



An
Bord
Pleanála

Inspector's Report ABP-300421-17

Development	The provision of 2no. dwelling units, consisting of 2no. 3-bedroom 2-storey detached units, with the provision of 4no. on-site parking spaces, and all associated site works.
Location	Mountfield Lawns, Malahide, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0151
Applicant(s)	James Doyle
Type of Application	Permission
Planning Authority Decision	Granted
Type of Appeal	Third Party
Appellant	Pat Brennan
Observer(s)	None
Date of Site Inspection	2 nd April & 11 th April 2018
Inspector	L. W. Howard

1.0 Site Location and Description

- 1.1.1. The stated 0.08ha application site is located just off and to the south of Seamount Road, an established residential area within Malahide, North County Dublin.
- 1.1.2. The rectangular shaped site is located to the rear of large, detached dwellinghouses fronting directly onto Seamount Road. The site is not visible from Seamount Road.
- 1.1.3. Topographically, the site slopes gently from North to South. Originally, this slope would have been southward from Seamount Road. The level change from the sites northern boundary to the southern boundary is stated as c.1.6m. The site visit confirmed that the adjoining houses to the north are at a significant higher ground level than the application site.
- 1.1.4. The two houses immediately north of the application site, fronting directly onto Seamount Road, are large detached dormer type dwellinghouses (210m²), on sites which are c.4m above the ground level of the application site. The shared boundary between the application site and these two properties comprises a 2.8m high screen wall with mature trees on the side of the adjacent properties. The rear garden depth of these two properties are c.20m.
- 1.1.5. These two properties are understood to have been constructed approximately the year 2006, as the permitted replacements of the demolished original single storey dwellinghouse, and which included the area of the current application site (see case history under **F05A/0855**).
Having regard to planning history documentation, the permission granted under **F05A/0855** excluded the rear garden of the original site, which is now the current application site. The current application site is understood to have been subsequently subdivided off and sold.
- 1.1.6. Along the western boundary, the application site is adjoined by the extensive rear garden of the detached dwellinghouse fronting onto Seamount Road. On the neighbours side the boundary is defined by dense mature hedgerow, with planting of trees.
- 1.1.7. The application site eastern boundary is defined by an c.1.5m high chicken wire fence. The adjacent property to the east appears to be historically been used for chicken farming. Buildings comprising of a former chicken hatchery, chicken run and farm are now vacant and unused.

- 1.1.8. The adjoining Mountfield Estate to the south of the application site, and through which access is taken consists of a mix of 3-storey apartments (with underground parking) and a mixture of 2-storey detached, semi-detached and terraced houses. These include areas of back-garden developments, subdivided off original houses fronting onto Seamount Road.
- 1.1.9. To the immediate south of the application site is a cul-de-sac – ‘Mountfield Lawns’, orientated north-south, and comprising of c.9 terraced and semi-detached houses. The area between the application site and the cul-de-sac comprises a small roughly paved space, over the which the applicant has a right-of-way to the application site.
- 1.1.10. At present, the application sites southern boundary onto ‘Mountfield Lawns’ is sealed off with c.2.0m high boarding with padlocked door.

2.0 Proposed Development

2.1. The construction of two dwellinghouses, consisting of :

- two 3-bedroom, 2-storey detached units, with
- a total 4no. on-site car parking spaces (ie. two spaces per dwellinghouse), and all associated site works

all at Mountfield Lawns, Malahide, North County Dublin.

2.2. Detailed clarification regarding the substance, composition and spatial arrangement of the proposed development on the application site, is provided by –

- the applicant as part of the original planning application documentation and mapping / drawings (received by the Planning Authority dated – 14/03/2017), as Further Information (F.I.) received by the Planning Authority dated – 01/11/2017, and subsequently in the ‘Response Submission’ to the 3rd Party Appeal, received by the Board dated 15/01/2018, and .
- the Planning Authority in the Planning Officers ‘planning reports’ dated 08/05/2017, and the 23/11/2017.

3.0 Planning Authority Decision

3.1. **Decision**

3.1.1. Decision to grant planning permission, subject to 19no. Conditions

3.1.2. Having regard to the 3rd party grounds of appeal, the following are considered noteworthy :

- C2 Permission granted for 2no. 3-bedroom residential units
- C3 Specification of detailed amendments (six issues determined for attention), requiring submission of revised plans for the written approval of the Planning Authority, prior to commencement of development.
- C4 Each dwellinghouse to be used as a single dwelling unit.
- C5 All bathroom / en-suite windows to be fitted with obscure glass only.
- C6 All materials in accordance with C7W O'Brien Drawings 312, 313 and 317.
- C7 Compliance in full, with the requirements of the Transportation Planning Section
- C8 Compliance in full, with the requirements of the Water Services Planning Section
- C9 Compliance in full, with the requirements of the Parks and Green Infrastructure Section
- C12 No dwellinghouse to be occupied until all services have been connected and are operational.
- C13 Acceptable street naming and house numbering scheme approved, prior to commencement of works, or marketing.
- C14 Requirements for agreement with the Planning Authority in accordance with the requirements of Section 96 of the Planning Act 2000, as amended. Unless an exemption certificate granted under Section 97 of the Act, as amended.
- C15 Requirements for prevention / mitigation of spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.
- C16 Specification of construction hours of operation.
- C17 re. Payment by the applicant of financial security for the provision and satisfactory completion of services, including maintenance, to the taking in charge standard of the Local Authority for roads, open spaces, car-parks and drains.
- C18 Specification of financial contribution to be paid by the applicant in lieu of **open space** provision towards the cost of amenity works in the area

C19 Specification of financial contribution to be paid by the applicant, in respect of **public infrastructure and facilities** benefitting development in the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The key planning issues considered as follows -

Zoning Objective / Development Plan Objectives

- The proposed development is considered consistent with the 'RS' Zoning Objective.
- This opinion "in principle", is subject to further assessment of the proposed development itself, and compliance with the relevant Development Plan 'policies' and 'objectives'.
- particular reference made to Objectives DMS 39 – 'Infill Development', 40 and 58 – 'Financial Contribution in lieu of open space provision', and to Tables 12.1 – 'House Sizes' and 12.3 – 'Minimum room sizes'.

Integration and Visual and Residential Amenity Impact

- proposed site layout indicates 22m separation distance between the rear elevation of the front dwelling and the front elevation of the rear dwelling. Sufficient separation distance provided to prevent direct overlooking between opposing 1st floor windows.
- A separation distance of c.11m provided between the front elevation of the rear dwelling, and the rear boundary of the front dwelling, eliminating potential for undue levels of over-looking of the private amenity space serving the front dwelling.
- Notwithstanding 2-storey rear dwelling, there are no windows serving bedrooms located along the rear or side elevations at 1st floor level, which would give rise to significant levels of direct over-looking of adjacent properties.
- Planning Officer satisfied the proposed development would not give rise to adverse issues of over-looking.

- Note further that the proposed rear component of the development is 0.65m lower and inset over 2.0m from side boundaries. This is a significant improvement on the design refused permission under **F15A/0468**.
- The 'site shadow analysis' submitted indicates the proposed development would not give rise to significant levels of undue overshadowing. However, substantive benefit for assessment purposes would be provided, if a detailed shadow analysis was available demonstrating the extent of shadow caused throughout the duration of a day.
- Serious concern regarding the principal heights of each of the dwellings proposed, located in close proximity to respective site boundaries.
- In addition to the design of the proposed 'front' dwelling, concern at the central flat portion in the roof profile. As proposed this results in a significant bulk when viewed from from the side elevations, and would be visually obtrusive.
- The design of the front dwelling, in addition to the principal heights of each dwelling has the potential to be overbearing on the residential amenities of the properties to the east and the west.
- Note that the proposed development is not part of a larger comprehensive backland redevelopment, which could potentially set its own character. Rather, it is a small incremental infill development, which must respond sensitively to existing character.
- Having regard to the planning history of the site, recommend revision –
 - to the principal heights of each of the proposed dwellings to not more than 7.0m from ground level, and
 - to the roof profile of the 'front' dwelling, to that of a traditional pitched roof and the omission of the central flat portion.
- Notwithstanding the 'site section' submitted, demonstrating the proposed developments integration and relationship with Mountfield, Planning Officer concern the proposed development may have a visual impact when viewed from the south due to a combination of the excessive heights and site levels.
- In order to determine potential for overbearing and visual integration, request a 'contextual elevation' directed north to south, from the existing Mountfield Hammerhead.

