



An  
Bord  
Pleanála

## Inspector's Report ABP-300822-18

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<b>Development</b>	Demolition of house and construction of house.
<b>Location</b>	Mallows, Healeys Lane, Portrane, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F17A/0685
<b>Applicant(s)</b>	Michael McKeever.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Michael McKeever.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	30 <sup>th</sup> April 2018.
<b>Inspector</b>	Karen Kenny

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## **1.0 Site Location and Description**

- 1.1. The site is located on Healy's Lane a narrow cul-de-sac that is access from the Burrow Road in Portrane. The site with a stated area of 0.0935 hectares, is rectangular in shape and relatively flat. It fronts onto the eastern edge of the laneway, is bounded by residential properties to the north and south and Portrane Beech is directly to the rear (east) of the site.
- 1.2. The area is characterised by multiple detached dwellings all accessed from the narrow cul-de-sac.

## **2.0 Proposed Development**

- 2.1. Permission is sought to demolish an existing single storey dwelling and to construct a replacement two storey dwelling. The existing structure has a stated floor area of 38 square metres, while the proposed dwelling has a stated floor area of 215 square metres.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission for 4 no. reasons. The reasons for refusal can be summarised as follows:

1. Development is considered to relate to the replacement of an existing chalet / holiday home with a permanent dwelling. Objective RF42 of the Development Plan states that replacement or conversion of existing coastal chalets and seaside huts by dwellings which can be resided in all year round will only be considered in exceptional circumstances. The applicant has failed to demonstrate compliance with this objective.
2. The area is identified as being at risk of coastal erosion. Objective DMS174 prohibits new development outside urban areas within the areas indicated on Green Infrastructure Maps, which are within 100m of a coastline and at risk

from coastal erosion, unless it can be established based on best available scientific information, that the likelihood of erosion at a specific location is minimal.

3. Considered that coastal protection measures would be required to avoid damage by the sea in the future. Development would therefore contravene materially Objective NH61 of the Development Plan.
4. The development is located between the sea and the coast road on lands zoned High Amenity and would therefore contravene materially Objective RF49 of the Development Plan.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning Officer's Report includes the following considerations:

- Status of the structure on the site has not been determined to date to be a permanent house. Submitted details do not provide evidence that the unit is or had been in full time residential use. Permission should be refused under Objective RF42 of the Development Plan.
- Site is located on High Amenity zoned lands between the sea and the coast road and the application does not demonstrate compliance with Objective RF49 of the Development Plan.
- The Coastal Erosion Risk Management Study Portrane – Rush, 2013 is the most up to date scientific advice in relation to coastal erosion. The study finds that all properties between Healy's Lane and the sea will be at risk of erosion in the future. The development does not therefore comply with Objective NH61 which 'prohibits development along the coast outside existing urban areas where such development could not be adequately safeguarded over the lifetime of the development without the need to construct additional coastal defence'.

#### **3.2.2. Other Technical Reports**

Biodiversity Officer: Highly likely that coastal protection measures will be required for this property in the future to avoid damage by

the sea. The application is therefore not compliant with Objective NH61 of the Development Plan.

Transportation: No objection, subject to conditions.

Water Services: No objection.

### 3.3. Prescribed Bodies

Irish Water: No objection.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

**P.A. Ref. F17A/0404:** Application for demolition of existing single storey dwelling and the construction of a replacement two storey dwelling on the appeal site. The Planning Authority refused permission for 4 no. reason. The reasons for refusal are similar to the reasons for refusal under the subject application.

**P.A. Ref. F11B/0078:** Application for the construction of an extension to the existing dwelling. The Planning Authority refused permission

**P.A. Ref. F99A/0074:** Application for a replacement dwelling on the appeal site. The Planning Authority refused permission

**P.A. Ref. F00A/0430:** Application for the removal of an existing temporary dwelling and for the provision of a new dormer bungalow. The Planning Authority granted permission.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The Fingal County Development Plan 2017-2023 is the relevant statutory plan. The following sections of the Fingal County Development Plan 2017-2023 are considered to be relevant:

- The site is zoned High Amenity ('HA') with a zoning objective to '*protect and enhance high amenity areas*'. Residential development is limited to persons that comply with the Rural Settlement Strategy.
- Settlement Strategy for Housing in the Open Countryside:
  - Objective RF32: Permit houses in areas with zoning objective HA, only to those who have a defined essential housing need based on their involvement in farming or exceptional health circumstances.
  - Objective RF42: The replacement or conversion of existing coastal chalets and seaside huts by dwellings which can be resided in all the year round will only be considered in exceptional circumstances where the following criteria is fully met:
    - Verifiable documentary evidence indicating the unit is occupied on a year-round basis and has been for a period of 7 years or more.
    - The proposal satisfies planning criteria in relation to appropriate design and layout, drainage, access and integration with the character of the landscape.
    - The site shall not be liable to the impacts of climate change, including coastal erosion and flooding.
    - Impacts on European Sites will be fully assessed by Screening for Appropriate Assessment.
  - Objective RF49: Require that no new houses are permitted on High Amenity zoned lands which are located between the sea and the coast road except in such cases indicated in Objective RF50.
  - Objective RF51: Ensure that the development of any coastal site through the extension or replacement of existing buildings or development of any new buildings is of an appropriate size, scale and architectural quality and that it does not detract from the visual amenity of the area or impact negatively on the natural or built heritage.
- Objective NH51: Protect High Amenity areas from inappropriate development and reinforce their character, distinctiveness and sense of place.
- Objective NH52: Ensure that development reflects and reinforces the distinctiveness and sense of place of High Amenity areas, including the

retention of important features or characteristics, taking into account the various elements which contribute to its distinctiveness such as geology and landform, habitats, scenic quality, settlement pattern, historic heritage, local vernacular heritage, land-use and tranquillity.

- Objective NH59: Protect the special character of the coast by preventing inappropriate development along the coast, particularly on the seaward side of coastal roads. New development for which a coastal location is required shall, wherever possible, be accommodated within existing developed areas.
- Objective NH60: Strictly control the nature and pattern of development within coastal areas and ensure that it is designed and landscaped to the highest standards, and sited appropriately so as not to detract from the visual amenity of the area. Development shall be prohibited where the development poses a significant or potential threat to coastal habitats or features, and/or where the development is likely to result in altered patterns of erosion or deposition elsewhere along the coast.
- Objective NH61: Prohibit development along the coast outside existing urban areas where such development could not be adequately safeguarded over the lifetime of the development without the need to construct additional coastal defences.
- Objective DMS174: Prohibit new development outside urban areas within the areas indicated on Green Infrastructure Maps, which are within 100m of coastline at risk from coastal erosion, unless it can be objectively established based on the best scientific information available at the time of the application, that the likelihood of erosion at a specific location is minimal taking into account, inter alia, any impacts of the proposed development on erosion or deposition and the predicted impacts of climate change on the coastline.
- Sheet 9 Donabate / Portrane: GIM9: Establish a coastal monitoring programme on an ongoing basis to provide information on coastal erosion.
- Objective Portrane 7: The replacement of chalets/holiday huts by permanent dwellings, which can be resided in on an all year basis within 'HA' zoned land at The Burrow, will be considered in the context of verifiable documentary evidence indicating the unit is occupied on a year-round basis and has been

for a period of 7 years or more, flood risk, site size, EPA standards for waste water disposal, access, impact on Habitats Directive Annex I Habitats including the priority habitats.

## 5.2. **Natural Heritage Designations**

The designated areas of the Rogerstown Estuary SAC (Side Code: 000208) and SPA (Site Code: 004015) adjoin the site to the east.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

6.1.1. A first party appeal has been received against the decision of the Planning Authority to refuse permission. The grounds of appeal can be summarised as follows:

- Permission is sought for a replacement dwelling. It is not the intention to apply for a new dwelling on a High Amenity site.

#### **Reason 1:**

- Objective RFG42 (relating to the replacement or conversion of existing coastal chalets and seaside huts) has been applied incorrectly. Supporting documents submitted under a previous application demonstrate that the existing dwelling was a permanent residence. The submitted architectural assessment demonstrates that the structure is a permanent block built dwelling and not a wooden structure which is synonymous with beach side chalets.

