



An  
Bord  
Pleanála

## Inspector's Report ABP-301482-18

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<b>Development</b>	Proposed sports facilities infrastructure
<b>Location</b>	St. Paul's College, Raheny, Dublin 5
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	3777/17
<b>Applicant(s)</b>	Orsigney Company Limited by Guarantee
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Orsigney Company Limited by Guarantee
<b>Observer(s)</b>	<ol style="list-style-type: none"><li>1. Clontarf GAA Club</li><li>2. Peter Smyth and others</li><li>3. Clontarf Residents' Association</li><li>4. An Taisce</li></ol>
<b>Date of Site Inspection</b>	10 <sup>th</sup> October 2018 & 29 <sup>th</sup> December 2019
<b>Inspector</b>	Donal Donnelly

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## 1.0 Site Location and Description

- 1.1. The appeal site is located at St. Paul's College in Raheny approximately 5km north-east of Dublin city centre. Access to the site is off Sybil Hill Road, which forms part of the R808 Regional Route extending north from the coast at Clontarf Road to Artane. This road is characterised by community/ institutional and recreational uses at this location, with St. Brigid's National School and Sacred Heart Residence nursing home located opposite the site and St. Anne's Park to the south and east.
- 1.2. St. Paul's College is boys' secondary school with an enrolment of 578 (2017/18). The main school building is a 2-storey low pitched roof complex constructed around internal courtyards. Car parking is located to the front and rear of the school building and there are a number of prefab classrooms to the north-east. There is an all-weather pitch to the south of the rear car park and the eastern part of the site is occupied by a grass playing pitch. A number of other grass playing pitches within the former school grounds to the east and north-east of the appeal site are the subject of a residential planning application.
- 1.3. The site is rectangular shaped and the stated site area is 3.4528 hectares. Levels across the site are reasonably flat, although the grass pitch slopes slightly upwards from south to north. The southern site boundary is defined by a line of mature trees which align the northern side of Main Avenue in St. Anne's Park. To the north of the site is Sybil Hill House (protected structure), which is within the applicant's ownership, and further north is a recently constructed apartment development.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the following:
  - Demolition of 3 no. existing school (and school related) structures comprising prefab classrooms, a disused classroom block and a changing room block;
  - Construction of a 2-storey sports hall accommodating double height play courts, fitness suite, changing rooms and ancillary facilities;
  - Construction of 2 no. all-weather playing pitches comprising 1 no. championship sized floodlit playing pitch and 1 no. 5-a-side sized floodlit

playing pitch with associated ball stop netting, boundary fencing and landscaping;

- Provision of car parking (24 spaces) and coach set-down (3 bays) along realigned internal access road to south of St. Paul's College, with vehicular access from existing entrance to Sybil Hill Road; and
- Cycle parking, boundary treatments and all associated site works and services.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. Dublin City Council issued notification of decision to refuse permission for the following reason:

*“The application site, in conjunction with lands subject to proposed development under the concurrent SHD planning application ABP-300559-18 has provided feeding resources for groups of Brent geese of international importance over the past five wintering seasons. It is considered to be one of the most important ex-situ feeding sites for Brent Geese in Dublin based on the highest peak counts of Brent geese, regularity of use, size, relative lack of disturbance and geographical location in relation to the North Bull Island Special Protection Area. The proposed development is likely to result in significant impacts and the proposed mitigation which relies on the capacity of the network of alternative feeding sites to absorb the loss of lands at St Paul’s is questionable in terms of its achievability. Therefore, applying the precautionary principle, the Planning Authority is not satisfied that the proposed development would maintain the favourable conservation condition of the light-bellied Brent goose and would not adversely affect the integrity of the North Bull Island Special Protection Area contrary to the provisions of the Dublin City Development Plan 2016-2022 and contrary to the proper planning and sustainable development of the area.”*

## 3.2. Planning Authority Reports

3.2.1. The recommendation to refuse permission in the final Planner's Report reflects the decision of the Planning Authority. The following main points were raised under the evaluation of the application within the initial Planner's Report:

- Proposal designed to primarily serve the existing institutional use on site and to accommodate community uses.
- Removal of existing structures to the northern side of the site constitutes a net benefit in terms of visual amenity and the setting of the protected structure.
- Proposed sports hall comes within 16m height restriction for outer city sites and its contemporary design should be read against, and as part of the existing school complex, which has rather limited aesthetic.
- Not considered that the development will unduly obstruct third parties' access to daylight or sunlight, and will not result in undue overlooking.
- Applicant should be requested to evaluate the appropriate 'environmental zone', i.e. the adjoining interface with St. Anne's Park area perhaps may be closer to E2 'Low district brightness' environmental zone, which sets lower light impacts – although it is recognised that there may be existing ambient levels of artificial illumination.

3.2.2. The following comments were submitted by the Parks and Landscape Division:

- Appropriate Assessment report submitted with the application does not suggest that the temporary loss of feeding habitat for Brent Geese due to construction can be mitigated by the timing of these works, or that the permanent loss can be minimised by the layout of the on-site development.
- It may be possible to rule out significant impacts of this development on its own – this is not likely to be possible in combination with the referenced residential development.
- No indication that applicant has control over the management of sites within the proposed network of alternative inland feeding sites.
- Proposed development on its own may not result in significant effects, however, further information is required to demonstrate this.

- Proposed mitigation, i.e. the capacity of the network of alternative feeding sites to absorb the loss of St. Paul's, is not considered sufficient, practicable or achievable giving the information available.
- Extent of retention of community based sports clubs is unclear.
- Construction and long-term alteration of soils may impact on Holm Oak trees along The Avenue.

3.2.3. The Roads and Traffic Planning Division noted that the proposed development is acceptable from a traffic planning perspective. The City Archaeologist recommended that an archaeological assessment be carried out.

3.2.4. Further information was sought from the applicant on issues relating to mitigation of impact on Brent Geese; retention of main institutional and community uses; impact on root zone of trees; drainage details including proposed stormwater outfall to the River Naniken; reduction of obtrusive light; noise levels; photomontages; confirmation of heights of sports hall and ball stops; boundary treatment; and indicative roadway alignment.

3.2.5. The following points were raised in the subsequent Planner's Report assessing the further information response:

- Since making of subject application, Ref: ABP-300559-18 has been lodged with the Board and the Council recommended that this application be refused.
- Submitted reports including additional information does not provide sufficient information to rule out the potential significant impacts on Brent Geese caused by the proposed development.
- Still no information provided on what clubs are/ have been facilitated on the grass pitches and what arrangements have been made for them on the all-weather facility – leaves uncertainty of provisions for existing community use of pitches and adequacy of compliance with the Z15 zoning requirement.
- Setback of artificial pitch is now provided for and construction exclusion zone at the trees' root zone is welcomed.
- Use and treatment of setback strip is not clear – preferable that it retains existing grassed areas.