- Plans submitted indicate that the proposed dwellings would accord with Development Plan 'spatial standards', and as such the residential amenity for potential occupants is considered acceptable.

Private Open Space and Western Boundary

- Sufficient 'private open space', space has been provided, in compliance with Development Plan Standards.
- However, the rear garden depth of the 'rear dwelling' at a minimum c.7.043m falls below the Standard of 11.0m, which would be restrictive for a dwelling of this size.
- The 'rear dwelling' would be inside the root and crown spread of the mature beech tree along the sites western boundary.
Consider that the dwelling and associated areas of hard standing should be relocated to be 500mm outside of the indicated crown – ie. 5.7m.
- In addition, no hard surfaces to be permitted within the root protection zone of the western hedge.
- Note no supplementary planting proposed. Consider that this should be requested.

Public Open Space

- having regard to the small size of the application site, no public open space has been provided.
- Recommend that should planning permission be granted, a financial contribution be sought in lieu of open space, in accordance with Objective DMS58.

Car Parking

- The 2no. off street car parking spaces proposed per dwelling, complies with Development Plan requirements.
- However, having reference to the Transportation Planning Section assessment, which noted that the parking areas shown along with the swept path analysis for turning manoeuvres indicate that parking for 2no. cars particularly for the southern dwelling is not achievable in the current layout.

- Emphasise all cars to leave the site in a forward gear. Consequently, the turning area for the northern unit, to be amended to enable the turning manoeuvre without having to leave the hardstanding area. This to be addressed by way of 'additional information'.
- Vehicular access is via Mountfield Estate, and specifically the existing hammerhead at the top / northern end of Mountfield Lawns. Note that the Transportation Planning Section assessment references that the adjacent creche uses the existing turning area for drop-off and collections.

Water Services

- Following assessment of the proposed development, the Water Services Planning Section has no objection subject to Conditions.
- The report from Irish Water notes no objection to the proposed development.

Further Information (F.I.) Response Submission

Issue # 1 – Height of Dwellinghouses

- Note revised plans submitted at 1:200 indication –
 - the northern house reduced in height to 7.0m
 - no reduction in height of the southern house. However, roof profile amended to be a pitched roof, with no central flat roof section.
- the revisions submitted have considerably reduced visual impact, and the massing of the dwelling.
- revisions considered as acceptable, based on separation distances, and land levels in the vicinity.

Issue # 2 – Cross Section

- Reference F.I. Drawing 311 (C&W O'Brien) indicating an appropriate north-south and east-west cross section.
- Reference
 - the reduced height of proposed northern dwelling, would be at a similar height to the eaves level of the dormer bungalow dwelling to the north, fronting onto Seamount Road.
 - the 26.83m back to back separation distance between the northern dwelling and those adjacent to the north, fronting onto Seamount Road.

- Having regard to the above, consider the proposed development would not be visually obtrusive or overbearing on the adjacent properties to the north.
- Note that the revision house design for the proposed southern dwelling, renders it very similar to the existing houses to the south comprising Mountfield Lawns. This design revision enables effective integration with the visual appearance of Mountfield Lawns.

Issue # 3 – Shadow Analysis

- Reference 'site shadow analysis' drawing no.314 (C&W O'Brien) indicating extent of shadow effect on the 21st Dec, 21st March, 21st June and 21st September.
- Note that the levels of shadow cast on the lands to the north, west or east, are minimal.
- Consider this minimal impact as being acceptable

Issue # 4 – Car Parking

- Reference F.I. Drawing 311 (C&W O'Brien) indicating provision of 2no. in-curtilage car parking spaces per dwellinghouse.
- Northern dwelling – 2no. spaces to the front
Southern dwelling – 1no. space to the front and 1no. space to the rear
- Site layout and specifically the spatial arrangement of the spaces considered as acceptable. This particularly as the 1no. rear car parking space associated with the southern dwellinghouse does not encroach on the private rear amenity space of the house.
- Noted however that the layout, together with other issues addressed under 'Issue #5' below, would encroach upon and impact a mature beech tree along the western boundary

Issue # 5 – Landscaped Boundary

- Reference F.I. 'landscaping plan' submitted under Drawing 317 (C&W O'Brien).

- Note that 'augmentary planting' does not appear to have been provided to the western site boundary.
- A 'paladin fence' has been provided for, proximate to the root of the hedge.
- Noted historically that the western boundary hedgerow, and threat of impact of the proposed development on the mature beech tree, have been an issue and comprised a 'Reason for Refusal', in the 2no. most recent planning applications on the application site.
- Note that the 'cross-sections' submitted indicate that significant levels of excavation are proposed, which would have negative consequence on the hedgerow and the beech tree.

Reference that the 'Parks and Green Infrastructure Section' also raised this threat in their report.

- Taking into account the consequences for the western boundary of the proposed design, it was considered necessary that significant amendment be undertaken, to ensure that sufficient amounts of the existing ground levels are maintained in-situ, in order to ensure continued viability of the tree and hedge.

These include –

- removal of the 2no. car parking spaces from the northern dwellinghouse, from within the tree root protection zone.
- relocate the majority of the northern house outside of the root protection zone through omission of a section 3.5m in length on the east-west axis, and 2.2m in length on the north-south axis, from the south-western corner of the house.
- omission of any areas of hard standing from the western and southern part of the house.
- maintenance of soil at the existing levels within the root protection zone of the tree, and western hedge, with provision of a retaining structure where required.
- Note the 'Parks and Green Infrastructure Section' stated opinion that the beech tree is mature, and of fine specimen quality. They recommend a €40,000.00 'tree bond' to ensure safe keeping.

This recommendation considered as onerous, having regard to the fact that the 'beech tree' is located on private property, outside the control of the applicant.

However, consider it necessary for some incentive to be in place ensuring maintenance of the health of the 'beech tree'.

In this regard, a €5,000.00 'tree bond' considered as acceptable.

- Consider that other matters relating to tree protection, can be addressed by way of Condition.

Conclusion

Subject to Conditions, including those targeted to avoid significant impact on tree and hedgerow roots, the proposed development :

- which would represent a limited infill development
- which would not seriously injure the amenities of the area and of property in the vicinity'
- would provide for an acceptable standard of residential amenity for future residents,
- would be acceptable in terms of traffic safety,
- would be in accordance with the policy requirements of the County Development Plan 2017-2023, and

would therefore, be in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

Water Services Planning Section No Objection, subject to Conditions

Transportation Planning Section No Objection, subject to Conditions

Parks Planning Section Having regard to –

Existing Trees & other Vegetation

- the applicant's F.I. 'Tree Survey' report (February 2017), and
- the need to successfully retain the hedges and trees, in particular the 'Beech Tree', along the sites western boundary,

conclude no objection to the proposed development, subject to specified Condition relating to trees and hedges.

Open Space Provision

- no public open space provided, and
 - Objective DMS58 requiring “an equivalent financial contribution in lieu of open space provision in smaller developments”,
- conclude application of a financial contribution in lieu of open space provision, to be used towards the upgrading of open space facilities within Malahide Demesne.

