



An  
Bord  
Pleanála

## Inspector's Report ABP-301268-18

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<b>Development</b>	Retention of a single storey log cabin (c. 41q.m) and permission for the change of use of the log cabin to Montessori (12 children).
<b>Location</b>	27 St Patrick's Avenue, St Anne's, Portmarnock, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F17A/0771
<b>Applicant(s)</b>	Rebecca Fallon and Darragh Gibbons
<b>Type of Application</b>	Retention and permission.
<b>Planning Authority Decision</b>	To grant retention and permission with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Fiona and Gerard Loughran.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> September 2018.
<b>Inspector</b>	Deirdre MacGabhann

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	6
3.4. Third Party Observations .....	6
4.0 Planning History.....	8
5.0 Policy Context.....	8
5.1. National.....	8
5.2. Fingal County Development Plan 2017 to 2023 .....	9
5.4. Natural Heritage Designations .....	10
6.0 The Appeal .....	10
6.1. Grounds of Appeal .....	10
6.2. Applicant Response .....	11
6.3. Planning Authority Response .....	13
6.4. Observations/Further Responses.....	13
7.0 Assessment .....	13
7.3. Consistency with Zoning and Policies in Respect of Childcare Facilities. ...	15
7.4. Impact on traffic/risk of accidents.....	16
7.5. Impact on Residential Amenity and Privacy .....	17
7.6. Noise.....	17
7.7. Nature conservation/Appropriate Assessment .....	18
8.0 Screening for Environmental Impact Assessment .....	19

9.0 Recommendation..... 19

10.0 Reasons and Considerations ..... 19

## **1.0 Site Location and Description**

- 1.1. The appeal site is situated in Portmarnock, to the west of Strand Road (R106) in a residential estate, St. Anne's Estate. It comprises no. 27 St. Patrick's Avenue, a semi-detached, end of terrace dwelling and its curtilage. The appellant's property adjoins the appeal site and comprises no. 28 St. Patrick's Avenue.
- 1.2. At the time of site inspection, a single storey log cabin was in place in the rear garden of no. 27 St. Patrick's Avenue. Access to the cabin and rear garden is via a driveway from the public road. To the rear of the site is agricultural/amenity land and Sluice River.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises retention of the single storey log cabin and its change of use to Montessori, for 12 no. children. Opening hours are 9.00am to 1.00pm and 2.00pm to 5.00pm. Water supply and waste management are proposed via connection to the existing public supply/sewer respectively.
- 2.2. The planning application states that the application for retention is made of foot of an enforcement warning letter (ENF no. 17/229B) and that the development replaces a portacabin on the site which has been removed. It states that this previous portacabin building was installed in c.1978 and was used as a dance school and for some time as a Scout Den.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 26<sup>th</sup> February 2018, the planning authority decided to grant retention and permission for the development subject to 11 conditions. Most are standard and the remainder are as follows:
  - No. 2 – Installation of 1.8m high timber panel fence on the inside face of the northern and southern (side) boundary wall; 2.0m high fence to rear boundary

with Sluice River, 1.8m high timber fence and gate to the side of the dwelling, for pedestrian access only to the rear.

- No. 3 – Requires provision of noise insulation to an appropriate standard, having regard to the location of the development in the Outer Airport Noise Zone.
- No. 4 – Restricts operating hours to 9am to 1pm and 2pm to 5pm.
- No. 5 – Limits the use of the structure to a Montessori and operation by the occupier of the main dwelling. Precludes sale or independent letting of the structure. Requires use of structure to revert to ancillary accommodation when Montessori use finishes. Precludes use of the dwelling for sleeping accommodation and short-term holiday letting.
- No. 6 – Requires compliance with the requirements of the Environmental Health Officer within three months of the date of the grant of retention permission.
- No. 7 – Requires that no parent vehicular set downs/pick-ups occur within the curtilage of the site. All parking within the site to be restricted to staff car parking and the existing residential use.
- No. 8 – Requires compliance with water services standards.
- No. 9 – Requires all bathroom windows to be permanently fitted with obscure glass.
- No. 10 – Controls the construction hours.
- No. 11 – Requires payment of a development contribution.

