



An
Bord
Pleanála

Inspector's Report ABP-303485-19

Development	Outline permission for the construction of 9 no. houses and permission for all associated site works. Application includes a Natura Impact Statement.
Location	Southend, Blackrock, Co Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	18865
Applicant(s)	Colin Fee.
Type of Application	Outline Permission and Full Permission.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Colin Fee.
Observer(s)	1. Peter and Cathy Lennon. 2. Fionnuala Morgan & others
Date of Site Inspection	02 nd of April 2019.
Inspector	Karen Hamilton

1.0 Site Location and Description

- 1.1. The site is located along the coastline of Dundalk Bay to the south of the village of Blackrock, Co. Louth. The site is accessed from the R172 into a small residential development, Wavecrest Drive and a large detached dwelling which has been abandoned during construction.
- 1.2. The site is a flat greenfield site which has direct access onto the Bay and desire lines around the site indicate informal access. There are a number of two storey standalone dwellings round the periphery, backing onto the site and small timber post fence surrounds the site.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following;
 - Outline permission for 9 no. new dwelling houses,
 - Full permission for all associated site works.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for 2 no reasons as summarised below:

1. Variation No. 1 of the Dundalk & Environs Development Plan 2009-2015 (as extended) sets out the overall phasing strategy for a sustainable approach to residential development. Policy CS 2 states that new residential developments, other than infill, brownfield or mixed use development; shall only be permitted within Phase 1. The subject site (c. 0.9043ha) is located on Residential 1 lands, outside the urban core area or phase 1 of the Core Strategy. The proposal comprises 9 no. dwelling houses and associated site works. The nature and scale of the site and proposal could not be described as infill development in terms of the subject site area which is greater than 0.5heactres and as such development at this location is not precluded from the requirement to comply with the phasing set out in the Core Strategy. Accordingly to permit the proposed development would materially contravene

the objectives of the Core Strategy, would be contrary to policy CS2 of the Strategy and would be contrary to the proper planning and sustainable development of the area.

2. The subject proposal comprises 9 no. dwelling houses within a site of c. 0.9043ha. The guidelines for Sustainable Residential Development in Urban Areas and associated Urban Design Manual, sets out best practice standards for new residential development including the “12 criteria with indicators”. Policy HC 9 of the Dundalk and Environs Development Plan 2009-2015 (as extended) seeks to implement the guidelines and best practice manual. The design and layout of the development which includes dwellings backing onto the proposed coastal path does not have due regard to coastal site context: Likewise the mix and variety of units and the density of the development does not represent efficient use of zoned land or promote inclusivity or variety. The design and layout of the proposed development is considered substandard and is not in keeping with the guidelines.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission and is summarised below:

- 9 no. submissions were received on the application.
- The applicant states that preplanning discussions indicate an acceptance of the proposal, although, in the formal recorded preplanning discussions the applicant was clearly advised that the principle of development remained contrary to the current plan.
- The size of the site is 0.9ha and is larger than the guidance in the Planning Guidelines on Sustainable Residential Development in Urban Areas 2007 as a “small gap infill, unused or derelict land.....” The site is not considered infill and therefore not compliant with the Core Strategy.
- There is a previous refusal for a similar development on the site and both the development plan and the core strategy remain the same.

- Other similar infill developments granted by the Board relate to different sites in Ardee where the site sizes were 0.3ha (PL15.246126).
- The design of the overall development, including the orientation of the 5 houses onto the walkway/ coastline, is not considered best practice.
- The including of the open space and the proposed walkway through the site will retain the views protected in V12.
- The separation distances are acceptable.
- A stage 2 Natura Impact Assessment appears to take into consideration all the concerns from the Inspector to the Boards refusal.
- The Flood Risk Assessment includes measures to overcome flood risk and the flood engineers have stated that the proposals are acceptable.
- Irish Water has no objection and indicate the proposal will require connection to the Blackrock Sewerage Treatment system, which has capacity issues. Inland Fisheries Ireland raised concern.

3.2.2. Other Technical Reports

Infrastructure Section- Request for further information on the public lighting, removal of an overflow pipe, revisions to footpath and road finish and speed reducing measures.

3.3. Prescribed Bodies

Irish Water- No objection subject to conditions.

Inland Fisheries Ireland (IFI)- Concern is raised over the treatment of the wastewater and there is insufficient clarity on the capacity of the treatment system. Blackrock wastewater treatment plant is at capacity.