3.3. Prescribed Bodies

Irish Water

No Objection, subject to Condition

3.4. Third Party Observations

3.4.1. Three letters of objection received.

3.4.2. The issues argued include -

- the previous reason for refusal is not addressed
- excessive size and scale of development.
- negative impact on adjacent dwellings
- northernmost dwelling totally out of character with the pattern of development locally
- contravention of Development Plan Standards
- issues in relation to stability of adjacent sites
- issue regarding damage to an existing boundary
- potential overlooking / overshadowing
- potential conflict between an existing root system along the boundary wall, and proposals to construct a wall and services which may further damage objector’s boundary
- issues regarding previous excavation and proposed excavation and the stability of adjacent sites.

4.0 Planning History

4.1. The Application Site

F15A/0468 3no. dwellinghouses, 6no. onsite car parking spaces and associated development, **refused** planning permission for 3no. Refusal Reasons as follows –

1. Visually obtrusive over development of the site, with serious injury to adjacent amenity due to overlooking and overshadowing.
2. Overdevelopment of the site, resulting in substandard living conditions for future occupiers by way of –
 - substandard private amenity space, and
 - overlooking and inadequate levels of privacy.

Therefore, conflicts with Objective OS35 of County Development Plan 2011-2017 re. Standards for usable private open space.

3. Consequent loss of onsite existing natural screening, would injure the amenities of the surrounding area, resulting in an obtrusive development

F15A/0191 1no. dwellinghouse (detached 2-storey, 5-bedrooms, 350m²) and associated development, **refused** planning permission for 3no. Refusal Reasons as follows –

1. Visually intrusive form of development, out of character with the surrounding pattern of development, thereby detracting from the visual and residential amenities of the area, by way of overlooking and overshadowing.
2. Consequent loss of onsite existing natural screening, would injure the amenities of the surrounding area, resulting in an obtrusive development.
3. Threat to Public Health, as the adequacy of onsite surface water drainage and disposal has not been satisfactorily demonstrated.

- F06A/1910**
- 1no. dormer style dwellinghouse (G.F.A. – 449m²; 5-bedrooms), over-basement with new vehicular access through Mountfield Park, with associated landscaping.
 - ‘Rathevin’, Seamount Road, Malahide, Co. Dublin,
 - **granted** planning permission, subject to Conditions.

F06A/1910/E1 Extension of the duration of this planning permission in relation to **F06A/1910** to be for 3-years only, and to expire on the 29th May2015.

4.2. The surrounding area

- F05A/0855**
- Demolish existing single storey dwellinghouse, and Erect 2no. detached dormer style dwellinghouses (height – 6.825m & F.A. – 210m² each), new entrances, boundary walls and associated site works
 - ‘Rathevin’, Seamount Road, Malahide, Co. Dublin,
 - **Granted** planning permission, subject to Conditions.

5.0 Policy Context

5.1. Development Plan

5.1.1. Fingal Co. Development Plan (2017-2023)

Relevant provisions incl. –

Ch3 Placemaking

3.4 Sustainable Design and Standards

Private Open Space – Residential Units

Objective PM65 Ensure all areas of private open space have an adequate level of privacy for residents through the minimisation of overlooking and the provision of screening arrangements.

Ch11 Land Use Zoning Objectives

Zoning Objective “RS” Residential

Objective: Provide for residential development and protect and improve residential amenity.

Vision: Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

Use Classes related to Zoning Objective

Permitted in Principle incl. – ‘Residential’

(see Map – Fingal Co. Dev. Plan 2017 Land Use Zoning Objectives).

Ch12 Development Management Standards

12.4 Design Criteria for Residential Development

Separation Distances

- A minimum standard of 22m separation between directly opposing rear 1st floor windows shall be observed, normally resulting in a minimum rear garden depth of 11m.
- However, where sufficient alternative private open space (eg. To the side) is available, this may be reduced – subject to the maintenance of privacy and protection of adjoining residential amenities

Objectives DMS28 Ensure a separation distance of a minimum of 22m between directly opposing rear 1st floor windows shall be observed, unless alternative provision has been designed to ensure privacy.

Daylight, Sunlight and Overshadowing

- High levels of daylight and sunlight provide for good levels of amenity for residents
- The internal layout of resident units should be designed to maximise use of natural daylight and sunlight.

Objectives DMS30 Ensure all new residential units comply with the recommendations of Site Layout Planning for Daylight and Sunlight : A Guide to Good Practice (B.R.E. 1991) and B.S. 8206 Lighting for Buildings, Part 2 2008 : Code

of Practice for Daylighting, or other updated relevant documents.

Other Residential Development

- The development of underutilised infill sites in existing residential areas is generally encouraged.
- However, a balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill.
- The use of contemporary and innovative design solutions will be encouraged for this type of development.
- All new dwellings shall comply with Development Plan standards in relation to accommodation size, garden size and car parking.
- Where the proposed height is greater than that of the surrounding area a transitional element should be provided.

Objective DMS39 New infill development –

- shall respect the height and massing of existing residential units.
- shall retain the physical character of the area including features such as boundary walls, pillars, gates / gateways, trees, landscaping, and fencing or railings.

12.7 Open Space

- The provision of accessible open space is an integral part of the provision of high-quality green infrastructure for communities and forms a core element in the emerging Green Infrastructure Strategy for the County.
- To achieve high quality open space, Fingal County Council has five basic principles of open space provision :
Hierarchy, Accessibility, Quantity, Quality and Private Open Space.

Hierarchy and Accessibility

- Table 12.5 'Open Space Hierarchy and Accessibility', outlines the public open space hierarchy and accessibility standards.
- The standards allow the provision of a wide variety of accessible public open spaces to meet the diverse needs of the County's residents.
- For all developments with a residential component a mix of public open space types should be provided where achievable.

Objective DMS58

- Require an equivalent financial contribution in lieu of open space provision, in smaller developments of less than three units, where the open space generated by the development would be so small as not to be viable.
- Where the Council accepts financial contribution in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1.

Private Open Space (usually to the rear of the front building line of the house).

Objective DMS85 Ensure private open spaces for all residential unit types are not unduly overlooked

Objective DMS86 Ensure boundary treatment associated with private open spaces is designed to protect residential amenity and visual amenity.

Residential Unit Type - Houses

Objective DMS87 Ensure a min. open space provision for dwelling houses (exclusive of car parking area) as follows:
 3-bedroom houses or less - a min. of 60sq.m. of private open space located behind the front building line of the house

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The development permitted does not address the previous Refusal Reasons on the site :

- Reference 2no. previous applications for similar development of the site, refused by Council as follows –

F15A/0191 1no. dwellinghouse (detached 2-storey, 5-bedrooms, 350m²) and associated development, refused planning permission for 3no. Refusal Reasons as follows –

1. Visually intrusive form of development, out of character with the surrounding pattern of development, thereby detracting from the visual and residential amenities of the area, by way of overlooking and overshadowing.
2. Consequent loss of onsite existing natural screening, would injure the amenities of the surrounding area, resulting in an obtrusive development.
3. Threat to Public Health, as the adequacy of onsite surface water drainage and disposal has not been satisfactorily demonstrated.

F15A/0468 3no. dwellinghouses, 6no. onsite car parking spaces and associated development, refused planning permission for 3no. Refusal Reasons as follows –

1. Visually obtrusive over development of the site, with serious injury to adjacent amenity due to overlooking and overshadowing.
2. Overdevelopment of the site, resulting in substandard living conditions for future occupiers by way of –

- substandard private amenity space, and
- overlooking and inadequate levels of privacy.

Therefore conflicts with Objective OS35 of County Development Plan 2011-2017 re. Standards for usable private open space.

3. Consequent loss of onsite existing natural screening, would injure the amenities of the surrounding area, resulting in an obtrusive development.