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

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

- 22<sup>nd</sup> February 2018 - Refers to the planning history of the appeal site and nearby sites, the zoning of the site, relevant planning policies, objections and submissions and departmental reports. It refers to a verbal report by Transportation Planning and states that there were no objections to the development, subject to condition. It assesses the application under a number of headings, including principle of use, residential impact, visual impact, transportation, water services, treatment of side entrance, internal layout and appropriate assessment. It considers that the development, due to

its limited size and nature is considered to be consistent with the policies and objectives of the current Fingal County Development Plan, would not result in a significant negative impact on existing residential amenity or result in traffic hazard, and would integrate appropriately with surrounding development. The report therefore recommends that retention and permission is granted for the development.

### 3.2.2. Other Technical Reports

- Water services – No objections subject to conditions.

### 3.3. Prescribed Bodies

- Irish Water – No objection.
- DAA – Having regard to the location of the development in the outer airport noise zone, and objectives of the County Development Plan in respect of this, requests further information and/or planning conditions in respect of (a) the existing and predicted noise environment, (b) that internal noise levels appropriate for the creche can be achieved and maintained (with airport growth), and that appropriate noise mitigation measures be implemented as required by the planning authority.

### 3.4. Third Party Observations

3.4.1. There are four observations on file, including one by the appellant (the owners of the property adjoining the appeal site at no. 28 St. Patrick's Avenue). Similar matters are raised in submissions, as follows:

- Zoning – The commercial development is inconsistent with the zoning objective for the site. Any future use as a residence or business would also conflict with the zoning objective.
- Inaccurate information on application – Refers to a number of inaccuracies e.g. no reference to current use of log cabin, distance to shared boundary, size of boundary vegetation, external measurements and height of log cabin not shown, window omitted from side elevation of log cabin, absence of internal plans, no reference to planning history of the site (PA ref.

F07B/0799). Photographs of the previous unauthorised structure on the site have no bearing on the application.

- Size/use of structure – The building is excessive in size and contravenes planning laws as it is not ancillary to the enjoyment of the main house. Consider that it must be residential rather than recreational use in the first instance.
- Impact on privacy – Proximity to boundary wall, overlooking of adjoining garden and bedrooms within the adjoining property from side and front windows in cabin.
- Rainwater collection – No downpipes on structure and concerns regarding how surface water will be disposed of (may enter observer's property).
- Inconsistent appearance – Materials and colour scheme are inconsistent with surrounding development.
- Acoustic privacy – Concern that there may be excessive transmission of sound into observer's property.
- Change of Use to Montessori
  - Insufficient details – Insufficient information on who will be operating the facility and the number of staff that will be employed.
  - Interior layout – Insufficient details regarding food preparation/storage areas, sleep or play areas, source of drinking water and hand washing facilities etc.
  - Impact of noise from facility on Brent Geese which use the high amenity area to the rear of the property for feeding.
  - Safety of children – Sluice River is 20m from property. No proposals for security of site. No reference to noise insulation to protect facility from aircraft noise e.g. glazing/door type.
  - Traffic issues – Impact of increase in traffic movements on St. Anne's Estate. Roads are very narrow as cars park on the street. Car parking spaces are at a premium. Residents have agreed to park on one side of the St. Patrick's Avenue to allow traffic to flow freely. Impact of development on congestion, additional parking, the risk of accidents

and access by emergency vehicles. No reference to dedicated set down areas or parking for employees.

- Need – There is a creche/Montessori at the entrance to St. Anne's Estate (which already causes problems to traffic flow).
- Precedent – That the oversized and inappropriate development would set in the garden of a residential property.

## 4.0 Planning History

- PA ref. F07B/0799 – Permission granted for a double storey extension to no. 27 St. Patrick's Avenue (appeal site).
- PA ref. F07B/0599 – Permission granted for a double storey extension to no. 28 St. Patrick's Avenue (appellant).
- PA ref. F07B/0800 - Permission granted for a double storey extension to no. 28 St. Patrick's Avenue (appellant).

## 5.0 Policy Context

### 5.1. National

- Childcare Facilities: Guidelines for Planning Authorities (DEHLG, 2001) – This document provides a framework to guide local authorities and childcare providers in assessing and formulating development proposals respectively. The Guidelines identify any residential areas as an appropriate location for sessional/after-school childcare facilities and set out criteria to be applied in the assessment of the suitability of childcare facilities (section 3.2), including suitability of the site for the type and size of facility proposed, availability of outdoor play area, convenience to public transport nodes, safe access and convenient parking for customers and staff, local traffic conditions, number of facilities in the area and interned hours of operation. In section 3.4.1 the Guidelines state that applications for a change of use to childcare facilities in an existing residential area, should require some residential content to be maintained in the premises on the grounds that totally commercial premises would detract from the amenity of residential community.