Department of Culture, Heritage and the Gaeltacht- Request for further information on archaeology.

3.4. **Third Party Observations**

6 no. submissions/observation were received on the planning application, some of the issues raised have been reiterated in the two observations to the appeal and may be summarised as follows:

- Impact on residential amenity.
- Increased flood risk and insufficient information in the flood risk assessment.
- Increase in ground levels.
- Impact on the natural landscape.
- Increase in traffic and vehicular entrance.
- V12, protected views, include views of the beach.
- The development is supported. The Louth Bank Wall on the site will be relocated and reconstructed on site and the sea wall defences will incorporate a coastal walkway.

4.0 **Planning History**

PL15.246674 (Reg Ref 16/154)

Outline permission refused for 11 no. dwellings and associated works for three reasons as summarised below:

1. The site is located in an area to the south of the village centre zoning of Blackrock which is not designated as Residential 1 or Phase 1 development area. The site is not considered as brownfield or infill as set out in Policy CS2 of the Core Strategy phasing and therefore the 11 no. dwellings would be premature considering the order of priority and would contravene an objective of the development plan to manage growth.
2. On the basis of the information submitted and having regard to the Stage 1 Appropriate Assessment Screening Report and Addendum submitted, the Board is not satisfied that the proposed development would not, either individually or in combination of other developments, would not have a significant negative impact on the conservation objectives of the Dundalk Bay

Special Area of Conservation (Site Code 004026) and the Dundalk Bay Special Area of Conservation (Site Code 000455) or any other European Site.

3. The site is located within and proximate to Dundalk Bay and is in an area at risk of tidal flooding. On the basis of the information submitted the Board is not satisfied that the developer has provided sufficient information for the justification test as set out in “The Planning System and Flood Risk Management Guidelines for Planning Authorities”.

Reg Ref 08/153

Permission granted for the demolition of an existing dwelling and the construction of 24 no. dwellings.

Reg Ref 13/349: An Extension of Duration (EOD) was refused as the site was located on Flood Zone A and the subject development does not satisfy the justification test for development and the site is located adjacent to Dundalk Bay, the development has the potential to have a negative impact and therefore a Stage1 Appropriate Assessment Screening exercise is required.

5.0 Policy and Context

- 5.1. The Planning System and Flood Risk Management Guidelines for Planning Authorities (DHLG) 2009.
- 5.2. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Area (2009).
- 5.3. Urban Design Manual, A Best Practice (DOEHLG, 2009).
- 5.4. Urban Design Manual- A Best Practice Guide and the Design Manual for Urban Roads and Streets DMURS (2013).
- 5.5. **Louth County Development Plan 2015-2021**

Waste Water

Policy WS 3 Private Waste Water Treatment facilities other than single house systems will not be permitted except in the following limited circumstances.

Consideration may be given to granting permission for private waste water/communal facilities in developments managed by suitable institutions.

5.6. **Dundalk and Environs Development Plan 2009-2015 (as extended)**

The site is located within land use zoning RES 1- Residential, where it is an objective *“To protect and improve existing residential amenities and to provide for infill and new residential developments.”*

Table 2.1: Development Area Objective- Blackrock / Haggardstown

To preserve the distinctive character of Blackrock Village, to promote new residential development and prepare a development framework plan for the area.

5.7. **Variation No 1 of the Dundalk and Environs Plan: Core Strategy (2011)**

POLICY CS1- To promote sustainable development on brownfield/ infill sites by excluding such sites from the requirement to comply with the phasing strategy throughout the Plan Area.

POLICY CS2 To apply the phasing of new residential development as per the phasing strategy set out, whereby residential development, other than infill, brownfield or mixed use development shall only be permitted in the identified area within Phase 1. Only on completion of the development of 75% of these lands shall subsequent phasing be considered for additional residential development.

POLICY CS4 To require that planning applications for residential development submit a ‘Phasing and Implementation Statement’ to ensure compliance with the Development Area Objectives of the Dundalk & Environs Development Plan 2009 – 2015.

5.8. **Natural Heritage Designations**

The site is located along the boundary of Dundalk Bay SPA (004026) and c. 10m from the edge of the Dundalk Bay SAC (000455).

