



An
Bord
Pleanála

Inspector's Report ABP-301001-18

Development	228 no. dwelling units, a crèche and all associated site works on a site area of approximately 8.26 ha.
Location	Ministers Road, Regles, Lusk, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0327
Applicant(s)	Dwyer Nolan.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	First / Third Party.
Appellant(s)	1. Dwyer Nolan. 2. Lusk Community Council.
Observer(s)	None.
Date of Site Inspection	23 rd May 2018.
Inspector	Karen Kenny

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1.0 Site Location and Description

- 1.1. Lusk is located in the administrative area of Fingal County Council and is approximately 8 kilometres to the north east of Swords. The site is located on the western edge of Lusk and to the north of Ministers Road, a local road that connects Lusk to the R132 (former N1).
- 1.2. The site is bounded by Minister's Road to the south, by agricultural lands to the north, to the east by the Round Towers GAA Club and to the west by agricultural lands that include a dwelling and a golf range. The site, with a stated area of 8.26 hectares, is irregular in shape. It comprises five fields or field sections and is traversed centrally by field boundaries, drainage ditches and mature hedge planting. The northern and southern boundaries are defined by field boundaries with hedge planting. The eastern boundary is undefined. The upper section of the western boundary includes a field boundary that is marked by hedge planting at its northern section, while the lower section is undefined. The site comprises a mixture of grassland, tilled land, bear ground, dry meadows, grass verges and scrub and ground levels fall from north to south. There is an underground gas main and an associated wayleave running north – south through the eastern section of the site.
- 1.3. The site is on the western outskirts of Lusk Village and is within the 50 k/h speed zone. The Dun Emer housing estate is located to the south of Minister's Road and address the site. Lands to the immediate east are zoned Open Space reflecting the established sports facility at this location, while the lands to the west are zoned for General Employment uses.
- 1.4. Bus stops on the Dublin Road are over 1 kilometre from the site and the Lusk / Rush Train Station is located between the settlements of Lusk and Rush at a distance of over 2.5 kilometres from the site.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of 228 no. two storey houses, a creche and all associated site works. The development as amended following a request for further information comprises the following:

- 4 no. 4 bedroom detached dwellings, 17 no. 4 bedroom semi-detached dwellings, 94 no. 3 bedroom semi-detached dwellings, 100 no. 3 bedroom terrace dwellings and 2 no. 2 bedroom terrace dwellings.
- Two storey creche facility with a stated floor area of 370 square metres.
- Class 1 and Class 2 Open Space, incorporating a children's playground and 2 no. detention basins for storm water attenuation.
- Two vehicular access points from Minister's Road.

2.1.1. The application was accompanied by the following:

- Archaeological Assessment (Desktop).
- Traffic & Transport Assessment.
- Engineering Services Report.
- Site Specific Flood Risk Assessment.
- Appropriate Assessment Screening Report.

2.1.2. The further information submission was accompanied by the following:

- Engineering Report – Sightlines and Attenuation Calculations.
- Archaeological Assessment – Site Testing.
- Biodiversity Assessment.
- Arborist Assessment.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Grant permission subject to 27 no. conditions. The following conditions are of note:

- Condition no. 2 requires a revised layout in the vicinity of the childcare facility and houses no. 190 to 196 to address surveillance of open space to south east and drop off / parking arrangements for the creche.
- Condition no. 3 requires the omission of 19 no. dwellings in the southern section of the development along Ministers Road, to facilitate the provision of

a cycle path in accordance with the Greater Dublin Area Cycle Network Plan and to provide for street realm works and in-curtilage car parking.

- Condition no. 4 states that the decision permits 209 houses only and requires phasing to be agreed with the Planning Authority.
- Condition no. 5 requires revised landscaping details or details to be agreed.
- Condition no. 6 (a) requires a minimum of 2 off street car parking spaces in close proximity to the units they serve.
- Condition no. 9 requires compliance with the mitigation measures contained in the Report of Mary Tubridy and Associates (Biodiversity) that was received by the Planning Authority at further information stage.
- Condition no. 10 requires compliance with the recommendations of the Archaeological Assessment prepared by Archaeology Plan that was received by the Planning Authority at further information stage.
- Condition no. 18 requires the main area of Class 1 Public Open Space to be completed prior to the occupation of the 25th housing unit and the remaining areas to be developed to taking in charge standard prior to the occupation of the 50th housing unit.
- Condition no. 27 requires the payment of a Special Contribution under Section 48 (2) (c) of the Planning and Development Act 2000, as amended in respect of the provision of a community facility in the area of the proposed development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Report of the Planning Officer includes the following considerations:

- The site is zoned RA Residential Area and is part of a larger bank of land that is subject to an objective in relation to the preparation of a Masterplan (MP6.B).
- The Report notes that the lands were previously assessed in the context of the Lusk LAP and the Development Plan review and concludes that the

proposed development would not prejudice the future preparation of a masterplan and does not prejudice the development of adjoining lands.

- Following the initial assessment, additional information was requested in relation to detailed design issues (site layout and urban design), archaeology, nature conservation (bird, bat and botanical surveys and assessment), surface water storage (attenuation), sightlines, parking, landscaping, boundary treatments, public art, childcare provision and electrical supply.
- The Planning Officer's report following the submission of further information concludes that generally, the proposed development provides for a high quality of residential amenity with adequate provision of public open space and a suitable scale of childcare provision.
- The Report refers to a number of outstanding issues that can be addressed by way of condition. This includes the omission of 19 no. units from the southern section of the development and revisions to the layout of development in the vicinity of the propose creche (Condition no. 2).

3.2.2. Other Technical Reports

Water Services:	No objection.
Transportation Section:	No objection.
Heritage Officer:	No objection subject to implementation of mitigation measures in Biodiversity Assessment.
Community, Culture and Sports:	No objection.
Parks and Green Infrastructure:	No objection.

3.3. Prescribed Bodies

Irish Water:	No objection.
DCHG:	No objection.

