



An  
Bord  
Pleanála

## Inspector's Report ABP-301843-18

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<b>Development</b>	Construction of 73 houses and all associated services.
<b>Location</b>	Flemington Lane, Balbriggan, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F18A/0137
<b>Applicant(s)</b>	John Smith and Cormac Smith.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	John Smith and Cormac Smith.
<b>Observer(s)</b>	Eileen Lacey
<b>Date of Site Inspection</b>	11 <sup>th</sup> December 2018
<b>Inspector</b>	Deirdre MacGabhann

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## **1.0 Introduction**

- 1.1. This appeal relates to an application for residential development on land to the north of Flemington Lane, Balbriggan. The site is zoned for residential development in the Fingal County Development Plan 2017 to 2023 and falls within an area which is subject to a Masterplan (MP 4.A). A second, concurrent appeal for a residential development, lands at Drogheda Road (north of Bremore Cottages), Bremore, Balbriggan, within the same Masterplan area is also before the Board (ABP-301845-18). Both developments were refused permission by the planning authority for the same four reasons.
- 1.2. This report deals with the matters raised in this appeal, but should be read in conjunction with the report for the concurrent appeal, as there is considerable overlap.

## **2.0 Site Location and Description**

- 2.1. The 2.66ha appeal site lies to the north west of Balbriggan town, immediately north of and adjoining Flemington Lane (L1135). Flemington Lane joins the R132 to the east of the site. Access to Flemington Park, a residential estate, lies directly opposite the site.
- 2.2. The site lies partly in the 60kph speed limit zone and partly within the 50kph zone, to the east of Flemington Park. The site currently comprises agricultural land. To the east of the site is a single storey residential dwelling and to the west and north is agricultural land.
- 2.3. Flemington Lane is characterised by residential development. To the north of the road it is primarily low density, single storey detached dwellings. To the south density is higher, with two storey development in the form of housing estates and detached properties. A footpath extends along most of the southern side of the road but is intermittent along the northern side.

### 3.0 Proposed Development

3.1. The proposed development comprises the construction of 73 no. two storey dwellings in the following arrangement:

- 30 no. three-bedroom semi-detached dwellings,
- 33 no. four-bedroom semi-detached dwellings (29 with attic),
- 9 no. four-bedroom detached dwellings,
- 1 no. five-bedroom dwelling (with attic).

3.2. Each dwelling has two in-curtilage parking spaces and optional roof mounted solar panels. Properties are finished principally in a mix of brick and render with tile/slate roof. The development is constructed around a new access road from Flemington Lane, which includes raised tables/shared surfaces at junctions throughout the site. A new pavement alongside Flemington Lane will also be provided. Dwellings face onto Flemington Lane or the internal access road. Two areas of landscaped open space are provided (c.2,797sqm in total), one to the front (east) of the site and one within the site (also to the east). This second area includes a playground. The development includes a Sustainable Urban Drainage System for surface water drainage with (a) direct infiltration to ground via permeable paving, and (b) a formal piped gravity system feeding into attenuation areas (under the two landscaped areas) with discharge from these through a flow control device to the existing stormwater sewer on Flemington Lane (see drawing no. 171055/C/006).

3.3. The application is accompanied by:

- Planning Report.
- Engineering Services Design Report.
- Junction Capacity Assessment Report TN01.
- Landscape Report.
- Schedule of areas and accommodation for house types.
- Urban Design Assessment.
- Geophysical Survey Report.
- Masterplan for the Flemington Lane Lands – This masterplan was prepared by the applicant on foot of an objective in the Fingal County Development

Plan 2017-2023 to prepare a masterplan for the Flemington Lane lands (MP 4.A). It sets out an urban design framework, development strategy and design guidelines for the development of the lands. It is based on a density of 28 dwellings/ha and is supported by a road Junction Capacity Assessment and a Technical Note: Water Infrastructure Services Assessment.