- Boundary treatment and tree protection measures can be agreed at compliance stage in the event of a grant of permission.
- Parks and Landscape Services still has significant concerns in view of the contribution to the loss of part of the most important ex-situ bird feeding area and unsatisfactory mitigation proposals. Cumulative impact of loss of grass pitches under this application and under the adjacent SHD application should be considered.
- No objection to rearrangement and increased playability of the existing playing field lands subject to certain conditions.
- Drainage Division in review of the additional information has no objection to the proposal subject to conditions. Parks and Landscape Division approves the proposed drainage pipe alignment with an outfall to the Naniken River.
- Recommends limits for artificial illumination and cut-out switch for floodlighting at 10pm.
- Proposed new playing pitches not expected to generate significant noise impact – curfew and noise control measures can be conditioned in the event of a grant of permission.
- Recommended that portion of future residential roadway be landscaped until, if and when the adjacent housing development is permitted by the Board.

### 3.3. Prescribed Bodies

3.3.1. The following points were raised in a submission received by the Planning Authority from the Department of Culture, Heritage & the Gaeltacht (NPWS):

- Proposed development is situated in a location likely to impact on the North Bull Island SPA.
- Proposal has the potential to disturb the feeding habitat of a significant population of Light Bellied Brent Geese, which is listed under Annex II of the EU Birds Directive (Council Directive 79/409/EEC).
- Potential impact would be caused by loss of feeding habitat.

- Numbers recorded in report are well above the international importance numbers for the species and represent approximately 50% of the roosting flock associated with the North Bull Island SPA.
- Adjacent proposed housing development will also impact on the feeding habitat of the geese.
- Replacement of grass football pitches with all-weather pitches results in loss of feeding areas and forces geese to possibly be in conflict with agricultural interests feeding on winter cereal crops.
- Greater expenditure of energy travelling greater distances to feed impacts on the condition of the birds and their ability to complete annual migration.
- Cumulative impact on Brent geese needs to be taken into consideration.
- Adequate areas for feeding should be appropriately zoned – Local Authority is obliged to comply with its obligations to the Birds Directive.

### 3.4. **Third Party Observations**

3.4.1. A number of third party observations were received by the Planning Authority. Some of the main issues not highlighted within the appeal and observations on the appeal are summarised as follows:

- Clarification of ownership required.
- Statutory notices do not reflect the full extent of the proposed development.
- Development does not secure objectives for 'Z15' lands.
- Flood and surface water will be diverted to the Naniken River and thus onto Natura 2000 sites downstream.
- Arrangements with community groups for use of the facilities can be withdrawn.
- A synergy has developed over time between the sports use of the lands and wildlife.
- Appears to be a lack of tree protection measures.
- Facilities welcomed to meet shortfall in winter training facilities.



- Sports hall should be turned to face the school.
- Parking provision is insufficient.

## 4.0 Planning History

### ***Former School Lands to East:***

#### An Bord Pleanála Ref: ABP-300559-18

- 4.1. The Board decided on 3<sup>rd</sup> April 2018 to grant permission for construction of 536 no. units (104 no. houses and 432 no. apartments).
- 4.2. Following a judicial review of the case, the decision of the Board was quashed and the application was remitted to the Board to allow it to reconsider the decision and make a fresh order on the planning application.

#### An Bord Pleanála Ref: ABP-302225-10

- 4.3. The above case was remitted to the Board and following consideration of the case *de novo*, it was decided to refuse permission on 11<sup>th</sup> September 2018 for two reasons.
- 4.4. Under the first reason, the Board was not satisfied that it was appropriate to exclude the relevant species of Special Conservation Interest associated with European Site from the Natura Impact Assessment on the basis of the infrequency of their use of the development lands and the low number of species involved.
- 4.5. The second reason for refusal refers to the subject site being one of the most important ex-situ feeding sites in Dublin for the Light-bellied Brent Goose. The Board was not satisfied, beyond all reasonably scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of nearby European sites in view of the sites' Conservation Objectives having regard to the lack of adequate qualitative analysis and accordingly the lack of certainty that this species would successfully relocate to other potential inland feeding sites in the wider area, as proposed as mitigation for the development of the subject site in the submitted Natura Impact Statement.

An Bord Pleanála Ref: ABP-305680-19

- 4.6. The Board received an new applicaton in October 2019 for the construction of 657 no. apartments, creche and associated site works. This case has yet to be decided.

***School Lands:***

Dublin City Council Reg. Ref: 2525/08x1

- 4.7. Extension of permission granted to 22<sup>nd</sup> July 2018 for 8 no. x 18m high floodlighting columns to rugby pitch and 8 no. x 18m high flood light columns to GAA pitch.

Dublin City Council Reg. Ref: 2381/01

- 4.8. Permission granted for erection of floodlighting to 2 no. pitches, the upgrading of 3 no. existing tennis courts and floodlighting to 3 no. all-purpose, all-weather courts, a new single storey changing pavilion, new entrance and gates to Sybil Hill Road and 67 no. car parking spaces.

Dublin City Council Reg. Ref: 2948/01

- 4.9. Permission granted for new railings, including those to the side of sports fields.

***Lands to North of School:***

Dublin City Council Reg. Ref: 4242/15 (PL29N.246250)

- 4.10. Permission granted for 76 no. residential units and ancillary works.

***St Anne's Park:***

Dublin City Council Reg. Ref: 2191/14 (Part 8)

- 4.11. Permission granted in May 2014 for construction of a synthetic all-weather flood-lit football pitch (60m x 100m) at the location of the natural sports pitch in St Anne's Park, Raheny (beside old tennis courts).

## **5.0 Policy Context**

### **5.1. Dublin City Development Plan 2016-2022**

- 5.1.1. The appeal site and lands to the north and east are zoned "Z15" where the objective is *"to protect and provide for institutional and community uses."* St. Anne's Park to

the south is designated as a conservation area and is zoned “Z9 – to preserve, provide and improve recreational amenity and open space and green networks.”

5.1.2. Policy SN12 seeks “to facilitate the provision of educational facilities in accordance with the requirements of the relevant education authorities and to encourage the shared use of school or college grounds and facilities with the local community, outside of core hours, anchoring such uses within the wider community.”

5.1.3. Policy GI23 seeks “to protect flora, fauna and habitats, which have been identified by Articles 10 and 12 of Habitats Directive, Birds Directive, Wildlife Acts 1976 – 2012, the Flora (Protection) Order 2015 S.I No. 356 of 2015, European Communities (Birds and Natural Habitats) Regulations 2011 to 2015.”