- Circular PL3/16 – Requires that the childcare facility standards set out in Appendix 1 of the above guidelines, including the minimum floor area requirement per child, are excluded from consideration, given the role of Tusla in ensuring compliance with the Child Care (Pre-School Services) Regulations, 2006 (which were published subsequent to the Departments Guidelines, above).

## 5.2. Fingal County Development Plan 2017 to 2023

- 5.2.1. The appeal site is zoned 'RS', Residential, the objective of which is to '*Provide for residential development and protect and improve residential amenity*'. Childcare uses are permitted in principle within the zone. It also lies within the Outer Airport Noise Zone and policy objective DA07 applies. This policy strictly controls inappropriate development within the zone and requires noise insulation where appropriate. Land to the north of the site is zoned 'HA', High Amenity, the objective of which is to '*Protect and improve high amenity areas*'.
- 5.2.2. The current County Development Plan refers to the importance of the provision of childcare facilities to enable parents to participate in the workforce, avail of training and for child development. It recognises the lack of affordable, accessible community based childcare facilities in the county and policies of the Plan, therefore:
- Encourage the provision of childcare facilities in appropriate locations, including residential areas, town and local centres, areas of employment and close to public transport nodes (PM74),
  - Ensure the childcare facilities are accommodated in appropriate premises, suitably located and with sufficient open space in accordance with the Childcare Regulations (PM75), and
  - Provide suitable high-quality facilities, with regard to:
    - The suitability of the site for the type and size of facility proposed,
    - Adequate sleeping/rest facilities,
    - Adequate availability of indoor and outdoor play space,
    - Convenience to public transport nodes,

- Safe access and convenient off-street parking and/or suitable drop-off and collection points for customers and staff,
- Local traffic conditions, and
- Intended opening hours.

5.3. Under Childcare Facilities, page 442, the Plan states that '*Applications for childcare facilities in existing residential areas will be treated on their own merits, having regard to the likely effect on the amenities of adjoining properties, and compliance with the above criteria. Detached houses or substantial semi-detached properties are most suitable for the provision of full day care facilities*'. Policy DMS95 states that residential properties with childcare shall retain a substantial residential component within the dwelling and shall be occupied by the operator of the childcare facility.

#### 5.4. **Natural Heritage Designations**

5.5. Approximately 300m to the north west of the appeal site lies the Sluice River Marsh proposed Natural Heritage Area (site code 001763). To the south east of the site, approximately 220m), Baldoyle Bay is designated as a proposed Natural Heritage Area, Special Area of Conservation a Special Protection Area (site codes 00199 and 004016, respectively).

## 6.0 **The Appeal**

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

6.1.1. The appeal is made by the owners of no. 28 St. Patrick's Avenue which lies immediately north of the appeal site. Grounds of appeal are similar to the matters raised in observations (summarised above). Additional issues/comments are summarised below:

- Zoning – Whilst childcare uses are permitted within the RS zoning, childcare objectives indicate that facilities are preferable within the dwelling itself, so as not to impact on residential amenity. The childcare facility is proposed in a separate building and would set an inappropriate precedent for future commercial premises to be built within the curtilage of a dwelling.

- Traffic - Additional pressure on busy junction of Strand Road and St. Anne's Estate.
- Issues relating to the change of use to a sessional Montessori – Inadequate open space provision (policy PM 75). Development does not comply with requirements of policy DSM94.
- Noise - Development contravenes Objective DA07. Impact of noise from facility on pets in adjoining property.
- Impact of development on species using High Amenity grounds to the rear of the development (Brent Geese and Little Egrets). Development should be subject to appropriate assessment. Cumulative impacts could arise from Sutton to Skerries cycleway, Greater Dublin Drainage Outfall pipe under Baldoyle Bay SAC, new residential development along Sluice River and in Maynetown (including new outfall pipe to Baldoyle Bay).
- Impact on enjoyment of home – Due to its size and proximity to their rear garden, the development is also overbearing and has overshadowing effects.