## 4.0 Planning Authority Decision

### 4.1. Decision

4.1.1. On the 14<sup>th</sup> May 2018 the planning authority decided to refuse permission for the development for four reasons. In summary, these are:

1. The site forms part of wider lands to the north of the town strategically zoned for residential development which require the preparation of a masterplan (MP 4.A, CDP). In the absence of a masterplan the development would represent an *ad hoc*, piecemeal approach to the development of the area, result in an un-integrated and inequitable provision of community facilities and public infrastructure and contravene materially Objective PM14 of the County Development Plan.
2. Density of development is not in accordance with the government's Guidelines on Sustainable Residential Development in Urban Areas.
3. Absence of childcare facilities and conflict with government's guidelines on Childcare Facilities.
4. Inappropriate provision of underground attenuation tank under public open space and, therefore, material contravention of Objective DMS74 of County Development Plan.

### 4.2. Planning Authority Reports

#### Planning Report

4.2.1. This report describes the proposed development, relevant planning policy, reports and observations made. It considers the merits of the application under a number of headings including housing layout and design, private amenity space and boundary details, access and car parking, compliance with development plan policy, impact on

residential and visual amenity, transportation issues, water and drainage, Natura 2000 sites, Part V and archaeology. A number of concerns are raised in the assessment, including the following:

- Density – Considered to be too low, having regard to the location and nature of the site and the Department's Guidelines for residential densities in Outer Suburban/Greenfield sites (*Sustainable Residential Development in Urban Areas*) of 35-50 dwellings/ha.
- Childcare – The masterplan lands, with an area of c.17.1ha, have potential capacity for c.599-855 houses (based on density guidelines above) and require a number of childcare facilities (one per 75 no. dwellings – *Childcare Facilities Guidelines for Planning Authorities*). No provision is made for such facilities within the application site or in an integrated and equitable manner in the overall master plan lands.
- Mix of house types – In the absence of a masterplan it is not possible to determine the acceptability of the proposed housing mix (e.g. if two-bedroom units or housing for the elderly would be provided within the masterplan lands).
- Transportation – Notwithstanding the comments made in the Transportation report (see below), considers that a masterplan is an essential prerequisite to facilitate development at the location, providing an integrated and equitable approach to road improvements along Flemington Lane and connectivity across the masterplan lands.
- Drainage – Proposals for underground storage tanks conflict with policy objective DMS74 of the County Development Plan.
- Archaeology – Given the potential for archaeological finds on adjoining sites, a masterplan for the entire site, informed by an archaeological assessment of the masterplan lands is an essential pre-requisite to facilitate development in an integrated and equitable manner.

4.2.2. The report therefore recommends refusing permission for the development.

#### Other Technical Reports

- Water Services – Revised drainage scheme required following principles of SuDS and in compliance with GDSDS (omit use of underground storage

tanks), site specific infiltration tests, no surface water to discharge to foul sewer and compliance with Greater Dublin Regional Code of Practice for Drainage Works.

- Archaeology – Request geophysical results from proposed development be presented in the wider context of results for the Masterplan area to more effectively assess impacts on archaeology.
- Transportation – No objections subject to (i) revised site plan showing details of trees proposed along Flemington Lane to prevent future traffic hazard, (ii) revised site plan showing a cycle lane along Flemington Lane, and (iii) footpath connectivity to Balbriggan town.

#### **4.3. Prescribed Bodies**

- Department of Culture, Heritage and the Gaeltacht (DCHG) – Recommend pre-development testing of the site for archaeological remains.
- Irish Water – No objections.

#### **4.4. Third Party Observations**

- Owner of 2.2ha of Flemington Lane master plan lands – Objects to the development on the grounds that (i) the master plan prepared for the overall lands has not been prepared in accordance with the requirements of/procedures set out in the County Development Plan (i.e. co-operation with stakeholders, objectives determined by planning authority and public consultation), (ii) the master plan maximises the quantum of development on the application site and under PA ref. F18A/0133 (concurrent appeal, ABP-301845-18) and an unequal portion of the shared infrastructure e.g. public open space within the central parcels of land, and the risk of low density development on these lands, (iii) it is unclear whether or not there is to be independent vehicular access from Flemington Lane to the observer's lands or if this will be via third party lands, effectively landlocking the observer's lands, and (iv) it is therefore premature for the planning authority to grant permission for the development.



## 5.0 Planning History

- 5.1. The appeal site has no planning history.

## 6.0 Policy Context

### 6.1. National/Regional Policy

- 6.1.1. Having regard to the nature of the proposed development, the receiving environment and the matters raised in the appeal, the following national/regional policy guidelines are relevant to the appeal:

- Sustainable Residential Development in Urban Areas, 2006.
- Childcare Facilities, Guidelines for Planning Authorities, 2001.
- Development Management, Guidelines for Planning Authorities, 2007.