## 5.2. Natural Heritage Designations

5.2.1. The following Special Protection Areas are within 15km of the appeal site:

Site Code	Site Name	Approx. distance from appeal site (km)
4006	North Bull Island SPA	1.4
4024	South Dublin Bay and River Tolka Estuary SPA	1.5
4016	Baldoyle Bay SPA	5.2
4117	Ireland's Eye SPA	8.7
4025	Malahide Estuary SPA	8.8
4113	Howth Head Coast SPA	9.1
4172	Dalkey Islands SPA	12.3
4015	Rogerstown Estuary SPA	14

5.2.2. The following Special Areas of Conservation are within 15km of the appeal site.

Site Code	Site Name	Approx. distance from appeal site (km)
206	North Dublin Bay SAC	1.4
210	South Dublin Bay SAC	3.6
199	Baldoyle Bay SAC	5
202	Howth Head SAC	6.3
3000	Rockabill to Dalkey Island SAC	6.8
205	Malahide Estuary SAC	8.2
2193	Ireland's Eye SAC	9
208	Rogerstown Estuary SAC	13.7

5.2.3. The North Dublin Bay proposed Natural Heritage Area is approximately 1.4km from the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A first party appeal was submitted against the Council's decision on 20<sup>th</sup> April 2018. Letters of support accompany the submission from the Vincentian Order, St. Paul's Students' Council, St. Paul's Parents' Council and St. Paul's Board of Management. The grounds of appeal and main points raised in this submission are summarised as follows:

- Reason for refusal has been analysed in the context of the recent decision to grant permission for the residential development on part of St. Paul's lands – there is no further reason to sustain the refusal.
- Access to the new facilities will be afforded to local bodies approved by and under the auspices of Vincentian Order and the school board of management.
- Basically the same NIS accompanied SHD application Ref: ABP-300559-18.
- New facilities are designed to accommodate rugby, Gaelic and soccer on outdoor floodlit 4G playing surfaces for competition, training and sports curriculum.
- Sports hall will accommodate a full gymnasium, indoor sports/ training and curriculum, including championship standard basketball, volleyball, badminton and a range of other activities.
- Overall institutional zoning in the area will be consolidated.
- Proposed works would be carried out in summer months when the school is closed and there are no Brent Geese in Ireland.
- Construction works and the provision of floodlit artificial sports surfaces have taken place in St. Anne's Park, which is a more extensive and important natural resource for Brent Geese.

- Now that residential development has been permitted (*sic*), the sports facilities can be considered on their merits.
- Brent Geese have been quite adaptive in their feeding patterns and the network of feeding sites has extended as flock numbers have increased in recent years, ranging inland as far as Le Fanu Park in Ballyfermot.
- Red Arches foraging by Brent Geese is a recent phenomenon, as new pitches were only introduced from c. 2005 onwards.
- BirdWatch Ireland national survey in 2017 recorded 37,000 geese, which is well above the ISSAP maintenance population of 25,000.
- Report of status and trends of protected birds confirms that the long term population of Brent Geese is increasing – species appears to be flourishing and in no immediate threat to its maintenance population.
- Analysis by consultants shows advantages of synthetic pitch over natural grass.
- Artificial surfaces are 3 times less expensive to maintain and provide 3 times more hours of operation compared to unlit grass pitches.
- Dimensions of pitch can be indicated in a condition attached to any grant of permission – Board is requested to review the need for reduced pitch length, as longer pitch better serves the needs of end users.
- Applicant’s support for community activities in the area will be enhanced with the proposed facilities.

## 6.2. Planning Authority Response

6.2.1. No response.

## 6.3. Observations

6.3.1. A total of four observations on the appeal were received by the Board. The main points raised in these submissions are summarised as follows:

Clontarf GAA Club (received 11<sup>th</sup> May 2018)

- Fully supports proposal as it will provide high-end facilities for a large variety of sports to students of St. Paul's College.
- Development will include a full size GAA pitch and hurling wall, which will facilitate the promotion of Gaelic Games within the school.
- All weather flood-lit playing facilities and sports hall will be of invaluable use to local sporting clubs and community groups.
- Facilities will help to meet the shortfall that many local sports clubs face in regard to the availability of winter training facilities and all-weather pitches.

Peter Smyth and others, c/o 34 Vernon Drive, Clontarf (16<sup>th</sup> May 2018)

- Analysis carried out by applicant is insufficient to conclude, using the precautionary principle, that there will be no impact on Brent Geese.
- Underlying analysis and conclusions provided by ecologists changed considerably between applications 4185/15 and 3777/17.
- Concern that observations made by over 1,100 people on ABP-300559-18 were not properly considered – extra diligence should be applied to this related appeal as substantially the same issues apply.
- Opinion should be independently assessed by legal and environmental experts.
- Research should have included Curlews and Godwits, which are of significant risk and are of national significance.
- There has been inadequate consideration given to bat species.
- Developer has understated the requirement for tree root protection zones for the Holm Oak and Monterey Pines on Main Avenue.
- Land is deteriorating with heavy machinery cutting up the pitches and the grass has been left uncut, making it unsuitable for feeding birds.
- Applicant is relying on letter from the Department of Education to suggest support for this development – Minister has stated that Department has not been consulted since 2015.

- Playing facilities proposed are insufficient to meet the needs of the school.
- Maintaining use and allowing for expansion is a requirement of the Z15 zoning – community rooms are not an equivalent substitute for playing fields.
- This is an example of a split project.
- Approval of this scheme in conjunction with ABP-300559-18 will open the door to reduce playing pitches on Z15 lands to a fraction of their former size – this is contrary to intent of the zoning.

Clontarf Residents' Association (17<sup>th</sup> May 2018)

- Case should be assessed by expert on Habitats Directive and Board should undertake its own independent evaluation of environmental matters.
- No masterplan has been approved for these lands – does not comply with zoning objective.
- Project splitting would appear to be contrary to the Department of Housing, Planning, Community and Local Government Circular Letter PL3/2017 and contrary to ensuring that the existing institutional and community uses are adequately provided for.
- Parklands are deemed a buffer zone for the Dublin Bay Biosphere.
- Difficult to see how works can be completed during summer months.
- Council has considered the precautionary principle correctly in deciding on this application.
- Lack of reference to other protected species on site including bats, curlew, black headed gull, black tailed godwit and oyster catcher.
- Drainage plans indicate increased rainwater being diverted to Naniken River – this river has a long and well documented history of failing to cope with existing levels of rainwater and run off.
- No assessment of impact of additional water from proposed residential development or the sports facilities being diverted into the Naniken in addition to the impact of the loss of the greenfield site.
- Provision of 24 no. car parking spaces will be insufficient to meet demand.

- There should be no direct access to St. Anne's Park.