## 6.2. Applicant Response

6.2.1. The applicant responds to the appeal as follows:

- Traffic issues – Traffic issues are over-stated. The development is a Montessori, not a creche/childcare facility. Appellant's photographs were taken at the weekend. Weekday parking within the estate is less (see photographs). Montessori will operate Monday to Friday. The junction of the estate road and Strand Road has a newly marked yellow box. Having observed the junction, there is no straightforward evidence of risk of traffic hazard. Traffic movements associated with the Montessori will not be substantial. It is expected to be used by local residents, and it is reasonable to assume that quite a number would walk to the facility. The facility would benefit the local area.
- Issues relating to change of use to Montessori:
  - Operator – The facility will be operated by the applicant, a qualified Montessori teacher. It will be operated to TUSLA guidelines and under

the Pre-School Regulations, 2016 (including ratio of staff to children). There will be no additional staff car parking required.

- Internal layout/compliance with policy – There is no requirement for sleeping or food preparation. The internal layout is per the standard layout for a log cabin. There have been no alterations made to the layout pending a grant of permission. The layout will follow TUSLA requirements. Objective PM75 will be complied with. The site is suitable for the type and size of facility proposed (Objective DMS94). There will be adequate indoor and outdoor space. The Transportation and Planning Section have not objected to the application. The operator is the owner of the property and the site has a substantial residential component (Objective DMS95).
- Noise control – Condition no. 3 of the permission (noise control) will be fully complied with. Windows in the development are triple glazed and the building will be sound insulated. Children will be fully supervised at play breaks and while entering and exiting the premises. There are numerous childcare facilities/primary schools in the Outer Airport Noise Zone. The development will not have any adverse effects on pets in adjoining property.
- Habitats Directive – Land to the rear of the development is not zoned special habitat. There is no evidence the development will have a negative impact on bird species. Children will be supervised at external play time.
- Privacy/overbearing development – The two windows that overlook no. 28 will be fitted permanently with obscure glazing. The applicant would be happy to fit blinds/curtains to front windows of proposed Montessori. This would address privacy issues for both parties. The extension at no. 28 extends into the rear garden of the property and looms over the garden at no. 27.
- Zoning – The facility would improve the residential amenity of the RS zoned lands. There is a need for the facility in the local area. The use is permitted in principle in the zone. Any future commercial premises would be subject to the planning process.

- Application information – The planning authority has adjudicated on the application and issued a decision to grant. Any deviations between the actual buildings and the drawings are minor in nature. The internal layout has yet to be finalised pending planning. These alterations will be internal. (Comment on each of the detailed matters raised – see submission).
- Size/use of structure – The size of the log cabin relative to the size of the rear garden is not excessive. The property at no. 27 St. Patrick’s Avenue is 71.6sqm. The site is 417.7sqm. Plot ratio (with log cabin) is 18.5%. The log cabin was purchased to supplement the existing modest family property. The application is for a change of use from log cabin to Montessori. The appellant’s have made an unfounded assumption that the log cabin was for residential or commercial use.
- Rainwater – Will be collected and disposed of as per the conditions of the permission.
- Appearance – The log cabin by nature is different to the character of adjoining properties. However, it does not adversely affect or visually impact on the surrounding area.

### **6.3. Planning Authority Response**

- 6.3.1. The planning authority respond to the appeal (23<sup>rd</sup> April 2018), but make no further comments on it. If the Board decide to grant permission for the development, they request that condition no. 11, in respect of a development contribution, is included.

### **6.4. Observations/Further Responses**

- 6.4.1. None.

## **7.0 Assessment**

- 7.1. Having regard to the details on file regarding the proposed development, its development plan context and my inspection of the appeal site, I consider that the key issues for this appeal relate to, and are confined to, the matters raised by the third-party appellant, as follows:

- Consistency with zoning of the site and policies for childcare facilities.
- Impact on traffic/risk of accidents.
- Impact on amenity and privacy of the adjoining property.
- Noise.
- Nature conservation.