3.4. Third Party Observations

A total of 10 no. submissions were received from members of the public and from groups /clubs in the area in addition to 3 no. submissions from elected representatives. The issues raised can be summarised as follows:

- Mix of dwelling types. Shortage of larger homes and homes for elderly residents in the area.
- Capacity of the road network and public footpaths.
- Traffic safety.
- Adequacy of education and community facilities to serve existing and proposed development.
- Adequacy of retail and other public services to cater for existing and proposed development.
- Inadequate pedestrian / cycle links to village centre and train station.
- Adequacy of sewerage system.
- Impact of development on adjacent sports facility and health and safety issues associated with the use of the adjacent GAA facility during the construction phase of the development.
- Adequacy of open space provision to cater for existing and future residents.
- Surface water drainage, impact on open space and potential for failure.
- Failure to complete Class 1 Open Space in a previous development in the area (P.A. Ref. F06A/0608 / F15A/0015).
- Materials and finishes, including use of red brick not appropriate.
- Inadequate car parking provision for visitors.
- History of persistent Flooding on Ministers Road.

4.0 Planning History

There is no planning history pertaining to the appeal site.

5.0 Policy Context

5.1. Regional Planning Guidelines (RPGs)

- 5.1.1. The Regional Planning Guidelines for the Greater Dublin Area 2010-2022 outline the settlement hierarchy for the Greater Dublin Area (GDA). Lusk is designated as a Moderate Sustainable Growth Town in the Hinterland Area of Dublin.

5.2. Policy Guidelines

- 5.2.1. Having considered the nature of the development, the receiving environment and the details on the file, I consider that the following policy guidelines are directly relevant to the proposed development:

- Sustainable Residential Development in Urban Areas (2006)
- Urban Design Manual – A Best Practice Guide (May 2009)
- Design Manual for Urban Roads and Streets (2013)
- Design Standards for New Apartments (2018)
- Childcare Facilities, Guidelines for Planning Authorities (2001)
- Framework and Principles for the Protection of Archaeological Heritage (1999)
- Flood Risk Management, Guidelines for Planning Authorities (2009)

5.3. Development Plan

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

- The site is zoned RA 'Residential Area' with an objective to '*provide for new residential communities subject to the provision of the necessary social and physical infrastructure*'. The zoning vision is to '*ensure the provision of high quality new residential environments with good layout and design, with adequate public transport and cycle links and within walking distance of*

community facilities'. Residential development is permitted in principle in this zone.

- Objective SS20: Manage the development and growth of Lusk, Rush and Skerries in a planned manner linked to the capacity of local infrastructure to support new development.
- Chapter 3 sets out Design Criteria for Residential Development including mix of dwellings, density and open space provision.
- The Development Strategy for Lusk, contained in Chapter 4 'Urban Fingal' seeks to conserve and enhance the unique character of the town core, consolidate the planned growth of the town and to ensure that the level of retail and local services grows to serve the expanding town population. The following objectives are also considered relevant:
 - Objective LUSK 4 is to retain the traditional hedgerow boundary treatment characteristic of the town. The objectives states that the protection and enhancement of existing boundary hedgerows and trees shall be required save where limited removal is necessary for the provision of access and promote the planting of hedgerows and trees using native species within new developments.
 - Objective LUSK 7 is to ensure that existing and future development is consolidated within well-defined town boundaries to maintain the distinct physical separation of Lusk and Rush.
 - Objective LUSK 11 is to prepare and/or implement Masterplans during the lifetime of this Plan for the identified Masterplan areas including the Minister's Road Masterplan (Map Sheet 6A: MP 6.B refers). The objectives states that the main elements to be included in the Ministers Road Masterplan should include the provision of a new community facility with a minimum of 300 square metres, provision for phased residential development ensuring that playing pitches and the community facility are provided in tandem, and ensure that no development takes place until such time as a Management Plan for the Outer Rogerstown Estuary is adopted by the Council.
- Objective MT13: Promote walking and cycling as efficient, healthy, and environmentally-friendly modes of transport by securing the development of a

network of direct, comfortable, convenient and safe cycle routes and footpaths, particularly in urban areas.

- Objective MT14: The Council will work in cooperation with the NTA and adjoining Local Authorities to implement the *Greater Dublin Area Cycle Network Plan* subject to detailed engineering design and the mitigation measures presented in the SEA and Natura Impact Statement accompanying the NTA Plan.
- Objective MT41: Seek to implement the Road Improvement Schemes indicated in Table 7.1 within the Plan period, subject to assessment against the criteria set out in Section 5.8.3 of the NTA Transport Strategy for the GDA, where appropriate and where resources permit. Reserve the corridors of the proposed road improvements free of development. Ministers Road upgrade is listed as a proposed road scheme in Table 7.1.
- Section 12.3 of the Development Plan sets out design criteria for urban development and includes quantitative standards relating to dwelling size, separation standards, public and private open space provision, car parking, etc. Reference is made to guidelines published by the Department of Environment, Community and Local Government in respect of quality housing and sustainable residential development and to the Design Manual for Urban Roads and Streets, which was published jointly with the Department of Transport Tourism and Sport. Policy objectives PM31 to PM33 promote good urban design practices in accordance with these guidelines.
- With respect to residential densities, the Development Plan states that regard should be had to the government's guidelines (*Sustainable Residential Development in Urban Areas, Urban Design Manual*) (Objective PM41).
- Sheet No.6 Lusk / Rush: The site is within the development boundary of Lusk and is within Masterplan area "MP 6.B".
- The Lusk Local Area Plan 2009, contained local objectives relating to the subject site and its immediate environs. However, this plan has expired and is superseded by the more up to date policy context contained in the Fingal Development Plan 2017-2023.