### 6.2. Regional Planning Guidelines for the Greater Dublin Area, 2010-2022.

- 6.2.1. Balbriggan is identified in the Regional Planning Guidelines as a Large Growth Town, level II (population c15-30,000), acting as a self-sustaining regional driver and accommodating significant new investment in transport, economic and commercial activity and in housing.

### 6.3. Fingal County Development Plan 2017 to 2023

- 6.3.1. The County Development Plan describes Balbriggan, situated in the hinterland of the Greater Dublin Area, as a Large Growth Town, characterised by a young and expanding population which has rapidly grown in excess of 20,000 people over the last two decades. The Core Strategy of the Plan, in Objective SS19 supports and facilitates the residential, commercial, industrial and community development of the town to enable it to fulfil its role as a Large Growth Town.
- 6.3.2. New areas for residential development within Balbriggan are therefore identified in the Plan (sheet 4), principally to the north and west of the town. The appeal site lies within land zoned to the north of the town with the 'RA' objective to *'provide for new residential communities subject to the provision of the necessary social and physical*

*infrastructure*'. The site is part of a wider area of which is subject to a specific objective, 'masterplan area MP 4.A'. An indicative cycle/pedestrian route is also shown along Flemington Lane.

- 6.3.3. Chapter 3 of the Plan states that the planning authority will prepare masterplans for large or key sites which will *'assist in achieving quality developments in terms of inter alia, urban design, structure, delivery of community/amenity facilities and permeability'* and that *'subsequent planning applications will be required to adhere to approved Masterplans'* (section 11.3 of the Plan repeats this guidance). Masterplans will be subject to public consultation and presented to Elected Members for agreement. Each masterplan is required to consist of a written statement and a plan(s) indicating objectives, which include details in respect of overall design (types and mix of units and appearance), integration with surrounding land uses, proposals for transportation, services, provision of amenities, facilities and community services (including childcare facilities), public access to amenity areas and provision for sports and recreation (see attachments).
- 6.3.4. Policy Objective PM14 commits the planning authority to *'Prepare Masterplans for areas designated on Development Plan maps in co-operation with relevant stakeholders, and actively secure the implementation of these plans and the achievement of the specific objectives indicated'*.
- 6.3.5. Chapter 4 of the Plan deals with urban Fingal. It states, on page 91, that *'objectives are provided detailing locations where....and Masterplans are required in a number of urban areas.... In accordance with Objective....PM14 (Chapter 3, Placemaking), the...Masterplans for these lands shall be prepared and agreed by the Planning Authority prior to the submission of any planning application'*.
- 6.3.6. Objective BALBRIGGAN 16 of the Plan refers to the preparation of a number of Masterplans during the lifetime of the Plan for Balbriggan, including *'Flemington Lane Masterplan...MP 4.A'*. The elements to be included in the Flemington Lane Masterplan are:
- Provide for architecturally designed buildings with high quality finishes.
  - Prior to any proposed design or layout of development on these lands a detailed archaeological study shall be carried out.
  - Allow low density housing only.

- Provide for significant traffic calming and re-alignment of Flemington Lane.

6.3.7. Policy Objectives in Chapter 3 and Chapter 12 (Development Management Standards) of the Plan set out design standards and criteria for residential development (see attachments). These include:

- Regard to the government's guidelines on *Sustainable Residential Development in Urban Areas, 2009* and the accompanying *Urban Design Manual* in determining residential densities (Section 3.4 and 12.4) with higher residential densities promoted within walking distance of town and district centres and high capacity public transport facilities.
- The provision of childcare facilities in new residential development (Policy Objective PM76), and
- Preclude provision of underground tanks and storage systems under public open spaces as part of a SuDS solution (Policy Objective DMS74).

#### **6.4. Natural Heritage Designations**

6.4.1. No natural heritage designations apply to the site. The nearest Natura 2000 site lies >3km to the north of the site at Laytown and comprise the River Nanny Estuary and Shore SPA.