5.9. EIA Screening

Having regard to the nature and scale of the proposed development 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.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by an agent on behalf of the applicant in relation to the refusal and the issues raised are summarised as follows:

Core Strategy

- The site is not within the Core Strategy phasing map and not within Phase 1, 2 or 3. The site is shaded white in the Core Strategy and there are no phased lands in the vicinity.
- There has been a shift in emphasis on the provision of housing since the previous development plan in particular “Rebuilding Ireland” (July 2016).
- The lands are zoned as residential 1 in the development plan and as such should be classified as infill.

Infill

- The case officer refers to the size of infill site as those generally less than 0.5ha as noted in an earlier edition of the residential guidelines (1999).
- This is incorrect as the 1999 guidelines only provide guidance for detailed guidance for sites over 0.5 ha and does not restrict other infill.
- The 2009 guidelines define infill sites as those which range from small gap infill, unused or derelict land and backland areas and up to larger residual sites or sites assembled from a multiplicity of ownerships.
- The proposed site is a small infill site which can accommodate 9 no. dwellings.

- The proposed layout protects the amenities of adjoining residents and provides recreation and amenity.
- No local authority intervention is permitted as public mains and connections are confirmed by Irish Water.
- The Inspectors Report on the previous permission (PL15.246674) referred to the site as a sizeable backland site with limited road frontage.
- The site is located within the 50km/h speed limit and within 100-200m of services and facilities in the centre of Blackrock.
- The revised roadway and sea front allows for greater connectivity through the site.

Precedent sites

- Planning permission was granted on lands similar to the subject site.
- Development in Ardee PL15.246126 was granted, lands where white coloured and the surrounding area was characterised by residential. The case officer stated this site was smaller but the parameters where similar, therefore they should be treated the same.
- John Street, Ardee, Reg Ref 17.326, was a “white area” deemed acceptable for infill development.

Pre-planning correspondence

- A meeting with a Senior Executive Planning Officer was received with a positive response and subsequently a negative response with a further Executive Planner.
- Appendix 4 includes the written correspondence from the applicant’s agent to the planning authority with an indicative site layout (21st of December 2017).

6.2. Applicant Response

The applicant is the appellant.

6.3. Planning Authority Response

The planner has no further response to make over and above the Planner's Report dated 10th of December 2018.

6.4. Observations

Two observations were received from residents in the vicinity of the site and the issues raised are similar in nature and have been summarised into common themes below:

Planning History

- The application as submitted is the same proposal as previously and the same issues apply.
- Reg Ref 07/780 was deemed withdrawn, Reg Ref 13/349 extension of duration of 08/153 was refused
- PL15.246674 (Reg Ref 16/154) was refused.

Core Strategy

- The applicant has provided precedent for similar sites in Ardee where the "infill" argument was accepted. These sites are not the same as this subject site.
- The site, at 0.90 ha, cannot be considered as infill.
- The report of the area planner notes that the site is of a scale that could not be considered as infill and the authority had to be consistent in advise it has given in relation to other sites.
- Should An Bord Pleanala grant permission it would materially contravene the Core Strategy and Policy CS2 of Variation No 1 of the Development Plan.

Site Ownership

- The applicant has included the access road into Wavecrest Drive within the red line of the application.
- This road has been taken in charge by the local authority.

- The observer has not been approached nor given any permission for the proposed development

Access

- There is inadequate sight lines and the intensification of an existing access is inappropriate.
- Partial 3, as included in the planning application, was included in the refused proposal (Reg Ref 16.154)
- The proposal would cause a greater number cars along the main road as the pedestrian access would encourage beach access and exacerbate an existing problem.

Protected Views

- V 12 has been identified on Map 2 of the development plan and should be protected. The 2m high concrete walls between the dwellings will prevent any views.

European Sites

- The planning application form incorrectly indicates that the works do not relate to works in any European Site.
- The application site is one of the only few remaining sites left and used for feeding birds, particularly in the winter months
- The planners report for the previous refused application (Reg Ref 16.154) states that the design and open space does not have regard to the coastal site context or the local views.
- There has been no evidence of any dumping or anti-social behaviour on the site and therefore not a sufficient reason for development on the site.

Heritage

- There is evidence of presence of Louth Stone Bank Walls within the site. These walls support biodiversity and there is no mention of rebuilding these within the site.

- The development of the walkway should be appropriately developed and sympathetic to the natural and heritage features.

Views

- The open nature of the site allows for exquisite views and Policy CH4 of the development plan requires the protection of views identified on Map 2. This map illustrates a map at the site, V12. The 2m high boundary wall between the plots will further remove the enjoyment of the views.