7.2. In addition, the appellant raises concerns regarding the following matters, which I deal with briefly below:

- Use of the structure – The log cabin has been erected on the appeal site in the absence of planning permission. An application has been submitted for retention of the log cabin and for change of use to Montessori. There is no indication in the application form, what the existing use is. In response to the appeal, the applicant states that the log cabin was to supplement the existing modest family property. I would infer from this that it was acquired for a residential use. Notwithstanding this, the application before the Board is for the change of use of the log cabin to a Montessori. Any other use of the structure would require a further application for planning permission.
- Information on planning application – I have reviewed the matters referred to by the appellant. Some of the points made by the appellant are not correct, for example, the information submitted indicates distances to site boundaries, arrangements for the discharge of surface water, size of the structure relative to site area, extent of overhang and approximate height of vegetation (compare photographs to elevations submitted). However, I would accept that the second window in the elevation facing the appellant's rear garden has been omitted from the plans and that the internal layout of the log cabin may not match the plans submitted. However, these matters have been acknowledged and addressed by applicant in response to the appeal and I address them myself in this report.
- Compliance with Childcare Regulations – The internal spatial arrangement and provision of external play areas will be required to meet Tusla standards. In this aspect the development is regulated by another code and the matters raised by the appellant fall outside of the planning system and, therefore, cannot be adjudicated upon here.

- Discharge of surface water – The plans for the development indicate rainwater pipes from the roof and discharge of surface water via a soakaway on site. Given the relatively modest size of the development, this approach seems reasonable and can be controlled by condition.

### 7.3. Consistency with Zoning and Policies in Respect of Childcare Facilities.

7.3.1. The appeal site lies in a residential area and is zoned 'RS', Residential, the objective of which is to '*Provide for residential development and protect and improve residential amenity*'. Childcare uses are acceptable in principle in residential areas under the government's Guidelines on Childcare Facilities and within the zone.

7.3.2. The Department's Guidelines on Childcare Facilities and the County Development Plan set out criteria for the assessment of the suitability of childcare facilities and I comment on each of these below:

- Suitability of the site for the type and size of facility proposed – The proposed development is a small Montessori facility for 12 children, with two sessions running from 9am to 1pm and 2pm to 5pm. It is situated on a large site (c.400sqm), to the rear of existing residential development and within an existing residential estate. In principle the scale of the development, on a relatively large site, within an established residential area, is acceptable. However, I have concerns regarding access and parking and impact on residential amenity, discussed below.
- Convenience to public transport nodes – The proposed development lies within St. Anne's Estate and whilst it is not directly convenient to a public transport node (e.g. Portmarnock Station) it is within ready walking distance of Portmarnock village and to the public bus routes on the R106.
- Access and parking for customers and staff/local traffic conditions – Access to the appeal site is via the residential road network within St. Anne's Estate. I would accept that given the design of the estate, cars need to be parked on the road, and that at times this leads to a high level of congestion and difficulty in finding parking spaces. Further, I would accept that at busy times the junction of the estate road with Strand Road could be difficult to negotiate.

The proposed development provides off-road parking facility for staff (the applicant/operator) but no drop-down area and the facility would operate 9am to 5pm Monday to Friday. The effect of the development would be therefore to create a worst-case scenario of 12 additional vehicle trips at the start and end of each Montessori session.

Whilst I would accept, that the facility is relatively small, is likely to serve some families living within the estate, and will operate during times when the public roads are less congested, I would nonetheless have concerns that the development will generate a requirement for short term parking, which would add to congestion in the already busy estate, with the consequential risk of ad hoc parking and accidents.

- Number of facilities in the area and intended hours of operation – I note from my inspection of the appeal site that there is an existing childcare facility at the junction of St. Marnock’s Road and St. Anne’s Square. No objections have been submitted by this facility. There is also no information, or objections, on file from the Fingal County Childcare Committee, in relation to over-supply of childcare facilities. With regard to hours of operation, the two sessions of Montessori, between 9am and 5pm seem reasonable in principle and unlikely to detract from the residential amenity of the area.
- Residential component – I would accept that the proposed development comes forward with an on-going element of residential use on the site. This matter could also be controlled by condition, as proposed by the planning authority.

#### **7.4. Impact on traffic/risk of accidents**

- 7.4.1. For the reasons stated above, whilst the proposed development is quite modest in scale, it will give rise to a substantial increase in vehicle movements, accessing the site, and in the absence of dedicated drop-off space and the practice of significant on-street parking in the vicinity of the appeal site, it is my view that the proposed development would unreasonably add to existing congestion and could endanger public safety by reason of traffic hazard.