An Taisce (3<sup>rd</sup> August 2018)

- Following submission of first party appeal on current application, the Board “made an error” in the granting of permission for ABP-300559-18, and in Judicial Review proceedings the Board agreed to an order quashing the permission.
- Given outcome of High Court proceedings, An Taisce does not consider it appropriate for the Board in the assessment of the subject proposal to rely on the assessment made in the SHD proposal.
- Based on marked bird sightings, it is clear that the inland feeding site of St. Paul's has a relationship with the nearby SPA's, particularly the North Bull Island SPA and the South Dublin Bay and River Tolka Estuary SPA.
- Approximately 96% of ringed birds recorded at St. Paul's were also sighted within North Bull Island SPA; 34.5% in South Dublin Bay and River Tolka Estuary SPA; 7.3% in Baldoyle Bay SPA; 3.6% in Malahide Estuary SPA; and 5.3% in Rogerstown Estuary SPA.
- Conservation objective for all 5 European sites is *“no significant decrease in the range, timing and intensity of use of areas by [Light Bellied Brent Geese] other than that occurring from natural patterns of variation.”*
- Target is *“long term population trend stable or increasing”* – loss of St. Paul's has the potential to result in a reduction in numbers within the SPA.
- Impacts on the SPA and Brent Geese population have not been adequately addressed – considerations within NIS do not appear to be scientifically founded.
- CJEU ruling for C-040/09 [Commission v Spain] held that *“an assessment made under Article 6(3) of the Habitats Directive cannot be regarded as appropriate if it contains gaps and lacks complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the SPA concerned.”*



- Notwithstanding the residential development not going ahead, An Taisce considers that an element of certainty remained as to whether or not the subject proposal alone, could impact on the conservation objectives of the five European Sites.
- There is lack of evidence and certainty in the NIS that would be capable of removing all reasonable scientific doubt as to the effects of the works proposed on the SPA – precautionary principle should be adopted in this case and it is agreed that the *“proposed mitigation which relies on the capacity of the network of alternative feeding sites to absorb the loss of lands at St. Paul’s is questionable in terms of its achievability.”*

## 7.0 Assessment

- 7.1. Planning permission is sought for sports facilities infrastructure at St. Paul’s College, Raheny to include demolition of school structures and construction of a 1,639 sq.m. school sports hall, 2 no. all-weather floodlit playing pitches (1 no. championship sized GAA pitch/ 2 no. rugby pitches and 1 no. 5-a-side pitch) and associated works, including ball stop netting, fencing, parking, vehicular access, etc.
- 7.2. Dublin City Council issued notification of decision to refuse permission for the proposal on 27<sup>th</sup> March 2018 and a first party appeal has been lodged on behalf of the applicant. Under its reason for refusal, the Council noted that the application site, in conjunction with lands subject to proposed development under the concurrent SHD planning application ABP-300559-18, has provided feeding resources for groups of Brent Geese of international importance over the past five wintering seasons. This is considered to be one of the most important ex-situ feeding sites for Brent Geese in Dublin and applying the precautionary principle, the Planning Authority was not satisfied that the proposed development would maintain the favourable conservation condition of the Light-Bellied Brent Goose and would not adversely affect the integrity of the North Bull Island Special Protection Area.
- 7.3. The Chief Executive Officer of Dublin City Council submitted a report on the (then) concurrent SHD planning application (ABP-300559-18) also recommending refusal on the basis that the proposal for 536 no. dwelling units on adjoining lands to the north-east does not comply with the Z15 zoning objective and may have an adverse

impact on Brent Geese. This site included former grass playing pitches associated with St. Paul's College that were sold off in March 2015. These pitches were used by the school and other sports clubs.

- 7.4. The SHD planning application (ABP-300559-18) on the adjoining site has been refused permission following an initial decision to grant permission, which was subject to judicial review. The reasons for refusal related to the possible exclusion of the relevant species of Special Conservation Interest associated with European Site from the Natura Impact Assessment; the importance of the site as an ex-situ feeding site for the Light-bellied Brent Goose and the lack of adequate qualitative analysis, and accordingly, the lack of certainty that this species would successfully relocate to other potential inland feeding sites in the wider area; and the absence of survey data from site visits that the season peak counts recorded were in fact infrequent and/ or in low numbers, and were thus a reasonable basis for exclusion from the NIS. It should be noted that the Board has received a new SHD application on this site (ABP-305680-19).
- 7.5. The first party appeal against the Council's decision to refuse permission for the sport facilities was received by the Board on 20<sup>th</sup> April 2018 after the initial decision of the Board to grant permission for the adjoining residential development. Therefore, the first party grounds of appeal and responses are formulated on the basis that the previously proposed residential development was granted. The Appropriate Assessment Screening Report and the Natura Impact Assessment were also prepared before the final outcome of the previously proposed residential development. Only the final observation on the appeal by An Taisce (3<sup>rd</sup> August 2018) was received by the Board following the quashing of decision ABP-300559-18.
- 7.6. Having regard to the grounds of appeal, the planning history of the site, the Development Plan zoning and site surroundings, I consider that this appeal should be assessed under the following:
- Development Principle;
  - Visual impact and Floodlighting;
  - Impact on trees;
  - Appropriate Assessment; and

- EIA Screening.

## 7.7. Development Principle

- 7.7.1. The appeal site and surrounding lands to the north-west, north and north-east are zoned “Z15” where the objective is *“to protect and provide for institutional and community uses.”* Community facilities, cultural/ recreational buildings and uses, education and open space are all permissible uses under the Z15 zoning objective. The proposal for sports facilities infrastructure including outdoor pitches and an indoor sports hall would therefore be acceptable in principle.
- 7.7.2. It would appear that the purpose of the current application for sport facilities is to compensate for the loss of playing pitches on adjoining lands to the east/ north-east that are no longer under the ownership of the school/ religious order. The point is emphasised in the planning application that the proposed flood-lit all weather pitches will allow for more extensive use through all seasons and for longer hours of operation. Furthermore, it is stated that while the sports facilities will be developed primarily for use by the school, they will be available for community use outside of school requirements on a regulated basis. This would be in accordance with Development Plan Policy SN12 which seeks *“to facilitate the provision of educational facilities in accordance with the requirements of the relevant education authorities and to encourage the shared use of school or college grounds and facilities with the local community, outside of core hours, anchoring such uses within the wider community.”*
- 7.7.3. The applicant has carried out an assessment of the likely availability of a grass pitch for community use compared to an all-weather flood-lit pitch. The maximum amount of time the grass pitch would be available to the community after school is 623.5 hours per annum. This assessment does not take account of weather or deterioration of grass pitch quality due to over usage. The projected availability to the community of the proposed floodlit all-weather pitches is 1,779 hours per annum.
- 7.7.4. It would appear that the St. Paul’s school grounds previously contained seven grass playing pitches, including the existing school rugby pitch and a GAA pitch. The total available pitch playing hours for the community would therefore have been approximately 4,364.5 hours per annum. The proposed all weather area configured

as two pitches would facilitate 3,558 hours of play per annum. This figure would be reduced for periods when the pitch is configured as a single larger GAA pitch. However, there would be no period, typically between 8am and 10pm, when the pitch/ pitches is unavailable and the playing surface quality would be consistent throughout the year. When adverse weather conditions are factored in, and the possibility of non-availability to allow a pitch to repair itself after waterlogging, overuse etc., I consider that the difference in terms of pitch availability between the previous grass pitches and the proposed all-weather pitch is not significant. Notwithstanding this, it should be noted that the six pitches on the former St. Paul's lands are no longer available for use and are now in an overgrown condition. Moreover, there is no obligation on the current owner to return this land to use as playing pitches.