Access

- Although there is no official pedestrian access, the site and shore is used by locals to gain access to the coastal area and during busy periods the access road to Wavecrest and surrounding area gets busy with cars. There is no provision for visitor parking on the site.
- The proposed works to the access, movement c 9.5m to the south will lead to a cross-junction with Seaford Gardens opposite.
- The public have walked along the coastline since the beginning of the 20th century.

Residential Amenity

- The planners report on the current and previously refused permission states that the design of the estate is sub-standard. The applications are identified, save for the removal of Partial 3 and Partial 2

7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Planning History
- Core Strategy
- Flood Risk Assessment
- Waste Water
- Residential Amenity

- Archaeology
- Preplanning Correspondence
- Appropriate Assessment

Planning History

- 7.2. Planning permission was recently refused by the Board (PL15.246674 (Reg Ref 16/154)) or outline permission for 11 no. houses and all associated site works. The three reasons for refusal related to the absence of inclusion of the site within any phasing in the Core Strategy, insufficient information in the Appropriate Assessment Screening Assessment and the absence of any Justification Test for the Flood Risk Assessment.
- 7.3. Prior to this application, permission was granted (Reg Ref 08/153) by the Local Authority for the demolition of an existing dwelling and the construction of 24 no. dwellings, an extension of duration (Reg Ref 13/349) was refused as the site adjoined two European Sites and included lands which were subject to flooding.
- 7.4. In regard to the previous refusal by the Board (PL15.246674), the size of the site has been decreased slightly (0.1527ha) and the proposed development has been reduced from 11 no. dwellings to 9 no. dwellings. The location and characteristics of the site remain the same as are the development plan and flood zoning maps. A Natura Impact Statement has been submitted whilst the previous application included a Screening for Appropriate Assessment. These issues have been further detailed below.

Core Strategy

- 7.5. The proposed development is located on lands zoned as RA, Residential 1, in the Dundalk and Environs Development Plan 2009-2015, where it is an objection to “*To protect and improve existing residential amenities and to provide for infill and new residential developments*”. Variation No 1 of the development plan includes the Core Strategy for the Dundalk and Environs area. Phase 1 & 2 lands are illustrated on Map B which accompanies the Core Strategy, which do not include the subject site.
- 7.6. The first reason for refusal refers to Policy CS 2 of the Core Strategy, which allows a certain amount of infill outside the designated Phase 1 & 2 lands. The Planning authority did not consider the size of the site (0.9.043ha) could be considered as infill

(greater than 0.5 ha) and therefore, would materially contravene the Core Strategy. Reference to 0.5 ha is taken from 1999 Guidelines for Planning Authorities on Residential Density, as a best practice. The grounds of appeal consider these Guidelines are irrelevant and having regard to the current housing crisis and a precedent set by the Board in previous decisions for infill in Ardee (PL15.246126 and 0.3ha in size) the site should be considered as infill and therefore the proposed development would comply with the Core Strategy.

- 7.7. Policy CS1 of the Core Strategy promotes sustainable development on brownfield/ infill sites by excluding such sites from the requirement to comply with the phasing strategy throughout the plan area and Policy CS 2 requires the application of the phasing strategy aside for infill/ brownfield sites. Section 2.5 of the Core Strategy defines infill as *“sites range from small gap infill, unused or derelict land and backland areas up to larger residential sites or adjacent sites that are all in different ownerships”*.
- 7.8. An allocation of 9ha of infill development is permitted outside the phasing allocation, as per the Regional Planning Guidelines 2010-2020¹. Section 4.7 and Appendix 3 of the Background Document to the Core Strategy makes reference to the Urban Consolidation area, town centre, and the Muirhevnamore Area as areas which would support sustainable development and the infill allocation. The subject site is located in the Blackrock Area. This aside, even should the Board consider the location of the site within an existing residential development may be classified as infill, it should be noted that there has been no change in development plan policy since the Board's previous refusal relating to the order of priority of development in the Core Strategy and Policy CS 2 (PL15.246674).
- 7.9. Therefore, having regard to the planning history, the location of the site, Policy CS 1 and CS 2 of the Core Strategy for the Dundalk and Environs Area and Section 4.7 and Appendix 3 of the accompanying Background Document, it is not considered that the site is infill for the purposes of the Core Strategy and to permit development would be premature by reference to the order of priority for the development indicated in the said development plan.