5.4. **Natural Heritage Designations**

None.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.2. **Third Party Grounds of Appeal**

6.2.1. A third-party appeal has been received from Lusk Community Council. The grounds of appeal can be summarised as follows:

- Lands were subject to a variation of the 2005-2011 Development Plan.
- Lusk LAP published in 2009. Objectives of the LAP seek to phase development in line with the provision of waste water treatment facilities (OBJ LK1), school provision (OBJ LK5) and road improvements (OBJ LK14) and require that no development would take place pending the preparation of a Management Plan for the Outer Rogerstown Estuary (OBJ LK18).
- The site is zoned RA and forms part of a broader area of land that has a Masterplan designation. The principles of the Lusk LAP, have been incorporated into the Development Plan. Reference to Objectives LUSK 1 to 11 in Chapter 4 of the Development Plan. No Masterplan has been prepared to date, Ministers Road has not been upgraded and the site does not have the necessary social or physical infrastructure to support the proposed major development on the western access road to Lusk.
- The archaeological assessment submitted at additional information stage indicates the significance of the site. The identification of Bronze Age findings across an extensive area and the contextualisation of this information in the broader rich archaeological heritage of Lusk has highlighted the archaeological significance of the site and the impact that the extensive residential development would have on this rich cultural heritage.

- Reference to inaccuracies / inconsistencies in PA Reports. Issues raised in objections / representations may have been noted but have not been addressed in the decision. The Planner's Report states that the development would not prejudice the preparation of a Masterplan and that it sets out a framework for the proper planning and sustainable development of the lands, while a later section seeks to omit dwellings to facilitate provision of a cycle path, street realm works and to ensure that all houses have adequate in-curtilage car parking.
- Lusk LAP 2009 required that there would be no development on the lands until the upgrading of Minister's Road was completed. This has not been done and there is no timeline defined for the upgrade.
- Requirement for Ministers Road Masterplan set out in the Development Plan. The oversight of the Masterplan is a reserved function. Grant of permission would prejudice preparation of a masterplan and remove the opportunity for public consultation and input into the Masterplan.
- Concerns in relation to the proposal for units to access directly onto Ministers Road.
- Condition no. 3 of the decision is prejudicial to the overall planning process as it removes a section of the proposed development which will be subject to a separate application. This creates a further unknown.
- Appeal site is strategically important in the context of the proper planning and development of Lusk and the development is not in line with the objectives of the Development Plan.

6.3. **First Party Grounds of Appeal**

The applicant has submitted a first party appeal against condition no. 3 and condition no. 18 of the notification to grant permission. The grounds of appeal can be summarised as follows:

Condition No. 3:

- There is space to provide a cycle path along Ministers Road, without the omission of 19 no. dwellings. On the southern side it would be possible to increase the width of the shared pedestrian / cycle route to a 2.5-meters wide dual cycle route. On the northern side there is space for a single cycle lane of 1.75 metres in width. The proposed footpath is 2-meters wide and includes a 1.5-meter strip for landscaping, which equates to an available width of 3.5 metres.
- The GDA Cycle Network Plan, 2013 identifies a cycle path along Ministers Road, described as a feeder route or connector. There is no stated requirement for a cycle path on both sides of Ministers Road.
- The applicant has paid a financial contribution to the Council in respect of the upgrade and extension of Ministers Road under a separate permission for the development of lands to the south (Dun Emer). It is the applicant's understanding that the Council has acquired lands to facilitate the realignment of the sharp curve on Ministers Road which lies to the east of the subject site.

Condition No. 18:

- Condition No. 18 requires all open space to be delivered / operational prior to the occupation of the first sector of houses within the development.
- No objection to the delivery of open spaces in a phased manner. However, condition no. 18 is excessive and impractical. The condition would necessitate the provision of roads, services and almost 180 houses after the delivery of the completed open spaces. Question the usability and safety of open spaces if delivered early.
- The open space to the east of Road 2 and 5 could be delivered in its entirety prior to the occupation of unit no. 93. This provides for 14,512 square metres of public open space. Beyond that there are 135 no. units to be delivered and three open space areas to be provided with a total area of 5,041 square metres. The applicant requests that the condition is reworded.

6.4. Observers

None

6.5. First Party Response to Third Party Appeal

- The Fingal Development Plan 2017-2023 is the relevant plan. The site was zoned for residential development under the Lusk LAP 2009 and this zoning objective is retained in the 2017-2023 Development Plan. It is reasonable to assume that the development is appropriate.
- No request to prepare a Masterplan for the subject site.
- While the LAP has expired, objectives relating to the completion of the Waste Water Treatment Plant (OBJ LK1), the provision of a new primary and secondary school (OBJ LK5), the provision of playing pitches (OBJ LK15) and the provision of an appropriate mix of housing types (OBJ LK 12) have been satisfied. In relation to the completion of upgrades to Ministers Road the applicant has paid a contribution of €100,000 for the provision of a cycle path on the southern side of Ministers Road and a footpath has been provided on the southern side of Ministers Road. Land has been ceded to the Council for upgrades to Ministers Road. The road bend to the east of the subject site is under the control of Fingal County Council as part of an agreement with the applicant arising from the planning permission granted for the Dun Emer development. In relation to the objective to prepare a Management Plan for the Outer Rogerstown Estuary, the Planning Authority acknowledge that this is not done but concedes that the development will not impact on same (OBJ Lusk 11).
- As detailed in the first party appeal submission, there is adequate space to facilitate the provision of a cycle track at this location.
- The adjoining open space lands are in the ownership of Fingal County Council and are in use by a GAA club. The lands to the west are zoned General Employment and if developed will be subject to a separate application. The proposed development will not impede the preparation of a masterplan for these 'general employment' lands. The requirements for a Masterplan do not

preclude the current proposal from being implemented, nor does it prejudice the preparation of any Masterplan.

- The Planning Authority has no objection to the delivery of housing on the site and concludes that the application can be assessed in full without the requirement for a formal masterplan and does not prejudice the preparation of a plan for the remaining lands or contravene Objective Lusk 11 of the Development Plan.
- The Development as applied for meets the criteria of both the Lusk LAP and Fingal Development Plan.
- In relation to Archaeology, the Assessment Report submitted at further information stage has been deemed acceptable. Condition no. 10 of the grant of permission required mitigation measures to be implemented in accordance with the recommendations of the Department of Arts, Heritage Regional, Rural and Gaeltacht Affairs. If significant or unusual archaeological items had been discovered, it is likely that the Planning Authority and Department would have raised concerns regarding same.