7.7.5. The applicant submitted at further information stage that the use of the previous pitches at weekends ranged beyond the licenced areas and carrying capacity of the lands. This created concerns for the college relating to control, insurance liability, health and safety, and intensity of use in terms of the capacity of the grounds and supporting infrastructure. The new pitches will continue to be made available to GAA, rugby and soccer clubs, and the new sports hall will also be able to host indoor activities including martial arts, yoga and badminton, with the north elevation of the hall to be used as a hurling wall. It is submitted that the new facilities will be regulated on a seasonal basis and there will be no negative implications for responsible community clubs. A number of local clubs have outlined their support for the proposal in submissions to the Planning Authority and the Board.

7.7.6. Overall, I would be of the opinion that the proposal will facilitate better utilisation of an existing outdoor playing pitch and provide for high quality indoor sports facilities for the school and local community. The main playing pitch is designed to accommodate a GAA pitch or two rugby/ soccer pitches side by side. The layout, pitch markings and placement of goalposts can accommodate the playing of different sports on the one surface. The pitches cannot be used to their full potential unless they are floodlit and artificially surfaced. A synthetic pitch is less expensive and time consuming to maintain, and the pitch surface remains consistent and available for longer periods. Floodlighting and the extended hours of use will also enhance security for the school.

7.7.7. Finally, I would be of the opinion that this proposal should be assessed on its own merits within the context of the zoning objective for the site and notwithstanding the pre-existing or previously proposed use of the adjoining lands that were in college ownership in the past. The proposal is fully in accordance with the zoning objective and will bring about a more intense, efficient and varied use of the lands in question.

## 7.8. Visual impact and Floodlighting

7.8.1. The proposal includes the demolition of prefab classrooms, a disused classroom block and a changing room block located to the north-east of the school building. As noted in the Planner's Report, the removal of these structures will have a net benefit in terms of improvement of the visual amenity and the setting of Sybil Hill House (protected structure). Views of Sybil Hill House will be extended south-westwards but not necessarily outside of the site boundaries into St. Anne's Park.

7.8.2. The proposed sports hall will have a maximum height of 12.275m, a length of c. 53m and a width of c. 25m. The structure will be orientated north to south and a lower 8.625m high element containing changing rooms and a fitness suite, will be situated at the southern end. The building will be contemporary in appearance with finishes including aluminium rain screen cladding, aluminium framed glass channels and selected brick. The bulk of the elevations of the building are broken up by the different expanses of materials. The brick finish will also help to integrate the proposed sports hall with the existing redbrick main school building. As noted in the architect's statement, the sports hall is designed with a colonnaded brick entrance façade in the direction of St. Anne's Park to the south.

7.8.3. Other proposed structures on site include floodlighting poles, goal posts, ball stop netting and fencing. These structures will have no significant visual impact when viewed from St. Anne's Park, which is designated as a conservation area. The applicant proposes to replace the existing palisade fencing along the southern boundary with 2m high railing, in keeping with the style of railings at the entrance to the park. It should also be noted that there are existing floodlights, goalposts, fencing and enclosures on site. As is the current case, it is likely that only glimpse views of these structures will be available through the tree-lined southern boundary.

- 7.8.4. A total of 6 no. 20m high floodlight columns are proposed around the GAA pitch, with 3 no. 12m floodlighting columns illuminating the proposed 5-a-side pitches. Floodlighting would mainly be switched on when fewer people will be accessing St. Anne's Park after dark. The nearest external residential property is approximately 70m north of the nearest floodlight. Sybil Hill House (protected structure) is 75m from the nearest floodlight.
- 7.8.5. The applicant provided additional photomontages of the proposed development in response to a further information request to account for seasonal and floodlighting scenarios, particularly when viewed from Main Avenue within St. Anne's Park. The planning application is also accompanied by a Sports Complex Light Spill Analysis. LED luminaires will be used and this allows for greater light control and reduced light spillage. The assessment illustrates light spill ground illumination levels (Lux) for the adjoining site intended for residential development. It was concluded that the light spill on residential units reaches a level of 8 lux and this value does not exceed the 10 lux value set out in guidelines CIBSE Lighting Guide Part 4 – Sports Lighting (2006). It should be noted that the lighting design requirements of average 250 lux for the all-weather playing fields will be achieved.
- 7.8.6. The applicant was asked at further information stage to assess whether areas of St. Anne's Park are close to E2 'low district brightness' environment zone as set out in the ILE's Guidance Notes for the Reduction of Obtrusive Light – while accounting for the existing ambient levels of artificial illumination at this interface. In response, the applicant submits that the proposed floodlighting will have no impact on brightness levels in St. Anne's Park. It is also noted that there are similar floodlit pitches in St. Anne's Park.
- 7.8.7. Having regard to the above, I consider that the proposed flooding lighting is acceptable. Older style cowled floodlights will be replaced by modern LED floodlighting, that is easier to control and is more energy efficient. I would be in agreement with the Planning Authority that conditions should be attached to any grant of permission to control the timing and illumination of floodlight.
- 7.8.8. I have no objection of any other aspect of the proposed development from a visual amenity viewpoint. The design of the main sports building is appropriate within a school and sports campus, and in any case the tree-lined boundary along Main

Avenue will largely conceal the development from view within the park. The proposal may also bring about an element of planning gain by removing unsightly school structures and improving the setting of the protected structure.

## **7.9. Impact on trees**

7.9.1. The Parks and Landscape Services Division had concerns that construction impacts and long-term alteration of soil conditions may have detrimental impacts on Holm Oak trees along Main Avenue. In view of the importance of these trees to the historic fabric of the park, it was stated within a further information request that existing soil conditions should remain undisturbed and development should not take place in the vicinity of root zones or canopies. The applicant was also asked to clarify the alignment and treatment along the southern boundary of the site.

7.9.2. In response, the applicant reduced the length of the GAA pitch from 137m 132m, thereby setting back the proposed development 5m from the southern boundary and allowing an additional strip of land to be identified as a construction exclusion zone. The applicant also referred to the Preliminary Hydrogeological Assessment Report submitted with the planning application, which describes the under-pitch drainage and water retention measures.