### **7.0 The Appeal**

#### **7.1. Grounds of Appeal**

7.1.1. The following grounds of appeal are set out by the first party appellant:

##### Reason no. 1

- Preparation of a masterplan – A masterplan for the Flemington Lane lands has been prepared having due regard to policy objective PM14. This has been discussed at length with and is in accordance with the requirements for Masterplans, set out in Chapter 3 of the Development Plan and in respect of the Flemington Lane Masterplan. The absence of an adopted Masterplan does not preclude the planning authority from issuing a decision for an application falling within the designated masterplan area. The purpose of a

masterplan is to aid the planning authority with the application of a Development Plan or a Local Plan in a certain area. It does not have the same weight as a Development Plan or Local Area Plan

- Precedents – The planning authority has issued a number of decisions for land designated for the preparation of a Masterplan prior to formal adoption of the Masterplan, PA ref. F17A/0327 (ABP-301001-18), F17A/0597, F17A/0648, F17A/0372 (PL06F.249267) and F17A/0374. In light of the above, the appellant requests the Board to adopt the same approach and approve the development in advance of the Flemington Lane Masterplan as the development does not prejudice the preparation of Masterplan for the remaining lands or contravene Objective Balbriggan 16 and PM 14 of the Development Plan.
- Timescale - No Masterplan was prepared for the Flemington Lane site under the previous County Development Plan (2011-2017), despite there being an objective within the Plan to do so within the lifetime of the Plan. A Masterplan may not be prepared under the current Development Plan and to refuse permission for the development on this ground would be indecorous and contrary to the proper planning and sustainable development of the area.
- Legal Submission – The appellant attaches a legal submission which submits:
  - There is no legal basis on which to refuse permission for the development due to the absence of a masterplan.
  - A masterplan has no legal status under the PDA 2000 (as amended) and is subsidiary to a Development Plan. The development is compliant with the zoning objective for the site.
  - In other instances where the Board refused permission on the grounds of a development being premature to pending wind and spatial strategy cases were dismissed in the High Court (ABP v Element Power and Highfield Solar cases).
  - There is no timescale for the preparation of the Flemington Lane Masterplan. To refuse permission on the basis of the absence of a

Masterplan would indefinitely postpone the appellant's entitlement to have the application for the development determined.

- It is not clear from the Development Plan or Planning Officer's report if a Masterplan must be in place in every circumstance, prior to granting permission (page 91 and section 11.3 of Development Plan are contradictory).
- The planning authority has been inconsistent in their requirement for a Masterplan in all cases (see above).
- To refuse permission for the development on the grounds of prematurity would be unlawful.
- The proposed development is consistent with the RA zoning objective for the site in the Fingal County Development Plan 2017 to 2023 and is compliant with the minimum standards set out in the Plan, national standards for residential development and the regional planning guidelines for the development of Balbriggan.

#### Reason no. 2

- When assessing residential density, the planning authority has failed to have regard to the historic and current development plan guidance for the subject site (which require a low density of development), the broader guidance regarding density included in the 2009 Guidelines (section 5.12 and 7.10) and the precedents regarding density of other residential development in the county (PA ref. F15A/043, F17A/0374, F17A/0690, F16A/0221/PL06F.247032 and FA17A/0687). Densities of c.22 and 24 dwellings per ha have been deemed acceptable on land designated for medium and high-density housing. Within this context, the proposed 27 dwellings per hectare on the 'low density' housing site are appropriate.

#### Reason no. 3

- The reason for refusal provides an onerous interpretation of the government's guidelines on childcare facilities. The number of units proposed is just short of the threshold set out in the guidelines and is not required in this instance. The Flemington Lane lands are made up of five separate landholdings. That

adjoining the appeal site is the largest and should accommodate the childcare needs of all the houses, rather than creating a multiplicity of smaller facilities throughout the lands.

- Should the Board form the view that one is required, revised plans submitted indicating provision of a childcare facility within the scheme (see drawing no. 1623-P1-02 Rev B and Appendix B of appeal).

#### Reason no. 4

- The attenuation systems proposed are part of an engineered system that includes large void aggregates and surrounding membranes. They are not tanks as set out in DMS74. The system is an engineered system designed to provide treatment of storm water as well as attenuation for flood protection.
- Similar attenuation systems have been approved by the planning authority and other planning authorities (e.g. F16A/0462, F09A/0478, LB170428 – Meath County Council).
- The Water Services Department does not recommend refusal, but further information. The inclusion of reason no. 4 is contrary to the Development Management Guidelines (section 5.7).
- Should the Board consider the proposed arrangements inappropriate, revised plans are submitted indicating provision of an open basin attenuation tank at the entrance to the site, adjoining an area of open space scheme (see drawing nos. 171055/SK/019 and 1623-P1-02 Rev B and Appendix C of appeal).

