



An
Bord
Pleanála

Inspector's Report ABP-300521-17

Development	20 houses with access and services via previously permitted development under FCC Ref. F15A/0456
Location	Lands off Portrane Road, Ballisk Common, Donabate, County Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0589
Applicant(s)	Aljaco Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First-Party
Appellant(s)	Aljaco Ltd.
Observer(s)	1). Councillor Paul Mulville, 2). The Board of Management of Scoil Phádraic Cailíní, 3). Donabate-Portrane Educate Together, 4). Support Proper Development in Donabate
Date of Site Inspection	20 th March 2018
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.67ha and is located on the northeast side of Donabate in north County Dublin, 0.5km from the town centre and 0.7km from Donabate rail station.
- 1.2. It currently comprises undeveloped lands situated between Beaverstown Road, 100m to the west, and Portrane Road (R126 regional road), 200m to the east. The lands are bound by a 2m-high timber-trellis fence along the northern boundary with housing in Somerton estate. The western boundary with Donabate-Portrane Educate Together primary school and the southern boundary with Donabate Community College post-primary school campus is formed by a 2.4m-high chain-link fence. The western boundary is not marked on the ground and the site opens onto lands currently the subject of groundworks associated with construction activity for a residential development. The appeal site has been subject to site clearance works and accommodates banked earth materials.
- 1.3. The immediate area is characterised by two-storey semi-detached and detached housing to the north and education and community facilities to the south and west. A watercourse runs parallel and adjacent to the southern boundary. Ground levels in the vicinity are relatively level.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - construction of two three-bedroom detached houses, six three-bedroom terraced houses, ten three-bedroom semi-detached houses and two four-bedroom semi-detached houses, providing for a total of 20 houses to be accessed and served via the previously permitted residential development under Fingal County Council (FCC) Ref. F15A/0456;
 - site development works including landscaping throughout and provision of engineering services with an option to include a foul water pumping station.

2.1.1. In addition to the standard planning application contents, the application was accompanied by a Planning Statement, engineering services drawings, a landscape plan, a letter on file from the Economic, Enterprise and Tourism Development Department of FCC giving consent for the application to be submitted and a Letter from the Housing Department of FCC referring to an agreement in principle to satisfy Part V social and affordable housing requirements.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse permission for the following reason:

Reason No.1 – development would in part be located on lands zoned for ‘Community Infrastructure’ and consequently would materially contravene the zoning objectives for such lands.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (November 2017) reflects the decision of the Planning Authority. The Planning Officer notes the following:

- the Planning Officer is not aware of any preplanning consultation regarding the proposed development;
- context of the development relative to neighbouring properties is lacking in the details submitted;
- the design and layout of the proposed development is broadly acceptable;
- the western half of the site is zoned ‘Community Infrastructure CI’, which seeks to provide for and protect civic, religious, community, education, health care and social infrastructure. Residential development is not permitted on lands zoned ‘Community Infrastructure’;
- matters raised by third-parties and consultees can be addressed via conditions or a further information request, if necessary. However, it is not

possible to reconfigure the layout without materially altering the proposed scheme;

- proposals would also hinder the ability to extend the adjoining schools campus in the future.

3.2.2. Other Technical Reports

- Water Services Section - no objection, subject to conditions;
- Transportation Planning Section – no objection, subject to conditions;
- Parks Division – no response.

3.3. Prescribed Bodies

- Irish Water – Further Information requested.

3.4. Third-Party Submissions

3.4.1. A total of four submissions were received during consideration of the application, three from neighbouring residents and one from a local community group. The matters raised are largely summarised within the observations section below, but also included the following:

- security and safety concerns regarding treatments along the boundary with Somerton;
- lack of permeability with the neighbouring schools;
- inappropriate housing mix, layout and provision of parking.

4.0 Planning History

4.1. Appeal Site

4.1.1. None.

4.2. Surrounding Sites

4.2.1. The adjacent lands to the east have been subject to planning applications for housing, including the following:

- FCC Ref. F17A/0183 – Permission refused (May 2017) for amendment to FCC Ref. F15A/0456 to provide seven houses accessed and adjacent to the Portrane Road. Note: Reasons for refusal of permission related to the development being contrary to condition no.2 of the parent permission, which required omission of houses in the area of the proposed houses, and the potential impact on a pedestrian right of way;
- FCC Ref. F15A/0456 – Permission granted (August 2016) for 43 houses with access from the Portrane Road. Note: Application was withdrawn at appeal stage by the first-party (ABP Ref. PL06F.246937). The application was revised at Additional Information stage to address potential flood concerns and to create a 10-15m riparian buffer strip along the watercourse on the southern boundary.