6.6. Thirty Party Response to First Party Appeal

- Due to the absence of an agreed Masterplan for Ministers Road, it is not clear how all services and facilities for the community of Lusk will be provided. On one hand the PA suggest that the granting of permission will not prejudice the preparation of a Masterplan, while on the other the applicant is seeking to apply their own interpretation of design guidelines which suit their own objectives.
- Ministers Road is a main artery route into Lusk from the R132, and its street realm is therefore critically important to the sustainable development of Lusk. The provision of suitable roadside grass verges, street trees, signage is both critical and essential, as the road is transformed from a country road to part of the town. It is currently heavily used by vehicles, cyclists and pedestrians, however it is extremely dangerous for both pedestrians and cyclists due to the

absence of appropriate infrastructure. It is also poorly designed for motor vehicles and HGV's which make heavy use of the road. The proposal to delete the grass verge, is inappropriate.

- In the 'Dun Emer' residential development no houses were permitted to face directly onto Ministers Road.
- The suggestion that the provision of cycle facilities on the southern side of Ministers Road would be appropriate for a residential development on the northern side of the road is not in line with proper planning and development.
- The Cycle Network Plan sets out statutory policy for cycle routes in Ireland. The first stretch of Ministers Road is designated as F3, with L1 thereafter. There is a reference to 'tracks' plural in the Plan for this location. Tracks are required on both sides of Ministers Road to ensure seamless links to the L1 cycle track and links.
- The proposal to front directly onto Ministers Road conflicts with the design and development of pedestrian and cycle standards that are required for the proper planning and sustainable development of Lusk. Any redesign of this section must ensure that there are consistent design principles for Ministers Road.

6.7. Planning Authority Response to First Party and Third Party Appeals

6.7.1. The response of the Planning Authority to the issues raised in the first party appeal can be summarised as follows:

- The site is zoned RS-Residential. Regard was had to Objective Lusk 1 which relates to the preparation of a Masterplan. On a site of the subject scale it should be feasible to provide all aspects of design required as per the relevant statutory plans, including demarcation and buffering elements between private, semi-private areas and the public road network.
- Condition no. 3 was included to ensure a level of certainty over the provision of cycle infrastructure in accordance with the Greater Dublin Area Cycle Network Plan, 2013. The argument in relation to the ability of the applicant

and Fingal County Council to provide such infrastructure is noted; however, the reference to the removal of a landscaping strip to facilitate this cycle track is not acceptable and is part of the reason for the particular wording of the condition. This condition also requires suitable street realm works which would normally include the provision of street trees and other landscaping and which is considered to be essential in this location.

- The comments regarding condition no. 18 are noted. The applicant has not proposed a suitable alternative condition and only a revised phasing plan for the ratio of open space to housing. The condition as worded will ensure that open space is fully available to residents on first occupation of their homes, thereby, ensuring a high quality of recreational amenity in this residential development.

6.7.2. The response of the Planning Authority to the issues raised in the third-party appeal can be summarised as follows:

- No new issues have been raised by the third party.
- It is considered that the proposed development will not prejudice the preparation of the Masterplan. The Masterplan area is made up of three parcels of land, each zoned for different uses. A significant proportion of the Open Space lands to the east are already developed by the Round Towers GAA club. The General Employment lands are in agricultural use. The subject application relates to the entire RS zoned lands and as such provides certainty.
- Conditions will ensure that sufficient works are undertaken on Ministers Road. Sufficient archaeological protection is provided for under Condition no. 10 and under the National Monuments Act. The assessment included full regard to the impact on the surrounding area and it is considered that the proposed development is sustainable and appropriate with regard to its location on the western side of Lusk Village. The development will ensure that the long-term sustainability and vibrancy of Lusk can be maintained.
- ABP is requested to uphold the decision and to include conditions no. 25, 26 and 27 in the determination.

7.0 Assessment

- 7.1.1. First and third-party appeals have been received in respect of the decision of the Planning Authority. The first party appeal relates to conditions no. 3 and no. 18 of the notification to grant permission only. The third-party appeal is in respect of the decision to grant permission.
- 7.1.2. The first party appeal requests, in the event that there are no third-party appeals, that the Board uses its discretionary powers under Section 139 of the Planning and Development Act 2000 (as amended) and confines its considerations to conditions no. 3 and no. 18 only. In light of the fact that a third-party appeal has been received, the Board is empowered to consider this application *de novo*.
- 7.1.3. I consider that the key issues in determining the appeal can be addressed under the following headings:
- Policy Compliance
 - Density
 - Design and Layout
 - Condition No. 2
 - Condition No. 3
 - Condition No. 18
 - Childcare
 - Archaeology
 - Traffic
 - Other Issues
 - Appropriate Assessment

7.2. Policy Compliance

- 7.2.1. The Fingal County Development Plan 2017-2023 is the relevant statutory plan. There are two key matters that arise in respect of policy compliance, firstly, the principle of residential development within the zoning and secondly the issue of the development being premature pending the preparation of a Masterplan. I will address each matter in turn.