7.1.2. In addition to the above, the appellant provides a revised Masterplan for the overall Flemington Lane lands, addressing the matters raised in observations on the application (e.g. reduced area of public open space indicated in land Parcel C).

## **7.2. Planning Authority Response**

7.2.1. The planning authority respond as follows:

- Note the proposed inclusion of a childcare facility and provision of an alternative SuDS solution (with reduction in density).

- However, they refer the Board to the inclusion of the Masterplan for the Flemington Lane lands on the works programme (page 12 of Management Report), to be prepared by 2019. They also refer to extensive pre-planning consultations with the appellant in which they stated their requirement for this Masterplan in addition to the requirement for a childcare facility and supporting community infrastructure. The planning authority remain of the view that the provision of a Masterplan for the overall lands would allow for a coherent approach for the delivery of development, community and hard infrastructure, with the converse approach representing an *ad hoc* and piecemeal approach to development.
- Precedents - State that the cases referred to by the appellant (to grant permission for development on lands which are/were subject to Masterplans), are different to the proposed development, notably in north west Balbriggan and in Skerries where there was a significant and substantial underlying planning history.
- Density – Note the reduction in number of dwellings, with the proposed alterations, but consider that the development remains contrary to the Government’s guidelines on Sustainable Residential Development and that the issue of density is best addressed through the preparation of a Masterplan which would address the density of the overall Masterplan lands and ensure an equitable approach.

### **7.3. Observations**

- 7.3.1. There is one observation on file. It raises concerns regarding the impact of additional traffic on Flemington Lane which is already overburdened.

### **7.4. Further Responses**

- 7.4.1. The appellant makes the following additional comments on the planning authority’s response to the appeal:
- The proposed development has not been amended by the appellant (inclusion of childcare facility and alternative arrangements for attenuation) but are included for consideration by the Board. The appellant continues to seek full

permission for the proposal as originally submitted to the planning authority in the first instance.

- The timescale for the preparation of a Masterplan is disputed given the absence of a specific timescale, number of masterplans/studies to be carried out, absence of priority given to Flemington Lane masterplan, timescale for completion (i.e. 12-15 months once work commences) and other priorities (e.g. Masterplans in the Swords area).
- Not all the precedent cases referred to by the appellant have been subject to a recent planning application (PA ref. F17A/0327 and F16A/0464).
- The Masterplan submitted for the Flemington Lane site was developed in good faith by the applicant, in agreement with the planning authority. It provides the same housing density on all lands and distributes open space between the different holdings on a pro-rata basis.
- Refers to attached legal advice, which states that the proposed timescale for the completion of the Masterplan is vague. Maintains that as there is no realistic prospect of a strategy or plan being completed within a specific timeframe and therefore that permission cannot be refused on the grounds that it is premature (Development Management Guidelines, 2007). Refers to other objectives of the Development Plan and argues that in refusing permission on the grounds that the development will materially contravene Objective PM14, conflicts with other objectives of the Development Plan (PM04, PM05 and PM40) and that the board can grant permission to a development previously refused where there are conflicting objectives in the Development Plan (section 37(2)(b) of the PDA).
- If the Board were of the view that density should be increased, this could be achieved by inclusion of apartments and duplex units in the development (dwelling nos. 63 to 73 could be replaced with an apartment block with parking at basement level and duplex units). However, the appellant remains of the view that the proposed density is appropriate for the location and no such amendments should be required.

7.5. The observer also makes a further response to the appeal, but no new matters are raised.



## 8.0 Assessment

8.1. Having regard to the nature and detailed design of the proposed development which is in accordance with the zoning of the appeal site and the detailed design standards for residential development (e.g. urban design, quantitative and qualitative standards) set out in the Fingal County Development Plan, I consider that the matters to be addressed in this appeal are, and can be confined to, those raised in the reasons for refusal:

- Compliance with development plan policy (Objective PM14).
- Density.
- Childcare facilities.
- Means to attenuate surface water.