## 7.5. Impact on Residential Amenity and Privacy

- 7.5.1. The proposed portacabin lies to the rear of the appeal site, alongside the boundary with the adjoining property (no. 28 St. Patrick's Avenue).
- 7.5.2. From the rear garden of no. 28 St. Patrick's Avenue, the roof and upper part of south east facing windows are visible. It is not clear from the applicant what windows these will serve as it is stated that the internal configuration of space will meet Tusla requirements. Notwithstanding this, I would accept that these south east facing windows could be obscure glazing to prevent overlooking.
- 7.5.3. No. 28 St. Patrick's Avenue has been extended to the rear such that the building line of the property extends beyond that of no. 27 St. Patrick's Avenue (photograph 9). Consequently, the log cabin which is orientated to face the back of the residential dwellings on St. Patrick's Avenue, is c.6.6m from the rear elevation of no. 28 St. Patrick's Avenue. At this limited distance, the adjoining property is afforded clear views of the log cabin and external space. Further, children using the facility (indoor and outdoor space) and parents dropping/collecting children would be in close proximity to, and have oblique views into the appellant's property. In addition, there is likely to be a certain amount of noise/activity generated by access to the facility and use of the external play areas in close proximity to the adjoining residential dwellings.
- 7.5.4. In view of the above, I consider that the proposed development located to the rear of the existing property, would unreasonably detract from the amenity and privacy of the residential properties adjoining the site, most notably the property to the north east of it and should be refused for this reason.

## 7.6. Noise

- 7.6.1. The appeal site lies within the Outer Noise Zone of Dublin airport. Policy DA07 of the Fingal County Development Plan recognises the need to control inappropriate development within the zone and requires noise insulation where appropriate. The proposed development lies within an established residential area, where children live and go to school etc. The approach taken by the planning authority, to require noise insulation to an appropriate standard, therefore seems appropriate. The proposed

development is therefore unlikely to impact adversely on young children by way of airport noise.

## **7.7. Nature conservation/Appropriate Assessment**

- 7.7.1. Land immediately north of the appeal site is zoned 'High Amenity' and is not identified as a habitat of conservation interest. The nearest site of nature conservation interest lies c. 300m to the north west of the appeal site and comprises the Sluice River Marsh proposed Natural Heritage Area (site code 001763) and surrounding land.
- 7.7.2. Fingal County Council's report 'Sluice River Marsh – Flora and Fauna Assessment' provides an assessment of the biodiversity and interest of the Sluice River NHA and adjoining lands. It indicates that land to the rear of the appeal site (see attachments) is used by Little Egrets, a species is listed under Annex I of the Birds Directive.
- 7.7.3. Notwithstanding the above, the appeal site is situated within the established residential area and the adjoining HA lands are already affected by human activity i.e. the presence of Little Egrets and the use of the HA lands takes place within the existing semi-urban context. Further, the appeal site itself is separated from the high amenity lands by a mature hedgerow and the small number of children using the Montessori will have no access to these lands. In view of these factors, I do not consider that the development will give rise to any significant activity (e.g. noise or disturbance), over and above existing levels already arising from the urban area, to result in adverse effects on the protected species.
- 7.7.4. The nearest European site, Baldoyle Bay (SAC and SPA), lies c. 220m to the south east of the site. However, it is separated from it by a mix of residential and commercial development, is highly unlikely to be affected by the development.
- 7.7.5. Having regard to the foregoing, to the nature and scale of the proposed development, its location in an established urban area and distance from European sites, I do not consider that any Appropriate Assessment issues arise or that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Screening for Environmental Impact Assessment**

- 8.1. The proposed development is of a type that does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). The need for screening for environmental impact assessment is therefore not required.

## **9.0 Recommendation**

- 9.1. Having regard to my assessment above, I recommend that permission for the development be refused for the following reasons and considerations.

## **10.0 Reasons and Considerations**

Having regard to the location of the proposed development, to the rear of the appeal site, its proximity and orientation relative to adjoining property, and the absence of provision of a set down area in a residential area which already experiences a high level of congestion, it is considered that the proposed development would seriously injure the amenities of property in the vicinity and endanger public safety by reason of traffic hazard. The proposed development would not, therefore, be in accordance with the proper planning and sustainable development of the area.

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Deirdre MacGabhann

Senior Planning Inspector

25<sup>th</sup> September 2018