4.2.2. The school property to the west was permitted under the following:

- FCC Ref. F10A/0119 – Permission granted (June 2010) for a two-storey, 16 classroom primary school.

4.2.3. The school property to the south was permitted under the following:

- FCC Ref. F10A/0091 – Permission granted (June 2010) for a two-storey post-primary school.

5.0 Policy Context

5.1. Fingal Development Plan 2017-2023

5.1.1. Donabate is recognised as a moderate sustainable growth town in the Fingal Development Plan 2017-2023, with an Objective (SS17) to manage its development and growth in a planned manner linked to the capacity of local infrastructure. The Plan outlines that there is capacity for over 4,000 residential units within the town based on land-use zoning objectives. The appeal site is situated in an area identified as falling between two land-use zoning objectives. The eastern half of the

site is located within a 'Residential Area', which seeks to 'provide for new residential communities subject to the provision of the necessary social and physical infrastructure. Residential development is permitted in principle on 'Residential' zoned lands. The western half of the site is zoned 'Community Infrastructure', which seeks 'to provide for and protect civic, religious, community, education, health care and social infrastructure'. Residential development is 'not permitted' on lands zoned 'Community Infrastructure'. Lands off-site to the north and east are zoned 'Residential' and lands off-site to the south and west are zoned 'Community Infrastructure'.

- 5.1.2. The southeastern corner of the appeal site is partially located within an area identified for the 'Donabate Urban Framework Plan'. Local Objective 'DONABATE 3' of the Plan aims to 'provide for the further development of recreational, community and educational (primary and second level) facilities' in Donabate.
- 5.1.3. Section 12.4 of the Plan includes a host of both qualitative and quantitative 'Design Criteria for Residential Development', while Section 12.7 provides standards for open space provision.

5.2. Donabate Local Area Plan 2016

- 5.2.1. The Planning Authority has adopted a Local Area Plan for Donabate, but this relates to four distinct suburban parcels of land, zoned for residential communities, and does not include specific land-use policies or objectives relating to the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The principal grounds of the first-party appeal can be summarised as follows:

Principle of the Development

- Lands are landlocked between Donabate Portrane Educate Together primary school to the west and a residential development, which is under construction to the east, to be known as The Paddocks. If development is refused the area

would remain obsolete and unsafe, and a wall would be constructed along the boundary between The Paddocks and the appeal site;

- Proposals would increase housing supply on serviced land during an acute housing crisis, would conform with and complement the surrounding pattern of development and would positively contribute to the area;
- Lands were previously identified for residential development in an historic Donabate Local Area Plan and the area has sufficient social and other infrastructure in place to facilitate additional residential development;
- The existing schools have only recently been constructed and there are no proposals or finances in place to extend these;
- Lands would remain undeveloped and would not be purchased by the Department of Education and Skills;
- Proposed development would comply with the objectives of a broad range of strategic planning documents;

Zoning

- 11 houses would be located on the 'Community Infrastructure' lands and nine houses would be located on the 'Residential' lands;
- Proposals would provide for an extension of housing in The Paddocks and would provide seven houses for social housing on the 'Community Infrastructure' lands, as opposed to the 10% of houses normally required;
- Sheltered accommodation is permitted on 'Community Infrastructure' lands;
- There are other lands within Donabate available for schools;

Material Contravention

- The proposed development would represent a material contravention of the Development Plan, and the Board are requested to grant permission for the development under the terms set out in Section 37 of the Planning & Development Act 2000, as amended (hereinafter 'the Act');
- Rationale for allowing housing on the 'Community Infrastructure' lands is outlined, particularly in terms of various Government guidelines and initiatives

including 'Rebuilding Ireland an Action Plan for Housing and Homelessness', 'Guidelines for Sustainable Residential Development in Urban Areas' and the 'Design Manual for Urban Roads and Streets';

- Rationale for allowing a material contravention is also set out based on the proposals tying in with an existing development and complementing the surrounding pattern of development.