#### **Reason 2:**

- Objective DMS174 (relating to coastal erosion) has been incorrectly applied as the subject site is not subject to coastal erosion.
- The Irish Coastal Protection Strategy Study 2010 is an independent study carried out on behalf of the OPW. It demonstrates that the subject site is not prone to coastal erosion up to and including the year 2050 (Figure 44 refers). This study demonstrates that the Green Infrastructure Maps and Objective DMS174 of the Development Plan are not fit for purpose.



- The Report of the Biodiversity Officer refers to the Fingal County Council, Coastal Erosion Risk Management Study Portrane - Rush, prepared by RPS in 2013. This report is marked as a 'draft' document and is not therefore adopted as council policy and should not be considered to be the most up to date scientific evidence available.
- The appeal is accompanied by extracts from the Irish Coastal Protection Strategy Study 2010.

**Reason 3:**

- The site does not require any coastal defence as the site already has a natural defence and the site is not vulnerable to coastal erosion according to RPS/OPW assessment. Objective NH61 is to prohibit development along the coast outside existing urban areas where such development could not be adequately safeguarded over the lifetime of the development without the need to construct additional coastal defences. This objective has no definition of timescale and is not fit for purpose.

**Reason 4:**

- Objective RF49 relates to new houses and not replacement houses. The application seeks to establish a replacement dwelling at a more appropriate location on the subject site. This would remove the current dwelling from the front of the site, close to the road and move it back to the centre of the site to match the existing building line.

**Planning Officers Report**

- Report concludes that the dwelling on site is a chalet based on narrative under previous applications. The supporting documentation demonstrates that the current dwelling is a permanent dwelling.
- It is acknowledged that the development complies with Objective RF51 of the Development Plan which seeks to ensure that development of any coastal site is of an appropriate size, scale and architectural quality and that it does not detract from the visual amenity of the area or impact negatively on the natural or built heritage.

## 6.2. Planning Authority Response

- The information submitted with the application did not adequately demonstrate that this unit is a permanent residential dwelling rather than a coastal chalet. The method of construction / materials used in the construction of the unit does not demonstrate that this is a permanent residential dwelling.
- The Fingal County Council Biodiversity Officer has referenced the Coastal Erosion Risk Management Study Portrane – Rush prepared by RPS in 2013, which provides the most recent scientific advice and indicates that the subject site is at significant risk from coastal erosion. The applicant continues to reference the Irish Coastal Protection Strategy Study which was commissioned in 2010. This is outdated as more up to date information and assessment is contained in the 2013 Study prepared by RPS.
- The findings of the Coastal Erosion Risk Management Study: Portrane – Rush prepared by RPS indicates that the site is at significant risk from coastal erosion.
- The applicant has made a number of comments in relation to the Planning Officer's Report. All submitted information has been considered in the assessment of the application.
- In the event that the appeal is successful, provision should be made in the determination for applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

## 6.3. Observations

None.

## 7.0 Assessment

7.1. The main issues to be considered are as follows:

- Principle of Development
- Coastal Erosion

- Appropriate Assessment

## 7.2. Principle of Development

- 7.2.1. The applicant seeks permission for the construction of a replacement dwelling. However, the Planning Authority in the first reason for refusal states that having regard to the planning history of the site and the physical nature and characteristics of the existing structure, it considers that the proposed development relates to the replacement of an existing chalet / holiday home with a permanent residential dwelling. The reason states that the applicant has failed to demonstrate that the development complies with Objective RF42 of the Development Plan, which sets out the exceptional circumstances under which the replacement of a chalet or seaside hut will be considered.
- 7.2.2. The grounds of appeal argue that the existing structure on the site is a permanent dwelling and that permission is sought to replace this structure. An architectural assessment submitted with the application states that the structure is a permanent block built dwelling and not a wooden structure which would be synonymous with beach side chalets. The appeal submission also refers to evidence of rental income, local property tax and domestic utility bills submitted with a previous application. However, no such information has been submitted with the current application or appeal.
- 7.2.3. The appeal site falls within the High Amenity ('HA') zone. New residential development in this area is limited to persons who have a defined essential housing need based on their involvement in farming or exceptional health circumstances (Objective RF32 refers). The Development Plan also provides for the replacement or conversion of existing coastal chalets with permanent dwellings in exceptional circumstances where: (i) the unit is occupied on a year round basis and has been for a period of 7 years or more; (ii) the proposal satisfies planning criteria in relation to appropriate design and layout, drainage, access and integration with the character of the landscape; (iii) the site is not be liable to the impacts of climate change, including coastal erosion and flooding; and (iv) impacts on European Sites are fully assessed.
- 7.2.4. The applicant seeks permission for a replacement dwelling on the basis that the existing structure on the site has an established residential use. However, there is