- Argue that the refusal reasons substantiating each of the decisions to refuse planning permission under **F15A/0191** and **F15A/0468**, have not been addressed in the current application for which Council have decided to grant planning permission.
- In fact, in the current application, the northern dwellinghouse footprint has been moved closer to the 3rd party appellants rear boundary wall (ie. 7.0m from the 3rd party appellants property).
- Assert that the current application has been lodged “on the premise that the previous decisions were based on a detail that has been addressed. However, this is not the case.
- The Planning Authority’s previous decisions were based on matters of ‘principle and detail’, neither of which have been addressed in the current application for planning permission.
- The current application is worse than the previous ‘schemes’ refused planning permission by Fingal County Council.
- Request that the Board overturn Councils decision to grant permission for the current proposed development, having regard to –
 - visual obtrusion
 - is backland development
 - will have a serious negative impact on adjoining properties
- Request that the proposed development be refused planning permission.

6.1.2. The Size and Scale of the Development Permitted, remains excessive, and will result in an extremely negative impact on the 3rd Party Appellant's 'Oakland Hills' property :

- Notwithstanding the reduction in the proposed number of dwelling houses from 3no. to 2no. in the current application, the proposed development remains excessive.
- As referenced, the northern dwelling house of the two has moved closer to the shared northern boundary with the 3rd party appellant.
- It is now located 7m from the site boundary, sustaining the extremely negative impact on the 3rd party appellants property.
- Note that Council acknowledged that the proposed development had the potential to be over bearing and visually obtrusive, due to their scale and bulk. However the 3rd party appellant notes with concern that Council only had regard to this threat of negative impact (ie. overbearing and visual obtrusion), when viewed from the gardens to the west and east respectively, and from Mountfield.
- Council failed to reference the negative impacts on the 3rd party appellant's property.
- The 3rd party appellant's property will be particularly negatively impacted by way of 'overshadowing'. This impact will injure the residential amenities currently enjoyed in the 3rd party appellants rear garden.

6.1.3. The northernmost dwelling is totally out of character with the pattern of development within the area, and constitutes 'backland' development :

- The applicant has not addressed the Planning Authority's concern regarding the principle and backland nature of the proposed development.
- This is in particular regard to the northern proposed dwellinghouse, which remains out of character with the pattern of development locally.
- This dwellinghouse constitutes backland and inappropriate development.

6.1.4. The Development Permitted contravenes the Councils Development Plan Standards :

- Affirm the Zoning Objective ‘RS’ in the Fingal County Development Plan 2017-2023 which seeks to “protect and improve residential amenity”.
- Having regard to –
 - the restrictive nature of the application site
 - the proposed site layout, size, scale, design and proximity of the proposed northern house to the 3rd party appellant’s boundary,
 the proposed development will be ---
 - visually obtrusive,
 - constitute overdevelopment, and
 - would seriously injure the amenity of adjacent property by reason of overlooking and overshadowing.
- The proposed development contravenes materially the zoning objective for the area, therefore contravening the Development Plan and the proper planning and sustainable development of the area.
- Reference the caution outlined in the County Development Plan 20127-2023 regarding the development of individual backland sites as follows :
 - can conflict with the established pattern and character of development in the area
 - can contribute to the loss of residential amenities, and
 - can constitute piecemeal development.
- Having regard to the above, and to the proposed development, consider that :
 - the narrow application site will be dominated by the resultant large footprint of development, leaving very poor residual spaces for private amenity, and
 - the resultant dwellinghouses shoe-horned onto the site, are disproportionately large in comparison to the space available on site.
- the applicants have demonstrated no justification for the 2no. large dwellinghouses on the spatially restrictive application site.
- Accordingly, the development permitted, must be considered as contrary to the policies set out in the County Development Plan 2017-2023
- Re-emphasise the current development proposed and permitted by Council, is similar to the 2no. previous applications refused planning permission.
- Request that the Board overturn Council’s decision and refuse planning permission

6.1.5. Conclusion :

- Having regard to the above the current development proposed –
 - is worse than the similar applications previously refused planning permission
 - is excessive
 - will result in negative impact on the 3rd party appellant's property, and
 - contravenes the County Development Plan 2017-2023.
- Having regard to all of the above, request that the Board overturn Council's decision under **FA17A/0151**, and refuse planning permission

6.2. Applicants Response

The applicant structures the response aligned with the 4no. main grounds of appeal submitted, as follows –

6.2.1. The development permitted does not address the previous Refusal Reasons on the site :

- Emphasise that the refusal reasons substantiating historical refusal decisions by Council, have been overcome in this more modest and sensitive development proposal.
- Extensive consultations with the Planning Authority resulted in a more appropriate and proportionate scale of development, which sought to minimise impact on existing rear gardens to adjoining property.
- Point out that the height of –
 - the rear house is now 7m (ie. 1.54m lower than proposed under **F15A/0468**), and
 - the front house is now 8m, comparable with the houses within Mountfield Lawns.
- Revisions to the design approach has enabled a good quality environment for future occupants of the new houses, with minimal loss of visual and residential amenity

6.2.2. The Size and Scale of the Development Permitted, remains excessive, and will result in an extremely negative impact on the 3rd Party Appellant's 'Oakland Hills' property :

- Two, 3-bedroom houses (ie. 122m² and 144m²) with moderate roof heights, are not excessive on an enclosed urban site of 0.192 acres.
- Density of housing development proposed is c.24.5 units per ha (c.10 units per acre), and which is low in comparison with both Fingal Council and National Planning policy provisions regarding housing density within existing built up urban areas, adjacent to good residential support services and facilities, and to transport infrastructure.
- Density of housing development proposed is well below that of the houses adjacent, to the north, and the overall average for the Mountfield Estate to the south, through which access is proposed.
- Note the 3rd party appellant's reference to "potential extreme negative impacts". However, this view is not qualified apart from statement that the new houses will be overbearing and visually obtrusive.

- Emphasise that neither the applicant, or the Planning Authority accept this view.
- Clarify that the 3rd party appellant's house 'Oakland Hills' is 26.8m from the rear of the northern house. Further, the houses are divided from / screened by a 2.8m high screen wall and dense tree planting along this boundary.
- Further, the northern new house will have a ground level 4m lower than the 3rd party appellants house to the north, and a roof ridge level 3.24m lower than the 3rd party appellants.
- Altogether, the –
 - shallow though wide garden of over 114m²,
 - physical separation proposed, and
 - the substantially lower ground and roof ridge levelsintegrate to render the potential visibility and overbearing impacts "to be non-existent or very minimal.

- Arguably, no visual impact will result in this respect. Any view possible is to be very limited due to the existing screening when viewed from the 3rd party appellants garden or ground floor level.
- Express the view that the Planning Authority carefully considered any potential impact on this property in the initial assessment of the application, and by way of 'additional information' request.
- Assert that the 3rd party appellant has misinterpreted the applicant's 'supplementary shadow analysis'. The 3rd party appellant fails to demonstrate that the nearest new house would contribute to significant overshadowing, in comparison to the existing garden levels and the height of the screen wall and adjoining trees.
- Emphasise the view that most of the limited overshadowing through the day of the rear section of this garden will be caused due to this boundary, the boundary features, and structures on adjoining properties to the west and east.

6.2.3. The northernmost dwelling is totally out of character with the pattern of development within the area, and constitutes 'backland' development :

- This is an infill urban site, with separate and independent access onto a public road.
- The accessibility enables easy integration with the adjoining cul-de-sac housing, and the overall Mountfield Estate
- Therefore the proposed development –
 - will contribute to visual amenity and the variety of housing locally.
 - will replace existing unsightly rear boundary treatment, with an appropriate and well-designed infill development
- Applicant references the existing diversity and good mix of housing surrounding the application site, with which the proposed development will harmonise.
- Reference to the development proposed as 'backland development', is inappropriate and not applicable.