6.2. Planning Authority Response

6.2.1. The response from the Planning Authority can be summarised as follows:

- The entire site was previously zoned for 'Residential' development under the previous Fingal County Development Plan 2011-2017;
- It is necessary that lands remain available for appropriate compatible uses;
- Considering the extent of available 'Community Infrastructure' lands, the footprint of the existing school campus and the projected population increase for Donabate, the potential for future expansion of the school should be safeguarded;
- The application submitted did not specifically propose a development of sheltered accommodation and the proposals materially contravene the zoning objectives of the Development Plan;
- The remainder of the scheme would be unviable without significant and material alteration of the design/layout;
- Section 48 Development Contributions should be attached in the event of a grant of planning permission.

6.3. Observations

6.3.1. A total of 4 observations were submitted in response to the grounds of appeal, one from a local public representative, two from representatives of local schools and one from a local community group. The observations can be summarised as follows:

Principals

- Proposals represent a cynical attempt to overcome statutory planning provisions and constitute a material breach of the Development Plan;
- The location of the site 80m from Donabate Portrane Community & Leisure Centre, render the site suitable for expansion of this facility or to facilitate other social infrastructure needed in Donabate, such as a Garda Station or youth centre;
- Excessive social housing would result on the appeal site. This social housing element proposed would be likely to offset the social housing requirement of the adjoining residential development permission (FCC Ref. F15A/0456);
- A detailed design statement has not been included with the application, there is a shortfall in storage space in the proposed houses, there would be inadequate separation distances between the proposed houses, there would be an absence of provisions for refuse and bin storage, and there would be inadequate provision of open space;
- Roads infrastructure requires significant works and investment to facilitate further residential development. Adequate capacity for sewer treatment and water supply is not available. Public transport is operating above capacity with no DART rail services serving Donabate;
- Proposals may contribute to flooding in the area;

Schools

- Proposals would be to the detriment of the adjoining schools, including Donabate Community College post-primary school campus, which is not referenced in the grounds of appeal;
- Scoil Phádraic Cailíní primary school shares a campus with St. Patrick's Boys primary school. Of the 16 classrooms in the school, eight are at capacity and eight are well above capacity. Enrolment for junior infants in September 2018 is at 81 and normally there is only capacity for 60 pupils;
- Demand for school places will only increase further in advance of additional primary schools being constructed in other expanding parts of the town;

- FCC and the Department of Education are aware of the schools' desire to reserve the adjoining lands to allow for future expansion of the schools;
- Provision of an adequate set-down area is a priority measure for the school;
- Donabate-Portrane Educate Together state that all classes are full at present and there are waiting lists for all classes. Enrolment for junior infants in September 2018 is at 176 and there is only capacity for 56 pupils.

7.0 Assessment

7.1. Introduction

- 7.1.1. The proposed development involves the construction of 20 houses on an undeveloped greenfield site, which would serve as an extension to the permitted 43 houses (FCC Ref. F15A/0456) under construction on the adjoining site. Access to the proposed houses would be via the permitted adjoining development, which is accessed from Portrane Road.
- 7.1.2. I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal relate to:
- Principle of the Development
 - Other Matters

7.2. Principle of the Development

- 7.2.1. The appeal site is situated in an area zoned for land-use objectives in the Fingal Development Plan 2017-2023. The eastern half of the site is located within a 'Residential Area', which seeks to 'provide for new residential communities, subject to the provision of the necessary social and physical infrastructure'. Residential development is permitted in principle on these 'Residential' zoned lands. The western half of the site is zoned 'Community Infrastructure', which seeks 'to provide for and protect civic, religious, community, education, health care and social infrastructure'. Residential development is 'not permitted' on lands zoned 'Community Infrastructure'.
- 7.2.2. Adjoining to the north of the site is Somerton residential estate, which has a 'Residential' zoning objective. The lands currently under construction adjoining to

the east of the site are also within the 'Residential' zoning. Adjoining to the west of the site is Donabate Portrane Educate Together primary school, which is within the 'Community Infrastructure' zoning. Adjoining to the south is Donabate Community College post-primary school, which is also within the 'Community Infrastructure' zoning.

7.2.3. The Planning Authority decided to refuse planning permission as the development would in part be located on lands zoned for 'Community Infrastructure' and consequently would materially contravene the zoning objectives for such lands. The Planning Authority did not consider it feasible to grant permission for the nine houses on the 'residential' zoned land, due to the level of reconfiguration that would be required. The grounds of appeal acknowledge that to permit the proposed development would represent a material contravention of the Development Plan. The appellant requests that the Board permit the proposed development under the terms provided for in Section 37(2) of the Act.

