. These are:
- Rogerstown Estuary SAC (000208): 8.6km to south east.
 - Rogerstown Estuary SPA (004015): 9.3km to south east.
 - Malahide Estuary SAC (000205): 9.5km to south east.
 - Broadmeadow/Swords Estuary SPA (004025): 9.9km to south east.
- 7.6.2. Having regard to the nature and scale of the proposed development, which comprises a relatively small residential development on a zoned and serviced edge-of-village site which is not within or in close proximity to any European sites, and the lack of any source-pathway-receptor link to the European sites, I am satisfied that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Fingal Development Plan 2017-2023 and the Oldtown Local Area Plan 2012-2022 and its associated Village Design Framework Plan, 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, would be acceptable in terms of traffic impact and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 8th day of September 2017, 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. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Roof colour shall be blue-black, black or dark grey in colour only.

Reason: In the interest of visual amenity.

3. No construction traffic shall use The Orchard estate road. Access for construction traffic shall be via a temporary access as indicated on MTW Consultants Ltd. drawing no. MV-002, submitted to the planning authority on

the 8th day of September, 2017. This temporary access road and access onto the public road shall be decommissioned within one month of the completion of the development hereby permitted and all elements of the road shall be removed and the area levelled and reseeded. The gap in the hedgerow along the public road shall be reinstated with native species.

Reason: In the interests of residential amenity and public safety.

4. The construction of the development shall be managed in accordance with a 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 along the temporary construction access road;
 - (d) Details of appropriate mitigation measures for noise, dust and vibration, particularly along the temporary construction access road, and monitoring of such levels;
 - (e) Details of on-site car parking facilities for site workers during the course of construction;
 - (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) 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;
- (j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- (l) 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.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only 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 property in the vicinity.

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

Reason: In the interest public health.

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

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

8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to

commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

9. 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.

Reason: In the interests of visual and residential amenity.

10. (a) The boundary treatment between the rear gardens of house nos. 1, 2, 8 and 9 and the adjacent public open space shall comprise a rubble stone faced wall, 1.8 metres in height and capped.

(b) A timber post and rail fence, 1.0 metres in height, shall be provided to the inner side of all existing and proposed hedgerows within the site.

(c) With the exception of the boundaries specified in conditions 10(a) and 10(b), all rear gardens shall be bounded by block walls, 1.8 metres in height, capped, and rendered, on both sides.

(d) Front boundary walls shall be 0.9 metres in height and shall be suitably capped and finished in a material that matches the external finish of the dwellings.

Reason: In the interest of residential and visual amenity.

11. 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. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

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

12. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

13. The landscaping scheme shown on drawing no. PP163, as submitted to the planning authority on the 8th day of September, 2017 shall be carried out within the first planting season following substantial completion of external construction works.

In addition to the proposals in the submitted scheme, the following shall be carried out:

- (a) A number of existing apple trees within the site shall be incorporated into the private amenity space of the houses hereby permitted and the areas of public open space. Details of the number and location of apple trees to be retained shall be agreed in writing with the planning authority prior to commencement of development.
- (b) The mitigation measures and construction methods set out in the Arboricultural Report and associated Tree Protection Plan submitted to the planning authority on the 8th day of September 2017 shall be implemented in full.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

14. The ecological recommendations set out in Appendix 1 of the 'Habitats Directive Screening and Ecological Assessment' submitted to the planning authority on the 8th day of September 2017 shall be complied with.

Reason: In the interest of the proper planning and sustainable development of the area.

15. 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.

16. 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.

17. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála 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.

Niall Haverty
Planning Inspector

2nd February 2018