6.2.4. The Development Permitted contravenes the Councils Development Plan Standards :

- Emphasise the applicant's diligence in ensuring compliance with the Development Plan Standards and Policy for new housing development.
- Compliance with the Development Plan, together with an objective to provide best quality and design of new houses within a site layout, informed the applicants overall design approach.
- Reference that through pre-planning consultations, and through the application process, the Planning Authority carefully evaluated and accepted this compliance.
- Distinguish that whereas the garden depth of the rear garden is 7.5m, its overall width of 16m and area of 114m² ensure that this garden area is of good utility and amenity value.
- The 114m² provided is almost double the Development Plan requirement of 60m².
- Having regard to the southerly aspect and semi-private character of the front garden area, the extent of and quality of overall amenity space available will be enhanced.
- No element of the proposed development fails to comply with Development Plan Standards.

6.2.5. Conclusion :

- Request that the Board uphold the Planning Authority's decision to grant planning permission for a sensitive and modest infill development, on a suitable urban site.
- The development proposed –
 - is easily integrated into the existing housing estate, and adjacent housing area, without significant impact on visual or residential amenity.
 - is consistent with
 - the proper planning and development of the area, and
 - the 'RS' zoning objective for the area.

- constitutes sustainable development in an established urban area.

6.3. Planning Authority Response

- 6.3.1. Affirm the grounds of appeal have been addressed by the Planning Authority within the overall assessment of the planning application, and accompanying documentation.
- 6.3.2. Planning Authority sustains the view that the proposed development is in accordance with the proper planning and sustainable development of the area.
- 6.3.3. Request that the Board uphold the decision of the Planning Authority
- 6.3.4. Should the Planning Authority's decision be upheld, request that Conditions No. 9, 17, 18 and 19 are included in the Board's determination.

6.4. Observations

- 6.4.1. None

7.0 Assessment

- 7.1. I have examined the file and available planning history, considered the prevailing local and national policies, inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The relevant planning issues relate to :

- Planning history of the application site
- Principle and Location of the proposed development
- Visual Amenity Impact / Streetscape
- Residential Amenity Impact
- Western Site Boundary – Boundary 'Hedgerow' and 'Beech Tree'
- Road Access and Traffic Safety
- Appropriate Assessment.

7.2. Planning history of the site

- 7.2.1. I have taken careful note of the planning history of the application site and that of the adjacent surrounds. Planning history documentation has been submitted by the Planning Authority, and may be found on the appeal file. I have no objection 'in principle', to the proposed residential redevelopment of the application site. I am of the opinion however, notwithstanding this historical background, that each case must be considered on its own merits, and that the current application be deemed a new application.
- 7.2.2. However, as acknowledged by both the Planning Authority and the 3rd party appellant, this Seamount Road and Mountfield Estate neighbourhood of Malahide has a distinctive built character, pattern of development and associated amenity, which requires careful maintenance. The current proposed development itself, as acknowledged by the Planning Authority in the planning officers reports, challenges the existing pattern of development and associated character. Notwithstanding the need to consider each application on its individual merits I believe that the permissions historically refused on the application site, provide a benchmark or reference against which the merits of the current application may be measured for its compliance with prevailing statutory planning and development frameworks, which facilitate the proper planning and sustainable development of the area.

7.3. Principle and Location of the proposed development

- 7.3.1. Public policy advocates that residential development driven by urban areas should take place, as a general principle, within the built-up urban areas and on lands identified through the Development Plan process, for integrated, serviced and sustainable development. In the case of the current application, this context is provided for by the Fingal County Development Plan 2017-2023, which sets out the way forward for the urban growth and development of Malahide.
- 7.3.2. The site is zoned "RS – Residential", with the objective to provide for residential development and protect and improve residential amenity. The applicable zoning matrix designates residential land use as being permitted in principle within the zone.

The “RS – Residential” zoning objective seeks to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

- 7.3.3. If the Fingal County Development Plan 2017-2023 is intended as providing the way forward for the proper planning and sustainable development of the area, then the application site must be regarded as being appropriately located within residentially zoned (ie: “RS”) and serviced lands within Malahide.
- 7.3.4. The challenge to the applicant, having regard to relevant planning history on the application site, to the architectural and site layout planning design, and the relevant requirements of the Fingal County Development Plan 2017-2023, is to ensure the proposed modest 2no. 2-storey dwelling unit development, has no disproportionate adverse impact on the scale and character of existing residential development at Seamount Road / Mountfield Lawns itself (ie. including the 3rd party appellant), and no unacceptable impact on the amenities enjoyed by the surrounding neighbours.

7.4. Visual Amenity Impact : Townscape / Streetscape

- 7.4.1. I have taken note of the established scale and pattern of development in the area. This is split between the more conventional suburban layout along Seamount Road, and the higher density, mixed house type comprising Mountfield Estate generally, and Mountfield Lawns particularly. The sense of place of this neighbourhood is clearly influenced by the density and pattern of residential development, and by the architectural style, design, and general finishing of the existing houses, all set in a local topographical and environmental context.
- 7.4.2. In this regard, whilst acknowledging that no preservation or protection status has been designated in terms of the Development Plan 2017-2023, I have empathy with the arguments made by the Planning Authority and by the 3rd party appellant regarding the need for maintenance and preservation of this unique townscape. I note that particularly the threat of negative visual impact on this townscape, informed the historical decisions to refuse planning permission (see 4.1 above). This can be clearly seen from the photographs attached
- 7.4.3. With respect to the Seamount Road frontage in the vicinity of the application site, what is clear in my view, is that as one moves along the road, no reasonable visibility is possible at all, of the rear of any of the houses, including that of the 3rd party

appellant – ‘Oakland Hills’, adjacent and to the north of the application site. Accordingly, and having particular reference to the significant site level variation between the application site and the 3rd party appellant’s property – ‘Oakland Hills’, no visibility of the application site from Seamount Road is possible at all.

7.4.4. From the rear, intervisibility is restricted to the rear elevations and rear yards / gardens of the adjacent properties to the east and west, and to the dwellinghouses comprising Mountfield Lawns, the modest cul-de-sac which enables the sole vehicular access to the application site, located at its northern end. Contextually, surrounding residential development appears in accordance with County Development Plan 2017-2023 Standards.

7.4.5. Section 12.4 – ‘Design Criteria for Residential Development’, of the County Development Plan 2017-2023 provides that the development of underutilised infill sites in existing residential areas, such as the application site, is generally encouraged. However, a balance is needed between the protection of amenities, privacy, the established character of the area, and proposed new residential infill.

7.4.6. Specifically, with respect to new infill development such as that proposed, Objective DMS39 requires that such development respect the height and massing of existing residential units, and ensure retention of the contextual physical character of the area, “including features such as boundary walls, pillars, gates / gateways, trees, landscaping and fencing”.

7.4.7. I understand it was in order to ensure compliance with Objective DMS39 particularly, and the mitigation of visual and residential amenity impact on the existing adjacent development, that the F.I. request was made, and with specific attention to the height and roof profile of proposed development, the contextualisation of proposed development by way of cross-section, the avoidance of overshadowing, the provision of onsite carparking spaces and necessary landscaping and tree preservation.

7.4.8. Having regard to the applicants F.I. response documentation, plans and drawings, I note that with regard to :

- the ‘Heights’ of the proposed dwellinghouses, the revised plans show the northern house reduced to a height of 7.0m. While no reduction in height of the southern house has been made, the roof profile has been amended to be a pitched roof, with no central flat roof section. In believe these revised F.I. drawings demonstrate a considerably reduced and minimised visual impact. I

believe these F.I. revisions by the applicant to be acceptable, having regard to separation distances, and contextual land levels in the vicinity.