7.9.3. Notwithstanding this, the applicant requests the Board to review the need for reduced pitch length, as a longer pitch better serves the needs of end users. An observer on the appeal also makes the point that the proposed pitches are insufficient to meet the school's needs. The 132m length of the GAA pitch is towards minimum dimensions and is particularly small for modern adult hurling. The observer also submits that the proposed all-weather pitch should not be installed beside the trees along Main Avenue. It is stated that the lateral root system of these trees would extend well into St. Paul's playing fields and even shallow excavations can damage the root system. In addition, the natural flow of rainfall would be redirected away from the trees towards the Naniken River.

7.9.4. The Planning Authority welcomed the proposed setback along the southern boundary as provided in the response to the further information submission. However, the use and treatment of the set-back strip is not clear and it is preferred that it comprises of a grassed area rather than hard surfacing. It is also considered

that the set-back area should continue along the full perimeter, inclusive of the hard landscaped courtyard.

7.9.5. I would be in agreement that the maximum length of the playing pitch should be 132m so as to provide a degree of set-back. The appellant has not submitted any additional evidence from an arborist to justify the 137m pitch length in closer proximity to southern boundary. The continuation of the set-back strip along the southern boundary is also preferable, as indicated by the Planning Authority. This can be agreed prior to commencement of development if the Board is minded to grant permission for the proposed development. Conditions can also be attached to require the protection of trees and hedgerows during construction and a security bond can be lodged with the Planning Authority to ensure such protection and preservation of trees on site and in St. Anne's Park.

#### **7.10. Appropriate Assessment**

7.10.1. The EU Habitats Directive (92/43/EEC) requires competent authorities to review planning applications and consents that have the potential to impact on European designated sites, i.e. Special Protection Areas (SPAs) and Special Areas of Conservation (SACs). To assist this process, the applicant has prepared a Screening Report for Appropriate Assessment and a Natura Impact Statement (NIS).

##### **Stage 1: Screening**

7.10.2. The first stage of the Appropriate Assessment process is the screening exercise where it should be decided if the effects of a development on a European site are likely and whether or not the effects are significant in light of the Conservation Objectives for the site. The precautionary principle should apply if there are significant effects that cannot be excluded, or where the likelihood is uncertain.

7.10.3. The first step of this stage is to identify all European sites which could potentially be affected using the Source-Pathway-Receptor model. Having regard to the nature and scale of the proposed development and the implications and receiving environment, it is reasonable in this instance to evaluate sites within a 15km radius for the purposes of identifying sites that could potentially be affected.

7.10.4. There are eight SPAs within 15km of the appeal site. The closest sites are the North Bull Island SPA and the South Dublin Bay and River Tolka Estuary SPA, which are



located 1.4km and 1.5km to the south-east and south respectively. Baldoyle Bay SPA, Ireland's Eye SPA, Malahide Estuary SPA and Howth Head Coast SPA are located between 5km and 10km from the appeal site, and Dalkey Islands SPA and Rogerstown Estuary SPA are 12.3km and 14km respectively from the appeal site.

- 7.10.5. There are also eight SACs within 15km of the appeal site. The closest SACs are the North Dublin Bay SAC and the South Dublin Bay SAC, which are 1.4km and 3.6km from the appeal site respectively. Baldoyle Bay SAC, Howth Head SAC, Rockabill to Dalkey Island SAC, Malahide Estuary SAC and Ireland's Eye SAC are between 5km and 10km from the appeal site. Rogerstown Estuary SAC is 13.7km from the site. The qualifying interests and any relevant source-pathway-receptor links between the appeal site and European Sites are set out in Table 1 of the Appropriate Assessment Screening Report submitted with the planning application.
- 7.10.6. Having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways and mobile species pathways. The physical distances from the project site to the Special Areas of Conservation are such that any impact from the hazard source will be well diminished along the pathways in question by the time it reaches the receptor. It can therefore be reasonably concluded that the proposed development would not have a significant effect individually or in combination with other plans or projects on the Special Area of Conservation within 15km of the appeal site having regard to the conservation objectives for these European Sites, the nature of proposed construction works, and the source-pathway-receptor risk assessment principle. It should be noted that foul effluent from the site will discharge to an existing public foul sewer and surface water will be collected and attenuated on site before passing through a petrol interceptor and discharging to the Naniken Stream.
- 7.10.7. The Appropriate Assessment Screening Report identifies a potential linkage between the appeal site and North Bull Island SPA, South Dublin Bay and River Tolka Estuary SPA, Baldoyle Bay SPA, Malahide Estuary SPA and Rogerstown Estuary SPA. This is based on surveys carried out in 2015-2016 and re-sighting data reports provided by the Irish Brent Goose Research Group, and the conclusion that the subject site is used by Light Bellied Brent Geese, a Qualifying Interest species in each of these European Sites. There is a possibility of significant effects on this species caused by partial loss of a feeding site and potential increase in noise and human disturbance.

- 7.10.8. The other Qualifying Interest species recorded on the appeal site were black-headed gull, black tailed godwit, curlew and oystercatcher. However, the seasonal peak counts for these species were below the threshold of international importance and therefore it was concluded that there is no possibility of significant effects on these species as a consequence of the proposed development.
- 7.10.9. Notwithstanding this, I note from the most recent decision on the residential development (ABP-302225-10) that the Board was not satisfied that it was appropriate to exclude the relevant species of Special Conservation Interest associated with European Site from the Natura Impact Statement on the basis of the infrequency of their use of development lands and the low number of species involved. Furthermore, the Board was not satisfied, in the absence of survey data from site visits that the season peak counts recorded were in fact infrequent and/ or in low numbers, and were thus a reasonable basis for the exclusion from the NIS.
- 7.10.10. Having regard to the above, I consider that likely significant effects, either individually or in combination with other plans or projects, on the North Bull Island SPA (004006), South Dublin Bay and River Tolka Estuary SPA (004024), Baldoyle Bay SPA (004016), Malahide Estuary SPA (004025) and Rogerstown Estuary SPA (004015) cannot be reasonably ruled out in this case on the basis of objective scientific information. A Stage 2 Appropriate Assessment must be carried out to establish if the project will adversely affect the integrity of these European sites, either individually or in combination with other plans and project, in view of the site's conservation objectives. I agree that a Stage 2 Appropriate Assessment can be confined to the above sites and that the other SPAs within 15km of the site can be screened out having regard to the nature of the proposal, the distance of these European Sites from the appeal site and the substantial marine buffer.

### **Stage 2: Appropriate Assessment**

- 7.10.11. The purpose of the Stage 2 Appropriate Assessment is to establish if the project will adversely affect the integrity of the European site, either individually or in combination with other plans and projects, in view of the site's conservation objectives. The Stage 2 Appropriate Assessment should consider mitigation measures where appropriate, both those proposed by the applicant and those that may be considered necessary to be required by the Board.