¹ <https://www.nwra.ie/wp-content/uploads/Planning-Guidelines-for-the-Border-Region.pdf> 25/04/19

Flood Risk Assessment

- 7.10. The subject site is located on lands that are vulnerable to coastal flooding and are within Flood Zone A and B², subject to coastal flood events. The Flood Risk Management Guidelines require that vulnerable developments, such as residential development satisfy the justification test for development plans (as per box 4.1 of the guidelines) and the justification test for development management (as per box 5.1 of the guidelines).
- 7.11. A Flood Risk Assessment (FRA) accompanied the proposed development, similar to that which accompanied the previous refused permission (PL15.246674 (Reg Ref 16/154)) which notes the site higher, c. 1m , from the high water mark (HWM) , and considers the eastern portion of the site would be susceptible to flooding under the 1 in 200 year coastal flood scenario. In light of the potential for tidal flooding of the site under extreme flood events a Stage 2 Assessment was carried out. It is stated that, having regard to the Area of Further Assessment (AFA) undertaken for Blackrock by the OPW, c. 33 % of the proposal is within a flood zone (A & B). Mitigation measures for flooding within the site include the increase in the site so as the dwellings have a FFL 4.22m (some areas currently 3.72m) and the inclusion of gabion revetments along the coastal boundary (low level reinforced concrete wall with a top level of at least 4.5m).
- 7.12. An assessment of the proposed development against the criteria included in Box 5.1 of the Guidelines was included in the FRA and concluded that as the site was zoned as residential use in the development plan, would not increase the flood risk elsewhere (only 0.5ha filled), the proposed development includes measures to minimise flood risk to people, property by use of strengthening the existing land/ sea interface, which will also further reduce residual flood risk to the site and will be compatible to the wider planning objectives of the area.
- 7.13. Observations from residents in the vicinity of the site have raised concern in regard over the adverse impact from the works on the site, in particular the increased risk of flooding on their property. I note the Planners Report referenced the Board's previous refusal relating to flooding although having regard to the report of the

² www.floodmaps.ie

Infrastructure Department, which accepted the justification in the FRA, they were satisfied there was no flooding issue.

- 7.14. The first criteria which must be satisfied in Box 5.1 (Justification Test) of the guidelines stated that “The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan,.....”. The planning authority’s first reason for refusal and the Boards previous reason for refusal both relate to non-compliance with the phasing and release of residential lands as per the Core Strategy, where both Phase 1 &2 lands where subject to a FRA. It has been determined that the proposed development is not located on lands permitted for the orderly development of the Dundalk and Environs plan area.
- 7.15. Whilst I acknowledge the residential zoning on the site could be interpreted as compliance with the first criteria I would also draw attention to the third reason for refusal under PL15.246674 which states that *“the Board is not satisfied that the developer has provided sufficient information to demonstrate compliance with the Justification Tests set out in ‘The Planning System and Flood Risk Management Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in November, 2009’, or relative to the Strategic Flood Risk Assessment provided in Variation Number 1 and to Policy EN5 (Flood Risk Management) of the Dundalk and Environs Development Plan 2009-2015 (as extended)”*. Policy EN 5 of the development plan seeks to apply a presumption against permitting development within areas at risk of flooding and within flood plains subject to the application of the sequential test and or the justification test to site selection.
- 7.16. Having regard to the allocation of lands zoned for residential within the Dundalk and Environs development plan area and within Phase 1 & 2 of the Core Strategy, the location of c. 33 % of the dwellings within Flood zone A & B and the scale of the works required to prevent flooding on the site along an area of scenic coastline, it is considered the proposed development does not satisfy the criteria as set out in Box 1 of the national flooding guidance and the justification for residential development at this specific location has not been satisfied.