- the 'Cross-Section' drawings contextualise that the reduced height of the proposed northern dwelling, would be at a similar height to the eaves level of the dormer dwellinghouse adjacent to the north, fronting onto Seamount Road. I note further, the 26.83m back to back separation distance between the northern dwelling and those adjacent to the north, fronting onto Seamount Road. Minimisation of intervisibility, and consequently visual impact is also, significantly in my view, achieved consequent in the ground levels differentiation between the application site / the proposed northern dwellinghouse, and the adjacent houses to the north, including the 3rd party appellants house. In my view the concrete block wall at southern shared boundary with the application site, together with the ground levels variance, effectively screens the proposed development, from normal, reasonable view. Therefore, I believe the proposed development would not be visually obtrusive or overbearing on the adjacent properties to the north.

7.4.9. I note further that the revised house design for the proposed southern dwelling, renders it similar to the existing houses to the south comprising Mountfield Lawns. In compliance with Objective DMS39, this design revision enables effective integration with the visual appearance of Mountfield Lawns.

7.4.10. Having regard to the architectural design details submitted, and specifically the revisions submitted in response to the Planning Authority's F.I. request, the proposed modest 2no. 2-storey dwellinghouse development –

- will not be disproportionately visually prominent or obtrusive to adjacent and nearby residents,
- would have no disproportionate impact on the established character and associated amenity enjoyed within the 'Seamount Road' / 'Mountfield Lawns' neighbourhood generally, and of adjacent properties specifically,
- has demonstrated satisfactory compliance with the relevant provisions of the County Development Plan 2017-2023, and

subject to relevant Conditions, would be in accordance with the proper planning and sustainable development of the area.

7.5. Residential Amenity Impact

7.5.1. Having regard to all of the information available, and prioritising the applicant's revised F.I. site layout plan, house designs and 'contextual cross-sections' Drawing No. 311, I am of the view that the proposed modest 2no. 2-storey dwellinghouse development will have no serious, or disproportionate negative impact on the prevailing residential amenity in the area. In this regard, I have given consideration to potential threats to residential amenity as follows :

- Visual Obtrusion : see as discussed at 7.4 above.
- Loss of Natural Light or Overshadowing : Application site located to the south and downslope of the 3rd party appellants property. I have had regard to my observations made at the time of 'site visit', and to the 'Site Shadow Analysis' Drawing No. 314 submitted by the applicant as part of the F.I. response documentation. This study indicated the extent of shadow effect on the 21st December, 21st March, 21st June and 21st September. In response to the 3rd party appellant's sustained argument regarding loss of residential amenity due to overshadowing of the rear / southern private garden, consequent of the proposed development, I have had regard to the following as key issues influencing the threat of, and extent of consequent overshadowing from the proposed development, if at all –
 - the 3rd party appellant's dwellinghouse – 'Oakland Hills', is c.26.8m from the rear / north facing elevation of the applicant's proposed northern dwellinghouse.
 - the 3rd party appellant's house and the applicant's proposed northern house are separated and screened by an c.2.8m high block wall, with trees and supplementary planting along the 3rd party appellants side of the wall.
 - the applicants proposed northern house, and notwithstanding its 2-storey and revised 7.0m roof height, will have a ground level c.4.0m lower than the 3rd party appellant's house to the north, and a roof ridge level now c.3.24m, lower than the 3rd party appellants house.

Having regard to these key factors, I believe that no overshadowing and consequent loss of residential amenity by the 3rd party appellant will result, on 'Oakland Hills', consequent of the proposed development.

Rather, having regard to the information available, I believe that any negative amenity impact on the 3rd party appellant's rear garden would be consequent of the 3rd party appellant's own rear boundary block wall and existing trees and planting along the southern boundary, than from any element associated with the proposed development. I note potential for overshadowing would also be possible during early morning and late afternoon / evening, from existing adjacent development to the east and west.

- Overlooking / Privacy Loss : Existing property and development surrounding the application site, including the 3rd party appellant's property adjacent to the north, are generally enclosed and screened from observation. In my view, no threat to the existing privacy of neighbours will result, consequent of the construction of 2no. new 2-storey dwellinghouses on the application site.

Notwithstanding the reasonable inclusion of window openings on the north-facing elevation of the proposed new northern dwellinghouse, closest to the 3rd party appellant's house, I believe that no overlooking of the 'Oakland Hills' property adjacent to the north, is possible. Therefore, no potential for serious privacy loss by the 3rd party appellant exists, consequent of the proposed development. In this regard, as was the case with respect to threat of overshadowing, I reference the c.26.8m separation distance between the two dwellinghouses, which exceeds the 22m separation Standard specified in the Development Plan, the c.2.8m high block wall along the 3rd party appellant's southern boundary, supplemented with existing trees and planting, and that the ground floor level of the proposed new northern house is expected to be c.4.0m lower than the 3rd party appellant's house adjacent to the north. As discussed at 7.4 above, I believe that intervisibility between the two houses will, in itself, be limited. Therefore, I believe that no serious threat to adjacent privacy on all sides exists, consequent of the proposed development.

Having regard to the proposed site layout itself, I am satisfied with the separation distance between the two proposed new dwellinghouses, supplemented with boundary planting. No serious threat of loss of residential amenity, due to overlooking (and overshadowing) will result.

- Noise : No disproportionate increase at all, above that currently characterising domestic residential use within the Seamount Road / Mountfield Estate neighbourhood, must reasonably be anticipated.
- Private Amenity / Leisure Space : Both adequate and usable private amenity space has been provided to serve each of the 2no. 2-storey dwellinghouses proposed. I do note the depth of the rear private garden of the northern house is 7.5m. However, the width is 16m, enabling an area of 114m², nearly double the Development Plan 2017-2023 Standard of 60m² minimum under Objective DMS87. A rear private amenity area of good utility and amenity value is thereby ensured. Further, having regard to adjacent contextual residential development, I believe that no serious negative impact will result on adjacent domestic amenity spaces, in compliance with Objectives PM65 and DMS87 of County Development Plan 2017-2023.

With respect to the northern dwellinghouse, I do note presence of the mature beech tree along the sites western boundary. Having regard to the applicant's 'Tree Survey' Report and the comments and recommendations of the County 'Parks Planning Section', the "root and crown spread" of this mature beech tree will have direct restrictive implications on the layout of hard landscaping particularly, in this vicinity. Further restrictive implication is noted in that no hard surfaces would be permitted within the 'root protection zone' of the hedgerow along the sites western boundary.

These restrictive implications can reasonably be addressed by way of Condition, should the Board be mindful to grant planning permission.

- Public Open Space : Having regard to the small, 0.08ha application site, and the proposal to construct a correspondingly, small, modest, 2no. 2-storey dwellinghouse development, no 'public open space' has been proposed. I note that Section 12.7 – 'Open Space' and Objective DMS58 of the County Development Plan 2017-2023 provides for circumstances such as this, in as much as Objective DMS58 enables the Planning Authority to require an equivalent financial contribution in lieu of 'public open space' provision, in smaller developments of less than 3no. dwelling units, where the public open space generated by the development would be so small as to not be viable. I am satisfied that this be addressed by way of Condition, should the Board be mindful to grant planning permission in this instance.

- Separation Distances between Side Walls of Houses : Adequate separation distances are retained with respect to existing residential development, as well as in respect of anticipated future potential development, in compliance with Objectives DMS28 and DMS29, enabling for adequate maintenance and access.
- In Situ Views / Outlooks : No designated views exist with respect to the collection of domestic dwellinghouses comprising the Seamount Road / Mountfield Estate neighbourhood.
- On-Site Car Parking : Capacity for adequate onsite car parking space exists within each new proposed property, in compliance with County Development Plan 2017-2023 Standards (ie. 2no. spaces per property).

7.5.2. I do acknowledge the potential for negative impact of construction activity on contextual residential amenity locally, whilst site works and construction activity are on the go. However, I consider that these impacts are only temporary, are to facilitate the completion of the proposed development, and certainly cannot be regarded as unique to this development. Further, I consider that given these impacts are predictable and to be expected, they can be properly and appropriately minimised and mitigated by the attachment of appropriate supplementary Conditions to a grant of permission, should the Board be mindful to grant permission, and deem such mitigation of negative impact necessary.