7.10.12. Firstly, the conservation objectives shall be identified for the European Sites that could potentially be affected using the Source-Pathway-Receptor model. The conservation objective is to maintain the favourable conservation condition of the qualifying interests for each of the European Sites set out in Table 1 of the Natura Impact Assessment submitted with the planning application. Table 1 includes each site name and code, the qualifying interest (species code and Birds of Conservation Concern in Ireland 2014-2018), and conditions underpinning the site integrity. Table 2 of the NIS sets out the site-specific objectives for each of the relevant European Sites taken from the conservation objectives documents.

#### Potential likely and significant effects

7.10.13. It was concluded as part of the applicant's screening for Appropriate Assessment that the only likely significant risks to the five European Sites listed above arises from partial loss of inland feeding habitat for Light Bellied Brent Geese as an ex-situ site connected to these SPAs. Further investigation was carried out to determine whether or not the proposed development, in the context of this potential linkage, could potentially result in adverse effects on site integrity in view of the conservation objectives of these European Site.

7.10.14. A Natura Impact Statement was therefore prepared to assess the partial loss (1.4 hectares) of the subject site as an ex-situ site utilised by Light Bellied Brent geese only. The NIS does not take account of the usage of the site by other bird species as these were screened out within the Stage 1 Appropriate Assessment. Furthermore, the NIS was prepared on the basis that the 1.4-hectare appeal site formed part of a larger c. 7-hectare site that would have been available as an ex-situ site feeding site utilised by Light Bellied Brent Geese. However, the remainder of the former St. Paul's lands are no longer being used as playing pitches and the grass has been left to grow.

7.10.15. The NIS sets out details of wintering bird surveys carried out at St. Paul's pitches, St. Anne's Park and North Bull Island during 2015-2016 and 2016-2017 to determine usage by Light Bellied Brent Geese. Surveys were also carried out to establish the presence of Brent Geese at 94 known inland feeding sites and 92 potential inland feeding sites. Data analysis was carried out to determine information such as the current known network of inland feeding sites for Light Bellied Brent Geese; the level

of importance of St. Paul's; evidence to suggest the geese are opportunistic as opposed to loyal to specific sites; factors that make a site more suitable to others; and availability of unutilised sites.

7.10.16. The following is a summary of the overall results:

- The long term population of Brent Geese in Ireland and at each of the five European sites is increasing;
- The highest peak count at St. Paul's during 2016-2017 was 1,530 Brent Geese compared to 820 in 2015-2016;
- There is some degree of variation between the use of sites by Brent Geese in 2017 compared to 2016;
- Between 2005 and 2017, Brent Geese have been recorded at 119 terrestrial inland feeding sites in Dublin (including St. Paul's);
- It is suggested that there is a certain degree of variation in usage of sites by Brent Geese from season to season and the current network of 132 sites may not be fully utilised;
- It is suggested that SPA ringed birds in North Bull Island SPA use a wide network of numerous inland feeding sites across Dublin to varying degrees;
- Distance to other known inland feeding sites, the average sward height and the percentage of bare ground/ grass cover are important factors in determining the usage of a site by Brent Geese;
- An additional 29 sites were identified as being potentially suitable inland feeding sites for Brent Geese;
- There are 161 inland feeding sites in Dublin, including 132 known sites.

7.10.17. An appraisal in the NIS of the potential impacts on European sites from habitat loss of ex-situ feeding sites for Brent Geese concludes that there would be no impact on the Special Conservation Interest of this species at any of the five European Sites based on an assessment of population trend and distribution. It was assumed that there would be adequate carrying capacity within the network to absorb the loss of St. Paul's and to support the increasing populations of the five European Sites. There is some degree of flexibility in inland feeding site preference and it is

considered possible that the geese will use other known sites to greater intensity. An additional 29 potential feeding sites were identified and it was considered that geese displaced from the loss of St. Paul's may utilise these sites in the future.

#### In combination effects

- 7.10.18. The in-combination effects of the loss of St. Paul's and other known inland feeding sites is addressed in the NIS. All 161 known and potential feeding sites were examined for planning permissions/ applications and it was discovered that there is potential for proposed projects to act in-combination with the proposed development at 12 sites. One of these sites was identified as being of major importance. The overall potential network of inland feeding sites in Dublin for the Light Bellied Brent Geese is therefore considered to comprise of a total of 149 sites.
- 7.10.19. The in-combination assessment also had regard to land zonings and protective policies and objectives for the feeding sites set out in the relevant development plans in the Dublin area. A total of 118 of the 161 sites are zoned for amenity/ open space lands/ green network/ greenbelt/ recreational amenity purposes/ playing pitches. There are 24 sites zoned as community and institutional resource use or for community infrastructure. Three sites are zoned as institutional land with future development potential and one is zoned for employment/ enterprise. Two sites are zoned for residential amenity and two are zoned as high amenity.
- 7.10.20. It is noted that it is a policy of Dublin City Council to support the implementation of the Dublin City Biodiversity Action Plan. Appendix F of the NIS outlines in detail the protective policies and objectives incorporated into all the Dublin Local Authorities' development plans. The preparation of these plans were informed by both Strategic Environmental Assessment and Appropriate Assessment undertaken as a parallel process.
- 7.10.21. The NIS concludes that there will be adequate capacity at inland feeding sites to absorb the loss of St. Paul's and the 12 other sites where projects are proposed. Furthermore, it is considered the protective policies and objectives outlined in the NIS should ensure that the overall potential network of inland feeding sites for Brent Geese is maintained.

#### Evaluation of Significant Effects

- 7.10.22. A number of submissions on the proposed development were received by prescribed bodies and third parties. A submission from the Department of Culture, Heritage and the Gaeltacht expressed the view that the proposed development has the potential to disturb the feeding habitat of a significant population of Light Bellied Brent Geese. It is considered that the potential impact would be caused by loss of feeding habitat, as amenity parklands and grass pitches are valuable feeding areas for geese. The replacement of the grass pitch with an artificial pitch would, in the opinion of the Department, force geese to travel greater distances to feed and potentially bring them into contact with agricultural interests feeding on winter cereal crop. Assurances are required that there are adequate areas left for Brent Geese feeding and that such areas are zoned appropriately.
- 7.10.23. An observation from An Taisce, made after the quashing of the adjoining residential development, states that impacts on the SPA and Brent Geese population have not been adequately addressed and are not scientifically founded. Reference is made to an element of assumption within the conclusions of the NIS and to CJEU rulings that there should be no reasonable scientific doubt as to the effects of proposed works on a European Site.
- 7.10.24. The submission from An Taisce also refers to the Council's assessment of the proposed development, where it is noted that it may be possible to rule out significant impacts of this development on its own but this is likely to be impossible in-combination with the adjoining residential development. The Council conclude that the proposed development, in-combination with the residential development, is likely to result in significant impacts, and that the proposed mitigation, i.e. the capacity of the network to absorb the loss of St. Paul's, is not sufficient, practicable or achievable.
- 7.10.25. An important factor to consider in the assessment of the current case is that the planning application, Screening for Appropriate Assessment and NIS were prepared in tandem with the previously proposed residential development. The circumstances of the appeal site and adjoining lands have now changed and therefore previous assessments may now be considered moot. The information was submitted to the Board on the basis of the entire lands being used as feeding grounds for Light Bellied Brent Geese. It is now unclear what impact any limitation in the availability of the majority of this feeding area would have on the appeal site alone as a feeding

area. Ground conditions on the adjoining lands where the residential development was proposed have altered, most significantly in relation the overall size of available grasslands and their sward height. The former pitches are now overgrown although the grass pitch on the appeal site remains in active use. The degree of anthropogenic and human disturbance are important factors in determining the suitability of a particular area as a feeding resource for Brent Geese, as well as grass sward height and the actual size of the grassed area in question.