### 8.2. Compliance with Development Plan Policy (Objective PM14)

- 8.2.1. **The appellant's masterplan and due regard to PM14.** A masterplan for the appeal site has been prepared by the applicant. It has regard to the broad requirements for masterplans set out in Chapter 3 of the County Development Plan and the specific requirements for the Flemington Lane site. However, the masterplan is predicated on a density of development of c.28 units/hectare (discussed below) and provides little guidance on the strategic approach towards the type or mix of housing units, the hierarchy/diversity of open space provision within the wider development lands or the provision of amenities, facilities and services for the community, including childcare provision (discussed below). In addition, whilst reference is made by the appellant to a geophysical survey of the entire masterplan lands, only geophysical surveys in respect of the appeal sites (under ABP-301843-18 and ABP-301845-18) have been submitted and it is not clear what issues arise for the entire site as a consequence of its archaeological potential. Finally, the masterplan provides little detail on the strategic approach to be taken to traffic calming, the realignment of Flemington Lane, the provision of cycle way along its length or pedestrian connectivity to Balbriggan.
- 8.2.2. Whilst the applicant's masterplan therefore goes some way towards providing a co-ordinated approach to the development of these lands, I consider that it does fall

short of satisfying key requirements. I am also mindful that the applicant's masterplan has not been made available for public comment or subject to strategic environmental assessment or appropriate assessment. Consequently, I consider that the applicant's masterplan cannot be considered a substitute for the planning authority's masterplan as it fails to tackle key matters.

8.2.3. **Policy and Precedent.** In its references to the preparation of masterplans, the County Development Plan states, on page 91 the Development Plan states *'Masterplans for these lands shall be prepared and agreed by the Planning Authority prior to the submission of any planning application'*. On page 11.3 it states *'Subsequent planning applications will be required to adhere to the approved Masterplans'*.

8.2.4. Having regard to these different statements, I would accept that there is a lack of clarity regarding the true intention of the Plan. Notwithstanding this, I have reviewed the cases referred to by the appellant and I would accept that there are precedents where permission was granted by the planning authority for developments on land which required a masterplan, in advance of preparation of the masterplan. However, I also note that in each case it was considered that the proposed development did not prejudice the preparation of a masterplan for the adjoining lands. Different reasons are cited in each case, including for example, because of the planning history of the site, or that the development in question related to all of the residential zoned lands in the masterplan area. In this instance, I consider that the proposed development would prejudice the preparation of a masterplan for the adjoining lands as it fails to take account of wider strategic objectives, for example, to achieve greater residential densities, variety of dwelling types and to provide amenities, facilities and services for the community (notably childcare). It therefore prescribes the form of development on other lands in a way which may be inequitable and/or not viable. In this instance, therefore I consider that the development differs from those cited by the appellant and would conflict with the development plan's objective to prepare a masterplan for the site.

8.2.5. **Timescale for Preparation of Masterplan and Development Management Guidelines.** In response to the appeal, the planning authority indicate that it is their intention to prepare a Masterplan for the Flemington Lane lands by 2019. Given that it is now late 2018 and there is no evidence to support the planning authority's

submission e.g. any planned programme of work/appointment of contractors, this timescale seems a little optimistic. Further, as identified by the appellant, it was an unfulfilled objective of the previous development plan to prepare a masterplan for the Flemington Lane site.

- 8.2.6. The government's guidelines on Development Management specifically deal with this issue in paragraph 7.16.1 and state '*development which is premature because of a commitment in a development plan to prepare a strategy, Local Area Plan or framework plan not yet completed should only be used as a reason for refusal if there is a realistic prospect of the strategy or plan being completed within a specific stated time frame*'. I would infer from this that the same constraint applies with regard to the commitment in a development to the preparation of a masterplan.
- 8.2.7. Having regard to the advice given in the Development Management Guidelines and the absence of a demonstrable commitment by the planning authority to commence work on the Masterplan, I consider that it would be inappropriate to refuse permission for the proposed development on the grounds that the development is premature i.e. that it is absent or awaited. Notwithstanding this, as stated it is my view that in this instance, it is not the absence of the masterplan which causes the problem but the nature and form of the proposed development which has consequences for the adjoining lands and which would therefore frustrate the development plan objective to prepare a masterplan for the overall lands. As a corollary, the applicant could address these matters, in the absence of a masterplan for the overall lands, in conjunction with the planning authority (in a manner that has been demonstrated in other precedent cases referred to by the appellant).