- 7.2.2. The appeal site is located within the zoning boundary of Lusk, designated as a 'Moderate Sustainable Growth Town' within the hinterland area of Dublin. The site is zoned RA 'Residential Area' with an objective to *'provide for new residential communities subject to the provision of the necessary social and physical infrastructure'*. The site was zoned for residential development in the 2011-2017 Development Plan and in the 2005-2011 Development Plan following a variation. I am satisfied that the principle of residential development on the site is established by the current and the previous Development Plans for the area.
- 7.2.3. In relation to the provision of social and physical infrastructure, I would note that a number of significant infrastructure projects have been delivered in the area in recent years to include new schools, a new wastewater treatment plant and recreational facilities and that further investment is planned. I do not, therefore, consider the proposed development to be premature on this basis.
- 7.2.4. In relation to the preparation of a Masterplan I would note that it is an objective of the Development Plan to prepare a Masterplan (Objective Lusk 11) for lands zoned Residential Area, Open Space and General Employment to the north of Ministers Road (MP6.B). The Development Plan states that the Masterplan should provide for a new community facility, for phased residential development and ensure that playing pitches and the community facility are provided in tandem. The Plan also states that the Masterplan should ensure that no development takes place until such time as a Management Plan for the Outer Rogerstown Estuary is adopted by the Council. The grounds of appeal argue that a decision to grant permission is premature pending the preparation of the Minister's Road Masterplan.
- 7.2.5. I consider that the appeal site represents a natural expansion of Lusk by virtue of its proximity to the village centre, its frontage onto one of the primary roads in Lusk and its position relative to existing housing and amenities. The site incorporates the entire bank of residential zoned land at this location and provides a framework for the development of this area and for the provision of a community facility (creche). The adjoining open space lands are under development for recreational purposes, while the employment lands to the west are in use for agricultural purposes and as a driving range. The impact of the proposed development on the Rogerstown Estuary is addressed in Section 7.12 below, Appropriate Assessment Screening.

- 7.2.6. The grounds of appeal refer to objectives of the Lusk Local Area Plan 2009. However, as the LAP has expired and is superseded by the policies and objectives of the Fingal Development Plan 2017-2023, I do not consider the objectives of the LAP to be relevant in the context of the subject application and appeal.
- 7.2.7. In conclusion, the lands have been zoned for some time, the site is effectively an extension to the existing settlement and is not therefore dependent on matters of principle which may be determined by a Masterplan. In terms of the preparation of a Masterplan, the application, in my opinion, provides an adequate level of certainty for the future development of the residential lands, without compromising the future development potential of the adjoining lands. I do not, therefore, agree that the proposed development would be premature pending the preparation of a Masterplan.

7.3. **Density**

- 7.3.1. The Development Plan states that density should be determined, in general, with reference to the Sustainable Residential Development in Urban Areas Guidelines (Section 3.4 and 12.8 refer). Lusk has a population of 7,786 persons¹ and is designated as a Moderate Sustainable Growth Town within the hinterland area of Dublin. The site itself, is a greenfield site at the periphery of Lusk and is outside of a public transport corridor.
- 7.3.2. The proposed scheme comprises the development of 228 houses on a site of 8.26 hectares. The applicant submits that this provides for a density of 27.6 units per hectare. The Guidelines for Sustainable Residential Development in Urban Areas, states under Section 5.11 that the greatest efficiency in land usage on outer suburban / greenfield sites will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare, that such densities should be encouraged generally, and that development at net densities of less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency. The proposed development at a density of 27.6 dwellings per hectare falls below the recommended density range.
- 7.3.3. I am of the opinion that the proposed scheme incorporates an excessive amount of open space and that this has influenced the density yield. The open areas use up

¹ Census 2016.

serviceable, developable lands in a location that is being promoted for residential development. The level of provision is based on the Development Plan requirement. Objective DMS57 of the Fingal Development Plan requires public open space provision at a rate of 25 square metres per person² based on an assumed occupancy rate of 3.5 persons for dwellings with three or more bedrooms and 1.5 persons for a dwelling with two or fewer bedrooms. On this basis, the proposed development has an occupancy rate of 774 persons and a public open space requirement of c. 1.94 hectares, equating to 23% of the overall site area. Objective DMS57B requires a minimum of 10% of a development site to be designated for use as public open space and states that the Council has the discretion to accept a financial contribution in lieu of remaining open space. In this instance, it is proposed to meet the requirement within the site, with a total provision of 1.99 hectares of Class 1 and Class 2 Open Space. Notwithstanding the terms of the Development Plan, I consider the level of open space provision to be excessive and to conflict with national policy guidance in relation to the efficient use of residential lands. The resulting density clearly conflicts with national guidance in relation to density and in my opinion, would constitute a misuse of serviced lands within the development boundary of a Moderate Sustainable Growth Town. On the basis of the foregoing I recommend that permission be refused.

- 7.3.4. In the event that the Board is minded to grant planning permission for the development, I would note that there is an opportunity to increase density within the subject layout. A housing area to the east of Road 2, that was detailed on in the original site plan submitted with the application and subsequently omitted, could be reintroduced. The creche could be relocated back to the open space to the north of Road 7, as per the original site plan and a higher density housing format introduced at both of these housing locations. However, on the basis of the significant revisions that would be required to the proposed development I am of the view that a refusal of permission is the most appropriate measure.

7.4. **Design and Layout**

- 7.4.1. Section 12.3 of the Development Plan sets out design criteria for urban development and states that it is a requirement that design principles are based on the guidance

² 2.5 hectares per 1000 population.

contained in the Sustainable Residential Development in Urban Areas Guidelines and the accompanying Best Practice Urban Design Manual (Section 12.3 refers). Section 12.10 sets out requirements for movement and transportation and requires new development to be designed in accordance with the Design Manual for Urban Roads and Streets (Objective DMS117).

- 7.4.2. The proposed development comprises a mix of two storey terrace, semi-detached and detached dwellings and a crèche all set around an internal road and open space network. The submitted details state that the development is broken up into a number of character areas and that the character of each area will be defined through the palette of materials used and landscaping features.
- 7.4.3. The overall block structure and the scale and height of development is suburban in character and is generally acceptable, in my view, with reference to national design standards.
- 7.4.4. The dwellings have been designed to comply with internal space and private open space standards set out in the Development Plan (Table 12.1 and 12.3) and the minimum separation distance of 22 metres between opposing first floor windows is provided (Objective DMS28).
- 7.4.5. Car parking is predominantly off street, with perpendicular on street spaces provided for terraced dwellings. The car parking blocks are broken up to reduce visual dominance and I consider the level of provision to be acceptable by reference to the standards set out in the Development Plan (Table 12.8).
- 7.4.6. In terms of the issues raised in the appeal with regard to the frontage onto Ministers Road, the proposal to front development directly onto the adjoining street is, in my opinion, an acceptable design response that reflects the suburban housing format in the area. The development will introduce an active street frontage along Ministers Road.
- 7.4.7. Conditions no. 2 and 3 of the notification to grant permission seek to alter the layout of the development along Ministers Road and in the vicinity of the proposed childcare facility. These conditions are discussed in Sections 7.5 and 7.6 below.