7.2.4. Where a Planning Authority has decided to refuse permission on the grounds that a proposed development materially contravenes the Development Plan, Section 37(2)(b) states that the Board may only grant permission where it is considered that:

- i. The proposed development is of strategic or national importance,
- ii. There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- iii. Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- iv. Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

7.2.5. The grounds of appeal assert that there is sufficient rationale for permitting the proposed development under each of the points (i), (iii) and (iv) above of Section 37(2)(b) of the Act. I am satisfied that item (ii) above, relating to 'conflicting objectives of the Development Plan', would not apply in this case following on from

my assessment of the land-use zoning objectives above (see Section 7.2.1). I also note that the Development Plan includes other objectives that are clearly stated, including objective SS17, which aims to manage development and growth in a planned manner in Donabate, linked to the capacity of local infrastructure. Furthermore, local Objective 'DONABATE 3' aims to 'provide for the further development of recreational, community and educational (primary and second level) facilities' in Donabate.

- 7.2.6. The appellant considers that the proposed development would be of national importance, as it would increase housing supply at a time when delivery is high on the Government's agenda. The appellant outlines various strategic planning documents, Ministerial guidelines and Government policy documents that the proposed development would comply with and support. There are extensive other areas of Donabate zoned for 'residential' development, as outlined in the Development Plan and I do not consider that the provision of 20 houses could be reasonably considered to be of national importance and a grant of permission would not be justified under item (i) above. I also note the various Government initiatives and guidelines referenced within the grounds of appeal, but I am not convinced that these initiatives or guidelines proactively support the provision of housing in locations where the statutory plan clearly instructs otherwise. Accordingly, the proposed development should not be permitted on the basis of item (iii) above.
- 7.2.7. The grounds of appeal also assert that the proposed development would tie in with existing development and complement the surrounding pattern of development in the area, therefore, permission for the proposed development is justified under item (iv). The surrounding area, as described in section 7.2.2 above, is quite typical for a suburban commuter town. Fingal Development Plan 2017-2023 came into effect in March 2017 and there have been no permissions granted of note in the immediate area since the adoption of this current Plan. Consequently, I would not consider item (iv) above provides sufficient justification for granting permission in this case. In summary, I am of the view that, in examining section 37(2)(b), the proposed development is not justified under the items (i) to (iv). Should the Board not be satisfied that this is the case, in addition to the requirements of section 34(10), the Board should indicate in its decision the main reasons and considerations for contravening materially the Development Plan.

7.2.8. In conclusion, I am not satisfied that the proposed development would accord with the land-use zoning objectives of the Development Plan. Furthermore, observations to the appeal outline significant capacity issues relating to schools and other social infrastructure in the area. Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area, and planning permission should be refused for this reason.

7.3. Other Matters

7.3.1. I note that at planning application stage, the Planning Authority considered that it would not be possible to reconfigure the layout to only allow for housing on the 'Residential' zoned lands, without materially altering the proposed scheme. In this regard I note that the boundary between the 'Community Infrastructure' and 'Residential' zones would broadly follow the shared rear boundary of the proposed houses on a north-south axis. If this approach was followed, nine of the 20 houses may be permitted and the remainder could be omitted via condition and additional amendments could be requested to reconfigure the layout. However, I note that the appellant has not submitted revised proposals as part of the appeal to potentially allow for this, nor have they requested this, and within the grounds of appeal it is requested that the Board permit the proposed development in full. Consequently, I do not recommend a grant of permission for the nine houses solely in the 'residential' zone.

7.3.2. Should the Board be minded to grant permission for the nine houses, I note the comments from the Transportation Planning Section of FCC requesting details in relation to home zones, the preference of Irish Water for the foul to be served by a gravity system (option 2 of Drawing No. 2100W-PL-002) and the necessity for a revised layout for foul sewers. I consider that it would be reasonable to request clarity regarding these details via conditions. Proposals should also provide for future pedestrian and cycle connectivity with the 'community infrastructure' zoned land.