Waste Water

- 7.17. The wastewater connection is into the Blackrock Sewerage Treatment System via an existing 300mm foul sewer which runs along the R172 to the front of the site. Initial correspondence between Irish Water and the applicant raised the absence of any capacity in the Blackrock Waste Water Treatment Plant, the current Local network Reinforcement Project and the scheduled completion in Q1 2020. The correspondence stated that no connection could be made until the treatment plant had capacity. Further correspondence to the Planning Authority from Irish Water states that the Irish Water Capital Investment Programme (CIP) includes the upgrade of Blackrock Sewerage Network (LNRP) which will increase capacity and all proposed connections will be conditioned upon completion.
- 7.18. Information on the EPA webpage relating to the Blackrock Wastewater Treatment System indicate that it is currently operating over capacity with a design p.e of 6,000 and an estimated loading p.e of c. 7,008 in 2014 and 8, 256 in 2020³.
- 7.19. Inland Fisheries Ireland (IFI) have raised concern over the lack of capacity within the treatment plant and the negative impact the proposed development would have on the receiving waters, in particular Dundalk Bay and the River Fane. The state of the treatment plan according to Irish Water's Annual Environmental Reports is highlighted and IFI recommends postponing the proposal until any works are complete.
- 7.20. A recent Strategic Housing Development was permitted (303253-18) for 166 no. dwellings along the Old Golf Links Road, north of Blackrock Village. Similar issues were raised by Irish Water in their submission to the application and the Board included Condition No 3 which restricted the occupation of any of the dwellings until such time as the Blackrock Wastewater Treatment Plant was upgraded, providing the necessary capacity. I note IFI made a submission to this application also.
- 7.21. Having regard to the recent grant of permission by the Board for a large scale housing development I consider the precedence has been set to permit the development within the Blackrock area, subject to the upgrade and completion of works to the treatment plant and therefore there can be no objection to the provision of wastewater facilities to the subject site for 9 no. dwellings.

³ http://www.epa.ie/licences/lic_eDMS/090151b2804f76cc.pdf

Residential Amenity

- 7.22. The proposed development includes 9 no. dwellings, 5 no. large detached dwellings and 4 no semi-detached dwellings. The open space provision is located to the north west of the site, adjacent to the access. Pedestrian access is provided through the site, connecting to a proposed coastal walkway which runs along the east of the site.
- 7.23. The second reason for refusal relates to the location of the 5 no. detached dwellings which back onto the proposal coastal path and the context to the remainder of the site. In addition, the Planning Authority did not consider the mix and variety of units and the density of the development represented efficient use of zoned land or promoted inclusivity or variety and was therefore not keeping with the guidelines for Sustainable Residential Development in Urban Areas and associated Urban Design Manual, sets out best practice standards for new residential development including the “12 criteria with indicators”.
- 7.24. Policy HC 9 of the Dundalk and Environs Development Plan 2009-2015 (as extended) seeks to implement the guidelines and best practice manual. These Guidelines advocate high quality sustainable development that are well designed and built to integrate with the existing or new communities and the design manual provides best practice design criteria such as context, connections, inclusivity, variety, efficiency, layout etc. where it is a requirement for the design of new development to improve and enhance the existing situation to make a positive contribution to the neighbourhood as assessed below.
- 7.25. Map 2 of the Dundalk and Environs Development Plan includes an indicative walkway along the entire coastline which the proposed development has integrated on top of the coastal protection works. The 5 no. detached dwellings back onto this walkway. The report of the area planner noted this layout and did not consider it respected the site context in relation to the costal path. The Urban Design promotes the use of the existing site features to inform any proposed developments and having regard to the layout out and treatment of the walkway, I do not consider the development responds sufficiently to the coastal surroundings.
- 7.26. The site is 0.9ha in size and includes a proposal for 9 no. dwellings. Policy HC 18 of the development plan requires compliance with the density requirements of national guidelines which are listed as between 35-50 dwellings where densities less than 30

dwellings per hectare should generally be discouraged on sites in excess of 0.5ha. Therefore, it is considered the proposed density falls excessively short of the national guidance.

- 7.27. Open space provision (1,496m²) complies with the 14% requirement in Policy HC 20 of the development plan although the location, adjoining the site entrance and along the internal access road cannot be defined as useable and will have a negative impact on the amenity of the residents. In addition, there is limited overlooking on the open space which the guidance in section 8 of the Urban Design Manual advocates.
- 7.28. Having regard to the overall design, orientation of the 5 no detached dwellings, the location of the open space and the proposed density on the site it is considered the proposed development does not comply with the Sustainable Residential Development in Urban Areas and associated Urban Design Manual and the relevant policies of the development plan and to permit such development would set an undesirable precedent for similar substandard residential developments.

Archaeology

- 7.29. The site is located on a coastal area which the Department of Culture Heritage and the Gaeltacht (DCHG) have deemed to have high archaeological potential. Additional information on archaeological monitoring was required before a final planning decision could be taken. Having regard to the substantive reason for refusal, the further information was not requested although I consider an archaeological monitoring condition could address the concerns raised by the DCHG.