7.5. Condition No. 2

- 7.5.1. Condition no. 2 of the notification to grant permission requires the applicant to submit revised plans for agreement prior to the commencement of development to include the following revisions:

“Revisions to the layout of the childcare facility and houses 190 – 196 to the south east of Road 9.....to ensure appropriate levels of surveillance of the adjoining open space to the south east. The revised layout shall ensure that the childcare facility is served by a suitable set-down area and a reduced number of staff car parking spaces. A physical separation between the residential areas and open space will be required in the form of a suitably located access road or footpath.”

- 7.5.2. This condition relates to a development block comprising a creche and 7 no. dwellings. The open space referred to would appear to be the GAA playing pitches situated to the south east. While I consider the layout in this area to be generally acceptable, concerns in relation to the position of the creche within the development are discussed in Section 7.8 below.

7.6. Condition No. 3

- 7.6.1. A first party appeal has been received in respect of Condition no. 3 of the notification to grant permission. Condition no. 3 states the following:

“The proposed development does not allow for the provision of a cycle path along Ministers Road in accordance with the Greater Dublin Area Cycle Network, 2013. Units 1 to 12 as detailed on Drawing Ref Proposed Site Plan (AO) D-1603 and units 46-52 inclusive shall be omitted to allow for the set back of the houses on Ministers Road to provide for a cycle path, suitable street realm works and the provision of in-curtilage car parking for all houses on site. A revised application for permission detailing a revised layout for the area in question shall be submitted to the Planning Authority prior to the commencement of any development on the site. Reason: In the interest of the proper planning and sustainable development of the area and to ensure the provision of adequate infrastructure to serve Lusk”.

- 7.6.2. The applicant's appeal against condition no. 3 argues that there is space to provide a cycle path along Ministers Road without the omission of dwellings. The grounds of

appeal state that it would be possible to increase the width of the existing shared pedestrian / cycle route on the southern road edge to a 2.5 metre dual cycle route. On the northern side it is argued that there is an available width of 3.5 metres and that this is adequate to provide for a footpath and a single cycle lane of 1.75 metres, whilst the proposed planting verge could be omitted. The appeal submission also states that the GDA Cycle Network Plan, 2013 does not have a stated requirement for a cycle path on both sides of Ministers Road. The grounds of appeal state that a financial contribution has been paid to the Council in respect of the upgrade and extension of Ministers Road under a separate permission that relates to the Dun Emer housing estate to the south. The response of the Planning Authority states that condition no. 3 was included to ensure certainty over the provision of cycle infrastructure in accordance with the Greater Dublin Area Cycle Network, 2013 and that the reference to the removal of the landscaping strip to facilitate the cycle track is not acceptable. This condition requires suitable street realm works to include the provision of street trees and other landscaping. The third party highlights the need for the cycle path and notes that the condition results in undue uncertainty.

- 7.6.3. I would note that the design of the development along Ministers Road and the requirement for a cycle path was not raised in the initial assessment or in the request for additional information. The Greater Dublin Area Cycle Network Plan, 2013 sets out a strategy for the provision of an integrated cycle network within the Greater Dublin Area and has been incorporated into the Greater Dublin Area Transport Strategy 2016-2035. Lusk is located within the Central Fingal Sector of the Plan and is detailed in 'Part 4C - Sheet N10'. The proposed network identifies 'Route L1: Lusk to Rush' running along Ministers Road to the south of the appeal site. In view of the designation under the Cycle Network Plan it would be reasonable to expect that provision be made on both sides of Ministers road for a cycle path with a minimum width of 2 metres, a footpath with a minimum width of 2 metres, in addition to a planting verge of c. 1.5 metres (min) to allow for the planting of street trees on the approach into Lusk. A minimum setback of 5.5 metres is required between the front wall of the proposed dwellings and the road edge in my opinion. The 3.5 metre setback, as proposed, is inadequate and the proposed development would, therefore, contravene the terms of the Greater Dublin Area Cycle Network Plan, 2013 and the Greater Dublin Area Transport Strategy 2016-2035.

7.6.4. In the event that the Board is minded to grant permission for the development I would note that an adjustment to the setback of front boundary walls and / or dwellings along Ministers Road would omit car parking provision and reduce the separation distances between opposing first floor windows to the rear and that more significant revisions would be required to facilitate the cycleway. In view of the revisions that would be required to the proposed development to facilitate the provision of a cycleway, footpath and planting verge, I am of the view that a refusal of permission is the most appropriate measure.

7.7. Phasing Condition no. 18

7.7.1. A first party appeal has been received in relation to the phasing provisions contained in Condition no. 18 of the notification to grant permission. Condition no. 18 includes the following requirements:

“...the main area of public open space to the east of Roads 2 and 5 shall be fully developed to taking in charge standard prior to the occupation of the 25th housing unit within the development. The remaining areas of public open space shall be fully developed to taking in charge standard prior to the occupation of the 50th housing unit within the development”.

7.7.2. The grounds of appeal argue that this condition requires all open spaces to be delivered and operational prior to the occupation of the first sector of houses within the development. The appeal submission states that while there is no objection to the delivery of open spaces in a phased manner, condition no. 18 is excessive and impractical. The condition would necessitate the provision of roads, services and almost 180 houses after the delivery of the completed open spaces. The first party questions the safety and practicality of the open spaces. The first party suggests that the open space to the east of Road 2 and 5 could be delivered in its entirety prior to the occupation of unit no. 93 and that this would provide for a total of 14,512 square metres of public open space in this initial phase. Beyond that it is suggested that there are 135 no. units to be delivered and three open space areas to be provided with a total area of 5,041 square metres. The applicant requests that the condition be reworded accordingly. The response of the Planning Authority states that the applicant has not proposed a suitable alternative condition and that the

condition as worded will ensure that open space is fully available to residents on first occupation of their homes.