7.5.3. Accordingly, I believe the proposed development of 2no. 2-storey dwellinghouses is satisfactorily compliant with the 'RS' – Zoning Objective, and accordingly would be in accordance with the proper planning and sustainable development of the area.

7.6. **Western Site Boundary – Boundary 'Hedgerow' and 'Beech Tree'**

7.6.1. I have had regard to all of the information, documentation and drawings on file. I specifically reference the historical case documentation, the County Planning Officers reports, the report of the County 'Parks Planning Section', the Planning Authority's F.I. request, the applicant's F.I. response the revised 'site layout plan' and 'site sections AA, BB, CC and DD' – Drawing No.311, the 'Tree Survey' report and associated drawings and plans. I further reference my observations made at the time of site visit (see photographs attached).

- 7.6.2. This did not comprise as a substantive issue, or grounds for appeal, made as part of the 3rd party appeal submission. It was however, an issue for attention and recommendation by the Planning Authority and the County 'Parks Planning Section', to the extent that notwithstanding the decision to grant planning permission, this decision was subject to Condition No.3, which requires significant revision to the site layout plan, with specific detailed regard to the layout of the proposed northern new property, dwellinghouse and hard surfaces.
- 7.6.3. Whereas the 3rd party appellant's submission did not clearly include the application site's existing western boundary hedgerow and beech tree, and the requirements for preservation thereof specified under Condition No. 3 attached to the Planning Authority's Decision to grant planning permission, neither did the applicant, as 1st Party, appeal Condition No.3 and the required revisions specified therein.
- 7.6.4. In the response submission to the 3rd party appeal, the applicant specifically references Condition 3 as being the exception, to the general acceptability of the Planning Authority's Decision and attached Conditions. The applicant references Condition No.3 as being "somewhat onerous as it requires a very substantial omission of part of the south west corner of the northern house", and affecting "the viability of this house" (see paragraph 5.3, page 4). Rather than appealing Condition No.3 directly, the applicant comments that the relevant issues and consideration thereof would be covered by the Board, in its assessment of the proposed development, under the current 3rd party appeal.
- 7.6.5. Having regard to the above, and to the planning history of the application site, I am of the view that the current case must be considered on its own merits, de novo as a new application.
- 7.6.6. Notwithstanding the applicants F.I. response submission, the 'Tree Survey' including recommendations for preservation of the boundary Hedgerow and Beech Tree, and the applicants stated commitment to the implementation thereof, I note the Planning Authority's opinion that having regard to the consequences for the western boundary of the applicant's F.I. revisions, it was still regarded as necessary that "significant amendment be undertaken, to ensure that sufficient amounts of the existing ground levels are maintained in-situ, in order to ensure continued viability of the tree and hedge". These further "significant amendments" comprise the required revisions specified at Condition No.3 (a) – (f) attached to the Planning Authority's Decision to grant planning permission. I understand these required revisions are targeted

primarily to avoid significant impact on the 'Hedgerow' and 'Beech Tree' roots system.

7.6.7. Further, whereas the County 'Parks Planning Section' recommends that a 'tree bond' of €40,000.00 be lodged by the applicant with Council, in order to ensure protection and maintenance of the Beech Tree and Hedgerow, I note the Planning Officers consideration of this recommendation as onerous, having regard to the fact that the Beech Tree is located on private property, outside the control of the applicant. Rather, in order to incentivise due diligence by the applicant, a revised 'tree bond' of €5,000.00 was considered as acceptable. This was addressed by the Planning Authority under Condition No.9 (c) attached to the Decision to grant planning permission.

7.6.8. Having regard to all of the above, I share the commitment expressed by all parties to the maintenance and preservation of the application sites western boundary comprising the hedgerow and beech tree. This commitment certainly contributes towards maintenance of the 'RS' Zoning Objective locally, by way of minimising impact and enhancing residential amenity. I note the applicant's stated commitment, and demonstrated investment in this regard. However, with respect to the implications of this, for the reasonable development of the application site, I have had regard to the following :

- the 'hedgerow' and 'beech tree' exist outside the boundary of the application site, on adjacent 3rd party lands to the west. These elements in the local environment, therefore exist beyond the scope and control of the applicant.
- no 'protection' or 'preservation' order, or other such designated status is in place, for the 'hedgerow' and 'beech tree', within the County Development Plan 2017-2023, and
- Labelled as T48 within the 'Tree Survey', the 'Beech Tree' is designated Class B – Moderate Quality, with 'Retention – Desirable'.

7.6.9. Therefore, having regard to these indicators, in my view, of the status of the 'hedgerow' and 'beech tree' with respect to the application site and its reasonable development, I believe the applicants proposed development, as represented particularly in the F.I. Response revised 'site layout plan' and 'site sections AA, BB, CC and DD' – Drawing No.311, the 'Tree Survey' report and associated drawings and plans, reasonably represents the applicant's commitment to balance the

expectations of residential development of the application site, with the maintenance and preservation of these elements. In this regard, I have considered and evaluated the following by the applicant :

- the edge of the proposed northern house, closest to the 'beech tree', is set back c.5.7m from the trunk of the 'beech tree' (located wholly within the adjacent neighbours property), proximate to the edge of the tree root system, as per the tree crown.
- the applicant's commitment to use of light weight paving with minimal excavation, for path and parking space surfacing proximate to the 'beech tree' root system.
- the proposed northern house being already reduced in width and size in order to mitigate threat of impact on the hedgerow and beech tree root systems. Notably, the setback separation away from the root systems as been increased and improved within the current application, both in comparison to initially as lodged, as well as the historically refused applications for residential development of the application site.
- the applicant's commitment to compliance with the details outlined in the "Arboricultural Method Statement", recommended consequent of the 'Tree Survey' completed for the application site, and intended to enable a methodological framework for construction works enabling the proposed development, affecting 'retained trees' (such as the 'beech tree') and the 'Tree Protection Areas'. These include :
 - re. Tree Works : removal and felling works, as specified, in accordance with BS3998:2010 and current best practice.
 - re. Protective Fencing : Protective fencing (barriers) erected in positions and alignments as indicated on the 'Tree Protection Plan (Drawing No. 17310_T_103), and in accordance with BS5837:2012. No development works without protective fencing being in place ...
 - re. Boundary Treatments : All landscaping and boundary treatment works within the 'Root Protection Area' to be undertaken to a specification and method statement, in accordance with BS5837:2012, submitted for approval prior to the commencement of works on site, under 'Professional' supervision.

- re. Landscape Works : Landscaping works, including new planting to be in accordance with BS5837:2012. Notably, having regard to Condition No.3, during works, the 'Arboricultural Method Statement' requires that the ground around 'retained trees' must not be compacted by vehicles, nor be mechanically excavated, nor be significantly altered in terms of ground levels.
- re. Monitoring & Compliance : Within the method statement and as per the 'Tree Protection Plan' (Drawing No.17310_T_103), several potentially critical future works in proximity to 'retained trees' are to be undertaken in accordance with approved method statements and under direct supervision of a qualified Consultant 'Arborist'. Therefore, during development works on site, a Consultant 'Arborist' to be retained, in order to monitor and advise on any works within the 'Tree Protection Area' of 'retained trees' (such as the 'beech tree') in order to ensure successful tree retention, and planning compliance.
Further, all 'retained trees' to be subject to expert re-inspection prior to completion of development on site.
- that whilst de facto defining the western boundary, the 'hedgerow' and 'beech tree' are not located on the application site, and that
- normal garden 'exempted' type development (eg. Sheds, boundary walls) could be undertaken by the future owner, or resident of this property, without regard to the formal statutory planning application process, and therefore to the 'root protection' of a tree, situated within another garden / property.