no documentation on the file to demonstrate that there is an established residential use and that the structure is occupied, either on a seasonal or permanent basis. I would note that at time of inspection the structure appeared to be unoccupied. On the basis of the foregoing, I would concur with the Planning Authority's view that the information submitted with the application does not adequately demonstrate that this unit is a permanent residential dwelling or a coastal chalet that meets the criteria set out under Objective RF42 of the Development Plan. The issue of climate change and coastal erosion will be discussed further in Section 7.3 below.

### **7.3. Coastal Erosion**

- 7.3.1. The second and third reasons for refusal relate to the sites location in an area that is identified as being at risk of coastal erosion. The second reason for refusal states that the development would contravene Objective DMS174 of the Development Plan, which prohibits new development at coastal locations that are at risk from coastal erosion, unless it can be established based on best available scientific information, that the likelihood of erosion at a specific location is minimal. The third reason for refusal states that the development would contravene Objective NH61 of the Development Plan which prohibits development which would be reliant on the construction of additional coastal defences.
- 7.3.2. The grounds of appeal states that The Irish Coastal Protection Strategy Study 2010 is an independent study carried out on behalf of the OPW and that this strategy demonstrates that the subject site is not prone to coastal erosion up to and including the year 2050 (Figure 44 refers). It is argued that this study demonstrates that the Green Infrastructure Maps and Objective DMS174 of the Development Plan are not fit for purpose as they are not based on any scientific evidence. The grounds of appeal state that the Planning Authority's assessment relies on the Coastal Erosion Risk Management Study Portrane - Rush, prepared by RPS in 2013. The appeal contends that this report is a 'draft' report, is not adopted as council policy and that it should not be considered to be the most up to date scientific evidence available.
- 7.3.3. The response of the Planning Authority argues that the Irish Coastal Protection Strategy Study is outdated as more up to date information and assessment is contained in the Coastal Erosion Risk Management Study: Portrane – Rush prepared by RPS in 2013.

7.3.4. I would concur with the view of the Planning Authority in this regard. The Coastal Erosion Risk Management Study Portrane - Rush, 2013, provides a more up to date assessment of coastal erosion. The Report identifies that the subject site is located on a sandy spit that forms part of a dynamic ecosystem and that the area is at risk from coastal erosion. The proposed development is therefore contrary to Objective DMS 174 and NH61 of the Development Plan and I recommend that permission is refused on this basis.

#### **7.4. Visual Impact**

7.4.1. The fourth reason for refusal states that the development would contravene materially Objective RF49 of the Development Plan which prohibits development that is located between the sea and the coast road on lands zoned High Amenity. While the proposed development is contrary to the terms of this objective, I would note that the site is an infill site along a line of established residential properties. I consider that the proposed dwelling is in keeping with the character of development in the immediate vicinity and is of a nature and scale that would integrate within this coastal context. I would not, therefore recommend that permission is refused on this basis.

7.4.2. The development exceeds the minimum standards for residential dwellings, private open space provision and car parking. Drainage and access arrangements are to the satisfaction of the Planning Authority, subject to conditions.

#### **7.5. Appropriate Assessment**

##### Screening

7.5.1. There are a number of Natura 2000 sites within a 15km radius of the site. They are as follows:

- Skerries Island SPA (004122);
- Rockabill to Dalkey Islands SAC (003000);
- Rockabill SPA (004014);
- Howth Head SAC (000202) & Howth Head Coast SPA (004113);
- Lambay Island SAC (000204) & SPA (004069);

- Rogerstown Estuary SAC (000208) & SPA (004015);
- Malahide Estuary SAC (000205) & SPA (004025);
- Baldoyle Bay SAC (000199) & SPA (004016);
- Ireland's Eye SAC (002193) & SPA (004117);
- North Dublin Bay SAC (000206);
- North Bull Island SPA (04006);
- South Dublin Bay and River Tolka Estuary SPA (04024).