- 7.10.26. The only other Special Conservation Interest species recorded during surveys on behalf of the applicant on the appeal site were black-headed gull, black tailed godwit, curlew and oystercatcher. However, the seasonal peak counts for these species were below the threshold of international importance and it was concluded that there is no possibility of significant effects on these species as a consequence of the proposed development.
- 7.10.27. The Board noted in its reason for ultimately refusing the adjoining residential development that it is inappropriate to exclude other relevant species of Special Conservation Interest associated with European Sites on the basis of the infrequency of use of the development lands and the low number of species involved. Furthermore, the Board noted in its decision that it was not satisfied, in the absence of survey data from site visits, that the season peak counts recorded were in fact infrequent and/ or in low numbers, and were thus a reasonable basis for the exclusion from the NIS.
- 7.10.28. In my opinion, the NIS includes a robust analysis and assessment of the presence or otherwise of Light Bellied Brent Geese on the appeal site, adjoining lands and other known and potential feeding sites in Dublin at the time the surveys were undertaken. I note that a certain level of assumption is made on the usage of the various sites by bird species. However, it has been demonstrated from comprehensive surveys and analysis that there is no precise behavioural patterns and that Light Bellied Brent Geese display a certain degree of flexibility in terms of use of sites from season to season.
- 7.10.29. There is no doubt that the existing and former pitches were one of the most important ex-situ feeding grounds Light Bellied Brent Geese in Dublin at the time surveys were being conducted. However, the characteristics of the adjoining pitches

have changed significantly since, and there is no up-to-date survey information present with this application on the current usage of the site by this species or any other Special Conservation Interest species. Consequently, the usage of the pitch on the appeal site by Special Conservation Interest species, or indeed the usage of adjoining former pitches by Light Bellied Brent Geese for ex-situ feeding, or by any other Special Conservation Interest species for any other purpose, cannot therefore be accurately determined.

#### Appropriate Assessment Conclusion

- 7.10.30. Under the precautionary principle, the likelihood of a significant effect exists if it cannot be determined beyond reasonable scientific doubt, and on the basis of objective information, that a likelihood does not exist. An Appropriate Assessment cannot have lacunae, and must contain complete, precise and definitive findings and conclusions capable of removing all scientific doubt as to the effects of the project on European Sites. Survey information presented with this application on the presence or otherwise of Special Conservation Interest species is not up-to-date and therefore accurate in this instance, and in these circumstances, best scientific knowledge is not available.
- 7.10.31. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site No's. 004006, 004024, 004016, 004025 and 004015, in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

#### **7.11. EIA Screening**

- 7.11.1. The SHD application submitted to the Board under ABP-300559-18 was accompanied by a EIAR and the Board carried out an Environmental Impact Assessment of the proposal. This proposal was for 536 no. dwellings which is in excess of the 500 unit threshold for EIA.



- 7.11.2. The current proposal in itself 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).
- 7.11.3. Having regard to nature and relatively minor scale of the proposed development, and to the general location in a serviced urban area, together with the issues specific to the likely significant impacts on European Sites that can be dealt with under the Appropriate Assessment, the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 8.0 Conclusion and Recommendation

- 8.1.1. The proposal for sports facilities infrastructure to include a sports hall and outdoor playing pitches at an existing school campus and on lands zoned “Z15” where the objective is *“to protect and provide for institutional and community uses”* is acceptable in principle. The proposal is fully in accordance with the zoning objective and will bring about a more efficient use of the lands in question for both the school and local community. The proposal for floodlit all-weather pitches that will be consistently available for longer periods of time will also compensate, to an extent, for the loss of the adjoining grass pitches sold off for development.
- 8.1.2. There are no significant visual impacts arising from the proposed development. Conditions can be attached to any grant of permission to control the timing and illumination of floodlighting and the design of the main sports building is appropriate within a school and sports campus. The proposal may also bring about an element of planning gain by removing unsightly school structures and improving the setting of the protected structure.
- 8.1.3. The proposed all-weather pitch was reduced in length to provide a greater set back from the tree-lined southern boundary. Conditions can be attached to any grant of permission to continue this buffer westward and to require the protection of trees and hedgerows during construction.
- 8.1.4. Notwithstanding the acceptability of the proposed development, it has been concluded following a Stage 2 Appropriate Assessment that the proposed development individually, or in combination with other plans or projects, may

adversely affect the integrity of European Sites, in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

- 8.1.5. Another option open to the Board is to issue a split decision in this case granting permission for the sports hall and smaller all weather pitches and refusing permission for the replacement of the grass pitch with a larger all -weather pitch. However, there would also be a degree of uncertainty with respect to the impact of construction works on the adjoining ex-situ feeding site (grass pitch) and on the usage of the former pitches (adjoining lands) by other Special Conservation Interest species.
- 8.1.6. Having regard to the above, I recommend that planning permission should be refused for the following reasons and considerations.

## 9.0 Reasons and Considerations

Notwithstanding that the grass pitch on the appeal site and adjoining former pitches were recorded in the Natura Impact Statement prepared on 9th August 2016 as being one of the most important ex-situ feeding grounds for Light Bellied Brent Geese in Dublin, and having regard to the recent changed characteristics of the former pitches resulting in a possible reduction in the overall availability of grasslands for feeding purposes due to increased sward height, together with the absence of any up-to-date survey information present with the planning application relating to the current usage of the site itself and immediately adjoining lands by Light Bellied Brent Geese as a feeding resource, or by any other Special Conservation Interest species for any other purpose, the Board is not satisfied that the usage of the site by any such species can be accurately determined at this time. The Board, therefore, cannot establish, beyond all reasonable scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of the North Bull Island SPA (Site Code: 004006), the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), the Baldoyle Bay SPA (Site Code: 004016), the Malahide Estuary SPA (Site Code: 004025), and the Rogerstown Estuary SPA (Site Code: 004015), or any other European site in view of these sites' conservation objectives.

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Donal Donnelly  
Planning Inspector

10<sup>th</sup> January 2020