7.6.10. On balance therefore, and having regard to all of the above, I am inclined to the view that Condition No.3(a)-(f) place a disproportionate burden on the applicant, in progressing the optimum residential development of the application site.

7.6.11. As set out in the planning application documentation, the applicant's F.I. response submission including the revised 'site layout plan' and 'site sections AA, BB, CC and DD' – Drawing No.311, the 'Tree Survey' report and associated drawings / maps, and with weighted reference to the 'Arboricultural Method Statement', I believe the applicant has demonstrated a clear, reasonable and proportionate commitment to the maintenance and protection of the 'hedgerow' and 'beech tree' comprising the de

facto western boundary of the application site, in the public interest, whilst enabling a reasonable return in the residential development of the application site.

- 7.6.12. Further, I share the Planning Authority view as reasonable, to incentivise due diligence by the applicant in the maintenance and protection of the 'hedgerow' and 'beech tree' whilst progressing construction and completion of the proposed development. Towards this end, I believe the €5,000.00 'Tree Bond' to be proportionate and reasonable, as included at Condition No.9(c) attached to the decision to grant planning permission. In this regard, I note that the €5,000.00 'Tree bond' would be refundable to the applicant upon completion of the development, and the 'Arboricultural Method Statement' being signed off by the site / project 'Arborist'.
- 7.6.13. Accordingly, having regard to all of the above, I am satisfied that Condition No.3(a)-(f) be omitted, without compromise to the sustained maintenance and protection of the 'hedgerow' and 'beech tree', and consequently the contextual visual and residential amenity. As proposed by the applicant, and clarified further by the detailed F.I. submission, the residential development of the application site would be in accordance with the 'RS' zoning objective, and the proper planning and sustainable development of the area.

7.7. Road Access and Traffic Safety

- 7.7.1. The application site is already served with access onto the local Mountfield Estate road network, with linkage onto Seamount Road. Specifically, access is located at the northern end of Mountfield Lawns, a cul-de-sac serving c.9no. dwellinghouses. It would reasonable be anticipated that an additional loading of 4no. domestic vehicles onto the Mountfield Estate road network would result consequent of the proposed development. Good sightline visibility exists both up and down the short stretch of Mountfield Lawns, where effective attenuation of vehicular speed exists (ie. narrow road width, on street car parking). This extends throughout the Mountfield Estate, onto Seamount Road. The increased loading and turning movements at this junction onto Seamount Road, is not considered as disproportionate. I am satisfied that satisfactory capacity exists within the local Estate road network and beyond, to safely accommodate the increased loading and traffic movements generated, without comprise to existing traffic safety locally.

7.8. Appropriate Assessment

- 7.8.1. Having regard to the nature and modest scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any European site, 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 be Granted for the Reasons and Considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the Zoning Objective "RS" for the area and the pattern of residential development in the area, it is considered that, subject to compliance with Conditions set out below, the proposed development would be in accordance with the relevant provisions of the Fingal County Development Plan 2017-2023, would not seriously injure the amenities of the Seamount Road / Mountfield Lawns neighbourhood, or of the property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, 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 01st November 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. The permission authorities 2 no. residential units only, each of 3no. bedrooms.

Reason : In the interest of clarity.

3. Each new dwellinghouse shall be used as a single domestic residential unit only.

Reason : In the interest of clarity and to ensure orderly development.

4. All bathroom and en-suite windows shall be fitted and permanently maintained with obscure glass. The use of film is not acceptable.

Reason : To prevent overlooking of adjoining residential property, in the interest of residential amenity.

5. The external materials and finishes, including roof tiles / slates, shall be shall be in accordance with C+W O'Brien Drawings 312, 313 and 317.

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

6. Physical infrastructure and servicing arrangements to enable the proposed development, specifically in relation to access (incl. the new vehicular entrance, front boundary treatment, internal road, costs), shall comply with the requirements of the Planning Authority for such works and services.

Reason : In the interest of traffic safety and orderly development, and in order to comply with requirements in relation to access.

7. All public service lines and cables servicing the proposed development, including electrical and telecommunications cables, shall be located underground except where otherwise agreed with the Planning Authority. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development

Reason: In the interest of orderly development and visual amenity.

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

Reason : In the interest of public health.

9. The following requirements of the Parks and Green Infrastructure Section shall be complied with in full :

- (a) A suitable qualified arborist/landscape professional shall be engaged by the developer for the duration of the development :
- (i) to oversee development works, ensuring strict compliance with the 'Arboricultural Method Statement', particularly as it relates to the sites western boundary, and
 - (ii) to monitor site development works and to liaise with the 'Parks and Green Infrastructure Division'.
- (b) Prior to commencement of development, the developer shall have an on-site meeting with the 'Parks & Green Infrastructure Division' to agree tree protection measures in compliance with BS 5837: 2012, Trees in relation to Design, Demolition and Construction – Recommendations. This shall include measures to prevent the parking of vehicles and the storage of materials on the grass verge.
- (c) A tree bond of €5,000 shall be lodged with the Council prior to the commencement of development in order to ensure that the trees and hedgerows are protected and maintained in good condition throughout the course of development. This bond will be held by Fingal County Council for a period of three years post construction which maybe extended in the event of possible construction related defects. It should be noted that a copy of the Arboricultural Method Statement (which has been signed off / certified by the Arborist including dates of Inspection) will be required to be submitted to the Council in order for this tree bond to be considered for release.

Reason : In the interest of tree protection and preservation of amenity.

10. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include reference to the 'Tree Survey' and relevant recommendations therein (Cunnane Stratton Reynolds), completed for the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, 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 order to screen the development and assimilate it into the surrounding urban environment, in the interest of visual amenity.

11. Each of the proposed dwellinghouses, shall not be occupied until such time as all services have been connected thereto, and are operational, to the satisfaction of the Planning Authority.

Reason : In the interest of orderly development.

12. That an acceptable street naming and house numbering scheme be submitted to and approved by the Council, well in advance of commencement of any works on site, or marketing.

Reason : In the interest of neighbourhood legibility, and of orderly development.

13. Prior to the 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 accordance with the requirements of Section 96 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.

Reason : To comply with the Requirements of Part V of the Planning and Development Act 2000 as amended and to comply with the

requirements of the housing strategy in the Development Plan of the area.

14. That all necessary measures be taken by the contractor including wheel wash facilities, to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason : To protect the amenities of the area.

15. 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 :

- hours of working,
- noise management measures,
- measures to prevent and mitigate the spillage or deposit of debris, soil or other material on the adjoining public road network, and
- off-site disposal of construction/demolition waste.

The developer shall be obliged to comply with the requirements set out in the Code of Practice.

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

16. That no development under any permission granted pursuant to this decision be commenced until security for the provision and satisfactory completion of services, including maintenance, to the taking in charge standard of the Local Authority for roads, open spaces, car parks and drains has been given by :

Lodgement with the Council of a Bond of any Body approved by the Planning Authority in the sum of €40,000 which shall be kept in force by him until such time as the Roads, Open Spaces, Car Parks and Drains are taken in charge by the Council OR /

Lodgement with the Council of a Cash Sum of €25,000 to be applied by the Council at its absolute discretion if such services are not duly provided to its

satisfaction on the provisions and completion of such services to standard specification.

Reason : To ensure that a ready sanction maybe available to the Council to induce the provision of services and prevent disamenity in the development.

17. That a financial contribution in the sum of €4,695 be paid by the applicant to Fingal County Council in lieu of open space provision towards the cost of amenity works in the area of the proposed development, in accordance with the requirements of the Fingal County Development Plan 2017-2023, based on a shortfall of 80m² of open space.

Reason : The provision of such services in the area by the Council will facilitate the proposed development. It is considered reasonable that the developer should contribute towards the cost of providing the services

18. 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

L. W. Howard
Planning Inspector

20th April 2018