7.5.1. An Appropriate Assessment Screening Report was submitted with the Planning Application (dated 20<sup>th</sup> June 2017). The Screening Report focuses on the Rogerstown Estuary SAC (Site Code: 000208) which is c. 1 meter to the east of the site and the Rogerstown Estuary SPA (Site Code: 004015) which is c. 15 metres to the east of the site. The Screening Report states that these are the only areas which may fall within the project's zone of influence.

7.5.2. The appeal site is a serviced site on the edge of Portrane Beach. The site itself is in grassland and there would be no loss of significant habitat. The development will be supplied from the public water supply network. Surface water runoff will be discharged to groundwater via a proposed soak way. In addition, the proposal for connection to the public foul network would mitigate any potential for impacts from wastewater. I am satisfied that the proposed construction management methodology is adequate to ensure that no significant effect would arise during the construction phase.

7.5.3. I am satisfied having regard to the nature and scale of the development, its location on serviced lands adjacent to Portrane, its separation from the aforementioned sites and the absence of direct source – pathway – receptor linkages that no Appropriate Assessment issues arise and it is considered that the proposed development, subject to the proposed mitigation measures, would not be likely to have a significant effect individually or in combination with other plans or projects on these European sites.

### **Screening Conclusion**

7.5.4. It is reasonable to conclude that on the basis of the information on the file, which I consider to be adequate in order to issue a screening determination that that proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 004122 Skerries Island SPA); 003000 (Rockabill to Dalkey Islands SAC); 004014 (Rockabill SPA); 000202 (Howth Head SAC); 004113 (Howth Head Coast SPA); 000204 (Lambay Island SAC); 004069 (Lambay Island SPA); 000208 (Rogerstown Estuary SAC), 004015 Rogerstown Estuary SPA; 000205 (Malahide Estuary SAC); 004025 (Malahide Estuary SPA); 000199 (Baldoyle Bay SAC) 004016 (Baldoyle Bay SPA); 002193 (Ireland's Eye SAC); 004117 (Ireland's Eye SPA); 000206 (North Dublin Bay SAC); 04006 (North Bull Island SPA); 04024 (South Dublin Bay and River Tolka Estuary SPA), or any other European Site, in view of the site's conservation objectives, and that a Stage 2 Appropriate Assessment is not therefore required.

## **8.0 Recommendation**

8.1.1. I recommend that planning permission for the proposed development be refused for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. The site is zoned High Amenity in the Fingal County Development Plan 2017-2023, with an objective to protect and enhance high amenity areas. It is the policy of the Planning Authority, as set out in the Development Plan, to limit new housing development in the High Amenity area, to persons who have a defined essential housing need based on their involvement in farming or based on exceptional health circumstances (Objective RF32). The replacement or conversion of existing coastal chalets or seaside huts will also be considered in the High Amenity area, in exceptional circumstances, where the criteria set out in the Development Plan are met (Objective RF42). The Board is not satisfied on the basis of the details submitted with the application and appeal that there is an established residential use on the appeal site, that the applicant has a defined essential housing need based on their involvement in farming or based on exceptional health circumstances, or that the criteria for the replacement or

conversion of existing coastal chalets and seaside huts, are met. It is, therefore, considered that the proposed development does not accord with the overall zoning objective for the area and the policies set out in the Fingal County Development Plan 2017-2023 in relation to the protection of high amenity areas. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. It is the policy of the Planning Authority, as set out in the Development Plan, to prohibit new development outside of urban areas, in coastal areas that are at risk from coastal erosion unless it can be objectively established based on the best scientific information available at the time of the application, that the likelihood of erosion at a specific location is minimal (Objective DMS174). Furthermore, it is the policy of the Planning Authority, to prohibit development along the coast, outside existing urban areas, where such development could not be adequately safeguarded over the lifetime of the development without the need to construct additional coastal defences (Objective NH61). The proposed development is situated in an area that is identified in the Fingal Development Plan 2017-2023 (Green Infrastructure Maps) as being at risk of coastal erosion and it is considered based on current conditions and future coastal erosion predictions that coastal protection measures would be required to avoid damage by the sea at this location in the future. It is, therefore, considered that the proposed development does not accord with the policies set out in the Fingal County Development Plan 2017-2023 in relation to development in areas that are at risk of coastal erosion. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Karen Kenny

Senior Planning Inspector

14<sup>th</sup> May 2018