### 8.3. Density

- 8.3.1. Section 3.4 and 12.4 of the County Development Plan refer to the government's guidelines on Sustainable Residential Development in Urban Areas (2009) when considering residential densities. These guidelines encourage increased densities on residentially zoned lands, including 'outer suburban/'greenfield' sites which the guidelines describe as '*open lands on the periphery of cities or larger towns whose development will require the provision of new infrastructure, roads, sewers and ancillary social and commercial facilities, etc.*'. The guidelines state that the greatest efficiency on such lands will be achieved by providing net residential

densities in the general range of 35-50 dwellings per hectare and that net densities less than 30 dwellings per hectare should generally be discouraged in the interest of land efficiency, particularly on sites in excess of 0.5ha. In section 5.12 the guidelines state that to facilitate a choice of housing types within areas, *'limited provision may be made for lower density schemes provided that, within a neighbourhood or district as a whole, average densities achieve the minimum standards recommended above'* (emphasis in guidelines).

- 8.3.2. I would acknowledge that the previous Fingal County Development Plan allowed low-density housing on the appeal site (c.12/ha) and that specific objectives of the current development plan for the Flemington Lane masterplan site include to *'allow low density housing only'*. The appellant refers to a number instances where permission has been granted by the planning authority for residential developments with a density of c.22 to 24 dwellings/ha on 'medium' and 'high' density sites and I would accept that these precedents exist, albeit in site specific circumstances.
- 8.3.3. In this instance, the proposed development (and ABP-301845-18) come forward as part of a wider area of land zoned for residential development to the north of Balbriggan. This masterplan area represents a substantial and strategic site on the edge of the town, which itself is designated for significant growth. The government's section 28 guidelines in respect of residential densities in outer suburban/green field sites is very clear i.e. to accommodate densities in a general range of 35-50 dwellings/ha, with limited provision for lower densities, subject to average densities being achieved within the neighbourhood or district as a whole.
- 8.3.4. The proposed development (and ABP-301845-18) has a density which is below the recommended range. Further, the development is accompanied by the developer led masterplan which provides a similar density across all the masterplan lands and, therefore, no means to increase the average density within the masterplan lands as a whole (whilst allowing areas of low density). Such a blanket, low-density approach is at odds with the government's guidelines on residential densities, potentially inconsistent with the strategic growth objectives for the town and would result in the inefficient use of the appeal site and masterplan lands.
- 8.3.5. **Alternative proposals for Duplex Units etc.** In submissions to the Board, the appellants propose the replacement of dwelling nos. 63-73 with an apartment block

and duplex units, with parking at basement level. No details are provided in respect of the proposed amendments and the Board could seek further information from the appellant (e.g. detailed plans, resultant density). However, I consider that for the reasons stated a more strategic approach should be taken towards the density of the development within the masterplan lands and within this, the appeal site.

#### **8.4. Childcare Facilities**

- 8.4.1. The government's guidelines on Childcare Facilities recommend for new housing areas, one childcare facility providing a minimum of 20 places per approximately 75 dwellings, depending on the circumstances for each individual site. In this instance, the proposed development of 73 units is slightly below the threshold. However, it comprises typical family housing and it is likely to generate some demand for a childcare.
- 8.4.2. The applicant's masterplan for the Flemington Lane lands does not make any provision for childcare facilities. However, the appellant does state in his appeal to the Board that the childcare facility should be ideally located on the largest segment of the masterplan area, where it would serve the childcare needs of all of the new houses. In the event that the Board decides that childcare provision is required, the applicant also submits with the appeal an alternative layout for each development which includes a childcare facility (with the loss of one residential unit in each case).
- 8.4.3. As stated previously the development comes forward as a part of wider masterplan lands which have the potential to accommodate >500 dwellings and childcare facilities should properly be included within this overall development and provided in a planned and co-ordinated manner. The proposed provision of a childcare facility, whilst satisfying likely childcare requirements and government policy, would further reduce the density of development and provide an *ad hoc* and piecemeal approach to childcare facilities within the appeal sites and with consequences for provision throughout the masterplan lands.
- 8.4.4. If the Board are minded to grant permission for the developments, I would recommend inclusion of the childcare facilities as proposed (to ensure provision in the new housing area). However, for the reasons stated above I consider that the

development currently provides a piecemeal approach to the development of the masterplan lands. Notwithstanding this,