- 7.7.3. I would concur with the applicants view in relation to the onerous nature of the condition and the view that open spaces may be inaccessible or unsafe if provided in advance of housing development. I am of the view that the purpose of a phasing schedule is to ensure that infrastructure, services, facilities and amenities are provided together with residential development. Condition no. 18 as worded would necessitate significant open space provision in advance of the corresponding residential development. The applicants appeal submission states that it is intended to develop the site from south to north and suggests that the Class 1 Open Space to the east of Roads 2 and 5 is provided prior to the occupation of the 93rd dwelling. However, this could result in up to 92 dwellings being occupied with no open space provision, which I consider to be unacceptable. Having regard to the extent of development proposed I am of the opinion that development should be completed in a minimum of 3 no. sequential phases, linked to the southern block of housing to the south of Road 1 (dwellings no. 1-52), the middle block of housing between Road 1 and Road 7 (dwellings no. 53 to 93), and the remaining blocks to the north of Road 7 (dwellings no. 94 to 228), with the associated roads, services and open spaces completed within each phase. In the event that the Board is minded to grant permission I would suggest that a condition is included requiring the phasing of development to be agreed with the Planning Authority prior to the commencement of development, subject to a minimum of 3 no. development phases.

7.8. **Childcare**

- 7.8.1. The development incorporates a childcare facility of 370 square metres. While the facility is adequate to meet the level of provision required under the 'Childcare Facilities Guidelines for Planning Authorities' DoEHLG (2001), I have concerns in relation to the remote location of the creche in the context of the overall development and the impact of this on its accessibility and on phasing. Section 2.4 of the Childcare Guidelines state that Planning Authorities should require the provision of childcare facilities at an average of one facility (20 no. childcare spaces) for each 75 dwellings. The threshold for provision should be established having regard to the distribution of childcare facilities and the demographic profile of an area. In the event

that the Board is minded to grant permission, I recommend that a condition is attached requiring the creche to be provided prior to the occupation of the 75th dwelling. I would also recommend that the creche is relocated back to the open space to the north of Road 7 to facilitate delivery within the second development phase as detailed in Section 7.7 above.

- 7.8.2. Should be Board be minded to relocate the proposed childcare facility, I would note that the housing area to the east of Road 9 would need to be redesigned. This is discussed in Section 7.3 above in the context of Density.

7.9. **Archaeology**

- 7.9.1. The grounds of appeal argue that the archaeological assessment submitted at further information stage highlights the archaeological significance of the site and the impact of the development on cultural heritage. I would note that the village of Lusk contains the remains of early medieval and prehistoric settlement. The Report received from the Department of Culture, Heritage and the Gaeltacht at application stage recommended that archaeological testing (geophysical survey and trench testing) be undertaken on the site and an assessment prepared, prior to a decision. The details submitted to the Planning Authority at further information stage included details of a geophysical survey and trench testing undertaken on the site and an assessment of the likely impacts of the proposed development on archaeological features. A total of 30 no. archaeological features were found during site testing. The most significant features were a prehistoric house, a fulacht fiadh (and features that are likely to relate to it) and a double ditched ring barrow. The proposed mitigation measures include full excavation in areas marked A, B and C on the submitted archaeology map (zones of high potential) in addition to archaeological monitoring of all works. A Report on the file from the Department of Culture, Heritage and the Gaeltacht, received at further information stage recommends that the mitigation proposals included in the Assessment are included as a condition of any grant of permission. On the basis of the foregoing, I consider that the proposed mitigation measures are sufficient to protect any remains that may exist within the site. In the event that the Board is minded to grant permission I would recommend that a condition is attached in relation to the implementation of the mitigation measures outlined in the Archaeological Assessment.

7.10. Traffic

- 7.10.1. The third-party appellant argues that Ministers Road is not adequate to cater for the proposed development and that it should be upgraded prior to any development on the appeal site in accordance with the requirements of the previous Local Area Plan. The appellants also raise concerns in relation to the proposal to provide direct access onto Ministers Road.
- 7.10.2. Local Objective LK14 of the expired Lusk Local Area Plan 2009, was “to ensure that development does not take place until the necessary upgrading of Minister’s Road as indicated on the Development Plan map is completed”. This objective was included as a local objective of the 2011 to 2017 Development Plan (No. 156) but has not been carried forward to the current Development Plan. It is an objective of the Development Plan to upgrade Ministers Road (Table 7.1).
- 7.10.3. The site is located at the edge of Lusk at a transitional location between Lusk Village and the countryside. Ministers Road comprises a two-way carriageway, with pedestrian and cycle facilities along the southern road edge only, at this location.
- 7.10.4. The Traffic and Transport Assessment submitted with the application includes baseline traffic counts for 3 no. junctions and forecasts trip generation rates from the development using the NRA approved TRICS database up to 2034. The assessment concludes that the proposed development would not have a seriously negative impact on the existing road network and that all of the junctions assessed would operate within their capacity.
- 7.10.5. In terms of pedestrian and cycle facilities, there are no facilities on the northern side of Ministers Road to link the proposed development to services and facilities, while there are pedestrian and cycle facilities on the southern side of the road. The site layout plan appears to detail two crossings on Ministers Road, while the the road layout plan (DW No. 170006-2000) shows drop kerbs only. I am of the opinion that an on-demand pedestrian or toucan crossing is necessary to allow residents of the proposed development to access pedestrian and cycle facilities in the area. In the event that the Board is minded to grant permission I recommend that a condition is attached to this effect.
- 7.10.6. In terms of Ministers Road and the proposal to realign same, I would note that there is adequate scope within the existing carriage way to cater for two way traffic flows

and subject to the provision of adequate crossings facilities, pedestrian and cycle facilities in the area are adequate to serve the development pending a more comprehensive upgrade of the road. Details submitted to the Planning Authority at further information stage demonstrate that adequate sightlines can be achieved from the proposed junctions onto Ministers Road. In terms of the proposal to provide direct frontage and access onto Ministers Road, I am of the opinion that this is positive and would provide an active frontage along the road and act as a traffic calming measure on the approach into Lusk Village. I do not, therefore, agree that the proposed development would be premature pending the completion of the proposed upgrade to Ministers Road.