Preplanning Correspondence

- 7.30. The applicant contends that the preplanning correspondence with the Planning Authority indicates a positive response to the proposed development. A letter to the council has accompanied the grounds of appeal. A response from the Planning Authority indicate that there was some informal discussion with the applicant on the principle of development and the need to rectify the Core Strategy although notwithstanding these conversations, no specific S247 consultation was undertaken. The grounds of appeal has not submitted any formal correspondence from the Planning Authority. I note the recent planning history on the site and the unchanged planning context and I do not consider these discussions between the applicant and

the Planning Authority are a matter for the Board to consider for the assessment of the proposed development.

Appropriate Assessment

- 7.31. The boundary of Dundalk Bay SPA (Site Code 004026) runs adjacent to the east of the site, along the coastline and c. 10m from the edge of Dundalk Bay SAC (Site Code 000455). The previous refusal by the Board ((PL15.246674 (Reg Ref 16/154)) noted the location of the site and the absence of any Stage 2 assessment and therefore was precluded from permitting the development. The planning application was accompanied by a Natura Impact Statement (NIS).
- 7.32. **Dundalk Bay SPA** lists the following species as special conservation interest:: Great Crested Grebe, Greylag Goose, Light-bellied Brent Goose, Shelduck, Teal, Mallard, Pintail, Common Scoter, Red-breasted Merganser, Oystercatcher, Ringed Plover, Golden Plover, Grey Plover, Lapwing, Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank, Black-headed Gull, Common Gull and Herring Gull. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds.
- 7.33. Dundalk Bay SPA is one of the most important wintering waterfowl sites in the country and one of the few that regularly supports more than 20,000 waterbirds. Four species occur in numbers of international importance and a further 19 species in numbers of national importance. The regular occurrence of Golden Plover, Bar-tailed Godwit, Red-throated Diver, Great Northern Diver and Little Egret is of particular note as these species are listed on Annex I of the E.U. Birds Directive. Dundalk Bay is a Ramsar Convention site and parts of Dundalk Bay SPA are designated as Wildfowl Sanctuaries.
- 7.34. **Potential Impact on SPA:** The background information presented in the NIS does not identify any species of interest for foraging or nesting on the site. In relation to noise, the NIS references scientific publications which have reviewed sensitivities of waterbirds to construction related impact and suggest ambient noise levels were capped at 70db (A). Section 5.0 of the supporting NIS includes mitigation measures to prevent any negative impact on the qualifying species of the Dundalk Bay SPA by limiting construction works outside the over wintering period, between the months of

September to March. In addition, construction works, where practical, will be undertaken during daylight hours.

- 7.35. In relation to the coastal protection works and the associated coastal walkway, the NIS states that all works will be undertaken within the confines of the site, no access to the coast is required and having regard to the above mitigation measures, the impact on the protected species will be minimal. Section 4.2 of the NIS confirms that human presence can have a potentially moderate level of disturbance to some wetland bird species, this has not been expanded on for individual species and no bird count data or supporting correspondence from Birdwatch Ireland has been integrated into the NIS. The use of the site for the coastal pathway has been justified based on the current existence of walkers along the site, which I do not consider a sufficient justification for additional works. In addition to the lack of any scientific supporting data to support the claims that the impact on the bird species will be minimal, I note the absence of any site layout maps or the integration of available data from the Conservation Objectives Supporting Documentation (NPWS 2011)⁴ which illustrates the location of a foraging site within and directly north of the subject site.
- 7.36. **Dundalk Bay SAC** is a large open shallow sea bay with extensive saltmarshes and intertidal sand/mudflats, extending some 16 km from Castletown River on the Cooley Peninsula, in the north, to Annagassan/Salterstown in the south.
- 7.37. The extensive sand flats and mud flats have a rich fauna of bivalves, molluscs, marine worms and crustaceans which provides the food resource for most of the wintering waterfowl. The outer part of the bay provides excellent shallow-water habitat for divers, grebes and sea duck. In summer, it is thought to be a major feeding area for auks from the Dublin breeding colonies. The bay is used at night for roosting by wintering flocks of Greylag Goose, Greenland White-fronted Goose and Whooper Swan from Stabannan/Braganstown (inland of Castlebelligham) and other inland sites.
- 7.38. **Potential Impact on SAC:** Section 5.0 includes mitigation measures which will be integrated into the overall development to prevent any negative impact on the

⁴https://www.npws.ie/sites/default/files/publications/pdf/4026_Dundalk%20Bay%20SPA%20Supporting%20Document_V1.pdf (26/04/19)

habitats of which mostly relate to the prevention of sediment controls, prevention of spills during construction and the provision of detailed methodologies and materials prior to commencement of the construction and installation of the Gabion Reno Mattress.