#### **8.5. Means to Attenuate Surface Water**

- 8.5.1. The appellant argues that the attenuation system are not tanks as set out in DMS74 but an engineered system, that includes large void aggregates and surrounding membranes, designed to provide treatment of stormwater as well as attenuation for flood protection.
- 8.5.2. However, I draw the Board's attention to the wording of Policy Objective DMS74 which specifically precludes provision of underground tanks and storage systems under public open spaces as part of a SuDS solution. I would consider, that the proposed underground engineered system falls within the specific provisions of the policy i.e. it comprises an underground storage system. Its provision in this format on the appeal site directly conflicts within this policy (despite any precedents of such use elsewhere).
- 8.5.3. In the appeal documentation an alternative layout is proposed, which incorporates dry storage basins in place of underground storage tanks, which would comply with Development Plan policy. However, the revised arrangements further reduce density of development and are proposed in the absence of a co-ordinated approach to the management of surface water within the wider masterplan lands, which may provide a more creative solution to the attenuation of surface water.

#### **8.6. Other Matters**

- 8.6.1. The planning authority refer to a number of a small number of design issues (handed version of house type D1, more active frontage to house no. 7). If the Board are minded to grant permission for the development, these matters could be addressed by way of condition.

### **9.0 Screening for EIA**

- 9.1. The proposed development comprises a class of development which falls within Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (Construction

of more than 500 dwellings), but well below the stated threshold. Further, the appeal site comprises agricultural land, on the edge of an existing urban area and removed from sensitive sites and discharges from the site will be controlled and/or directed to the existing urban infrastructure. Having regard to the foregoing there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **10.0 Appropriate Assessment**

10.1. Having regard to the nature of the proposed development and arrangements for servicing the development within existing urban infrastructure, the characteristics of the appeal site which comprises agricultural land and the distance of the site from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **11.0 Recommendation**

11.1. Having regard to the matters discussed in my assessment above, I consider that permission for the proposed development be refused for the following reasons and considerations.

## **12.0 Reasons and Considerations**

1. The subject site forms part of the Flemington Lane lands, a strategically important area of development land to the north of Balbriggan. Policy MP14 of the County Development Plan requires the preparation of a masterplan for these lands (MP 4.A). This objective is considered reasonable. The proposed development of 73 houses would represent *ad hoc* and piecemeal approach to the development of the lands, prejudice the development of adjoining lands and the plan led approach to the provision of integrated and equitable community facilities and public infrastructure. The proposed development would, therefore, contravene materially Policy Objective PM14

of the County Development Plan 2017 to 2023 and would be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is on serviced lands within the development boundary of Balbriggan, which is designated as a Large Growth Town in the Regional Planning Guidelines for the area and in the Core Strategy of the Fingal County Development Plan 2017 – 2023. It is a requirement of the development plan, that the number of dwellings to be provided on a site should be determined by reference to the guidance contained in the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, issued by the Department of Environment, Community and Local Government, 2009. The Guidelines state under Section 5.11 that the greatest efficiency in land usage on outer suburban/greenfield sites will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare, that such densities should be encouraged generally, and that development at net densities of less than 30 dwellings per hectare should generally be discouraged in the interest of land efficiency. It is considered that the development of the site at a density of 27 units per hectare would not be at a sufficiently high density to provide for an acceptable density of development on zoned and serviced land. It is, therefore, considered that the proposed development would not comply sufficiently with Government Guidelines, particularly the Guidelines for Planning Authority on Sustainable Residential Development in Urban Areas and would conflict with the provisions of the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Objective DSM74 of the Fingal County Development Plan 2017 – 2023 precludes the provision of underground storage tanks and storage systems under public open space, as part of a SuDS solution. This objective is considered reasonable. The proposed development provides an underground attenuation storage system and would contravene materially, this objective of the Development Plan. It would therefore be contrary to the proper planning and sustainable development of the area.



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Deirdre MacGabhann

Senior Planning Inspector

11<sup>th</sup> December 2018