7.11. Other Issues

Water Services and Flood Risk

- 7.11.1. The Engineering Assessments and the drawings and details submitted with the application and in response to the request for additional information, are considered to satisfactorily address surface water drainage, foul drainage and water supply.
- 7.11.2. A Flood Risk Assessment was included with the application. The site is located within Flood Zone C and as such, is at low risk of flooding and would not require a justification test in accordance with the Flood Risk Management Guidelines.

Biodiversity

- 7.11.3. The Report of Mary Tubridy and Associates submitted at further information stage provides an assessment of the potential impacts on farmland birds of nature conservation concern, on bats and on rear plant species. The assessment concludes that the site is of low to medium value for biodiversity and includes recommended mitigation measures to ensure that the development would not affect bat populations.

Procedural Matters

- 7.11.4. A number of procedural issues have been raised in relation to the preparation of a Masterplan and amending conditions. I consider that the matters raised are matters for the planning authority and cannot be addressed by the Board in this appeal.

7.12. Appropriate Assessment

Screening

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

- River Nanny Estuary and Shore Line SPA (004158);
- Rockabill SPA (004014);
- Baldoyle Bay SAC (000199) & SPA (004016);
- Lambay Island SAC (000204) & SPA (004069);
- Rockabill to Dalkey Islands SAC (003000);
- Skerries Island SPA (004122);
- Malahide Estuary SAC (000205) & SPA (004025);
- Rogerstown Estuary SAC (000208) & SPA (004015);

7.12.2. An Appropriate Assessment Screening Report was submitted with the Planning Application (dated February 2017).

7.12.3. The appeal site is a serviced site on the edge of Lusk and is occupied by amenity grassland, tilled land, recolonising bare ground, dry meadows, grassy verges, small areas of scrub, hedgerows and drainage ditches. The Screening Report concludes that the biodiversity value of the site is of 'Low Local Importance'. The proposed development will not lead to any reduction or loss of habitat within a Natura 2000 site or habitats related to them. Water will be provided via public supply and wastewater will discharge to the public system. I would also note that there are limited relevant pathways between the development and the aforementioned sites.

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

7.12.5. 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. 004158 (River Nanny Estuary and Shore Line SPA); No. 004014 (Rockabill SPA); No. 000199 (Baldoyle Bay SAC), No. 004016 (Baldoyle Bay SPA); No. 000204 (Lambay Island SAC), No. 004069 (Lambay Island SPA); No. 003000 (Rockabill to Dalkey Islands SAC); No. 004122 (Skerries Island SPA); No. 000205 (Malahide Estuary SAC), No. 004025 (Malahide Estuary SPA); No. 000208 (Rogerstown Estuary SAC), No. 004015 (Rogerstown 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.

7.13. **Conclusion**

7.13.1. While I consider that the principle of the residential development on the subject lands is acceptable there are a number of issues outstanding in the current proposal which would require considerable amendments to the scheme. The principle concerns are the density of the proposal which I consider requires a significant redesign of the scheme and the necessity to revise the layout of the scheme along the southern boundary to facilitate a future cycle access route. Other issues as outlined above include, inter alia, the amendments recommended in relation to the location of the crèche and the provision of pedestrian / cycle crossings. While I have outlined within the assessment above my recommendation regarding possible alterations seeking to remedy the scheme, in the absence of revised plans and particulars that address the issues raised, I do not consider that such a significant suite of amending conditions would be in the interest of proper planning or the sustainable development of the area and in this regard, I consider that the most appropriate means of rectifying the matters arising is to refuse permission.

8.0 **Recommendation**

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

9.0 Reasons and Considerations

1. The site of the proposed development is on serviced lands within the development boundary of Lusk, which is designated as a Moderate Sustainable Growth Town in the Regional Planning Guidelines for the area and in the Core Strategy of the Fingal County Development Plan 2017-2023. The site is zoned for residential purposes. It is a requirement of the Fingal County Development Plan 2017-2023, that the number of dwellings to be provided on a site should be determined by reference to the guidance contained in the *Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities (DECLG 2009)*. The Guidelines state under Section 5.11 that the greatest efficiency in land usage on outer suburban / greenfield sites will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare, that such densities should be encouraged generally, and that development at net densities of less than 30 dwellings per hectare should generally be discouraged in the interest of land efficiency. It is considered that the development of the site at a density of 27.6 units per hectare would not be at a sufficiently high density to provide for an acceptable efficiency of development on zoned and serviced land. It is, therefore, considered that the proposed development would not comply sufficiently with Government Guidelines, particularly the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* issued by the Department of the Environment, Community and Local Government in 2009 and would conflict with the provisions of the Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The Greater Dublin Area Cycle Network Plan, 2013 sets out a strategy for the provision of an integrated cycle network within the Greater Dublin Area and has been integrated into the Transport Strategy for the Greater Dublin Area 2016-2035. The proposed cycle network for the Central Fingal Sector, including Lusk, is detailed in 'Part 4C - Sheet N10' of the Cycle Network Plan and includes a proposed feeder cycle route 'Route L1: Lusk to Rush' along

Ministers Road. The proposed development fails to make adequate provision for the provision of a 'feeder' cycle route along the northern road edge. The proposed development is, therefore, contrary to the terms of the Greater Dublin Area Cycle Network Plan, 2013 and to the terms of the Greater Dublin Area Transport Strategy 2016-2035. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Karen Kenny
Planning Inspector

15th June 2018