7.39. I note the absence of any detailed mapping for the SAC in the context to the subject site. The NIS states that location of the coastal protection works will be outside the SAC although this has not been supported with any definitive information. In addition, the mitigation measures include the submission of additional construction methodology to the Planning Authority, prior to the construction of the Gabion Reno Mattress, which I cannot currently assess.

7.40. **Stage 2 Assessment:** Having regard to inadequate information to support claims that the coastal works and use of the proposed walkway will have no impact on the species listed as qualifying criteria in the Dundalk Bay SPA and the international importance of these species, I do not consider it reasonable to conclude, with any scientific doubt, that the proposed development would not adversely affect the integrity of the European site – Dundalk Bay SPA (Site Code 004026). In addition, it is considered that the failure of the NIS to present clear and concise illustrations to support a methodology for the construction of the Gabion Reno Mattress, means that it cannot be concluded the proposed development would not adversely affect the integrity of the habitats listed as qualifying criteria of the European Site- Dundalk Bay SAC (Site Code 000455).

8.0 Recommendation

8.1. It is recommended that the proposed development is refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. The site is located in an area to the south of the Village Centre zoning of Blackrock which is not designated as Phase 1 development of the Core Strategy adopted as Variation No 1 of the Dundalk and Environs Development Plan 2009 – 2015 (as extended). It is not considered that the proposed development constitutes infill or brownfield development for the

purposes of the Core Strategy as set out under Policy CS1 or CS2 of this Strategy which supports a phasing strategy set out to refuse such developments where they would not be located in such areas. It is, therefore, considered that the proposed development involving the provision of 9 no. dwellings on the site would be premature by reference to the order of priority for the development indicated in the said development plan and would materially contravene an objective indicated in the said development plan, which is integral to the planning authority's approach to managing the growth of the Dundalk and Environs area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The site is located along the coastline of Dundalk, proximate to Dundalk Bay and part of the site is in an area at risk of coastal flooding. On the basis of the submitted documentation, the Board is not satisfied that the developer has provided sufficient information to demonstrate compliance with the Justification Tests set out in 'The Planning System and Flood Risk Management Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in November, 2009', or relative to the Strategic Flood Risk Assessment provided in Variation Number 1 and to Policy EN5 (Flood Risk Management) of the Dundalk and Environs Development Plan 2009-2015 (as extended). The proposed development would, therefore, constitute an unacceptable risk of flooding and would be contrary to the said Ministerial Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to the objectives of the current development plan for the area, in particular Policy HC 9 and the national guidance in the Urban Design Manual, A Best Practice, in relation to urban development and urban renewal, it is considered that, by reason of the inappropriate residential density, layout and orientation of the 5 no. detached dwellings and absence of sufficient integration and overlooking of the communal amenity space, the proposed development would militate against an attractive environment, would be of insufficient urban design quality on a prominent site south of Blackrock Village

and would seriously injure the residential and visual amenities of the area. The proposed development would, therefore, conflict with the objectives of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

4. Having regard to the location of the site, together with adjoining land, adjacent to the Dundalk Bay candidate Special Area of Conservation (Site Code 000455) and the Dundalk Bay Special Area of Protection (Site Code 004026) it is considered that:

(b) the proposed development, including, but not restricted to the proposed coastal protection works and coastal walkway, would give rise to continued increased disturbance to wildlife, from construction and increased human activity in what was formerly a relatively undisturbed area.

Notwithstanding the above and those proposed mitigation measures submitted, the Board is not satisfied, on the basis of the information contained in the Natura Impact Statement that adequate information has been provided on the impact of the proposed development on the bird species listed as qualifying interest within the above European Sites and the resulting implications for wildlife and flora.

It is therefore considered that the Board is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the proposed development will not adversely affect the integrity of a European Site and it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area

Karen Hamilton
Planning Inspector

26th of April 2019