8.0 Appropriate Assessment

8.1.1. A report Screening for Appropriate Assessment was not submitted as part of the planning application or appeal.

- 8.1.2. The closest Natura 2000 sites to the appeal site are the Rogerstown Estuary Special Area of Conservation (SAC) (Site Code: 000208) and the Rogerstown Estuary Special Protection Area (SPA) (Site Code: 004015), both located approximately 1.0km to the northwest. Other Natura 2000 sites within 15km of the appeal site include; Broadmeadow/Swords Estuary SPA (004025), Malahide Estuary SAC (000205), Malahide Estuary SPA (004025), Ireland's Eye SAC (002193), Ireland's Eye SPA (004117), Rockabill to Dalkey Islands SAC (003000), South Dublin Bay SAC (000210), South Dublin Bay and River Tolka Estuary SPA (004024), Howth Head SAC (000202), Howth Head Coast SPA (004113), Lambay Island SAC (000204) and Lambay Island SPA (004069), Baldoyle Bay SAC (00199), North Dublin Bay SAC (000206) and North Bull Island SPA (004006).
- 8.1.3. The nearest pathway to the aforementioned designated sites from the appeal site is a drainage channel, which flows along the southern boundary of the site and connects into a stream that flows northeastwards into Rogerstown Estuary. With the exception of the Rogerstown Estuary SAC and the Rogerstown Estuary SPA, I am satisfied that the other sites within 15km of the appeal site can be 'screened out' on the basis that significant impacts on these European sites could be ruled out as a result of separation distance from the appeal site and given the absence of any hydrological or other pathway to the appeal site.
- 8.1.4. I note the location of the watercourse on site and the fact that it drains to the Rogerstown Estuary SAC and the Rogerstown Estuary SPA. The current conservation objectives for Rogerstown Estuary SAC (000208) are as follows:
- To maintain the favourable conservation condition of Estuaries;
 - To maintain the favourable conservation condition of mudflats and sandflats not covered by seawater at low tide;
 - To maintain the favourable conservation condition of Salicornia and other annuals colonizing mud and sand;
 - To restore the favourable conservation condition of Atlantic salt meadows (*Glauco-Puccinellietalia maritima*);
 - To maintain the favourable conservation condition of Mediterranean salt meadows (*Juncetalia maritimi*);

- To restore the favourable conservation condition of shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes');
- To restore the favourable conservation condition of fixed coastal dunes with herbaceous vegetation ('grey dunes').

8.1.5. The Conservation objectives for the Rogerstown Estuary SPA (004015) seek to maintain the favourable conservation condition of various estuarine and coastal bird species and wetland habitats, including greylag goose, light-bellied Brent goose, shelduck, shoveler, oystercatcher, ringed plover, grey plover, knot, dunlin, black-tailed godwit and redshank.

8.1.6. The subject proposals would not have the potential for loss or fragmentation of protected habitats. Having regard to the Source-Pathway-Receptor model, there would be a direct pathway between the proposed development and the Natura 2000 sites at Rogerstown Estuary. The proposed development is on a greenfield urban site, that would be served via a development currently under construction to the east (under FCC Ref. F15A/0456). The site is proposed to be connected to public wastewater and water systems. A buffer is to be maintained from the houses to the watercourse. In addition, given the distance from the Natura 2000 sites across built-up urban lands and the proposed connection to existing foul network, I am satisfied that the proposals would not result in a reduction in the quality of the SAC wetland or coastal habitats or the SPA wetland habitat or the status of protected birds species, and subsequently would not have a significant effect on the conservation objectives of the designated sites. I am satisfied that standard construction management practices would be sufficient to avoid an indirect effect on water quality during construction. I consider that adequate measures are proposed within the site during the operational phase to prevent surface-water contamination and, therefore, the potential for impact on the water quality within the designated sites is remote. In addition, the proposal for connection to the public foul network would address mitigate any potential for impacts from wastewater.

8.1.7. It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the Rogerstown Estuary SAC (Site Code:

000208) and Rogerstown Estuary SPA (Site Code: 0004015) or any other European sites, in light of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a Natura Impact Statement is not therefore required.

9.0 Recommendation

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

10.0 Reasons and Considerations

1. Having regard to the nature and layout of the proposed development, to the existing pattern of development in the area and to the provisions of the Fingal Development Plan 2017-2023, it is considered that the proposed development, by reason of locating 11 no. houses on lands zoned for 'Community Infrastructure', where residential development is not permitted, would materially contravene the land-use zoning objectives of Fingal Development Plan 2017-2023 and would set an undesirable precedent for similar developments. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colm McLoughlin
Planning Inspector

28th March 2018