



An
Bord
Pleanála

Inspector's Report ABP-305125-19

Development	For completion and alterations to (Planning Reg. Ref: F08A/1407 - F11A/0444) The development consists of 2 dwellings with basement accommodation.
Location	Robswall Cottage, Malahide, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F18A/0744
Applicant(s)	Deancastle Developments Ltd
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	Third Party
Appellant(s)	Kevin Flanagan
Observer(s)	None
Date of Site Inspection	20 th of November 2019
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.298ha and is located in proximity to Robswall Cottage, R106 Coast Road, Malahide, Co. Dublin. The construction of 2no. dwellings and associated site works including basements was permitted under Reg.Ref. F08A/1407 and amended under F11A/0444. The basement area has been excavated in the partially constructed dwelling 'A', which is on the plot proximate to the Coast Road. There is an old stone wall along the site frontage with the Coast Road, there is a 2m block wall along the rear of the site and temporary hoarding consisting of steel barriers along the sides of the site. There are views to the sea from the site.
- 1.2. The site is surrounded to the east, west and south by an area of amenity lands known as Paddy's Hill. The area to the south is also known as Robswall Park. There is a separate vehicular entrance to the east to Gannon Park that serves the Gourmet Food Parlour and Malahide United Football Club grounds to the south and rear of the site. A detached dormer bungalow directly adjoins the north-eastern boundary of the site. There is a separate vehicular entrance and gated access to this bungalow. Robswall Castle, a Protected Structure (No.422) and Robswall Cottage lie immediately to the west in the surrounding cluster of older established dwellings on the opposite side of the cul-de-sac access road. Further to the west, separated by a green field area is a recently constructed housing development of 3 storey terraced houses and 4 storey apartment blocks, known as Robswall.
- 1.3. The R106, Coast Road lies to the north. The site is located within an area with a speed limit of 50km/hr. It is proposed to provide an entrance onto the existing cul de sac road that serves the existing cluster of houses. The sight lines to the east of the junction to Coast Road are somewhat restricted by the embankment. There are traffic lights further to the east close to the junction with the aforementioned development at the rear. There is public transport in the area with bus routes along the Coast Road and bus stops in the vicinity of the site.

2.0 Proposed Development

2.1. This proposal is for the completion and alterations to previously approved development (Planning Reg. Ref. F08A/1407 – F11A/0444) at a site at Robswall Cottage, Coast Road, Malahide and includes the following:

- 2no. single storey detached dwellings with basement accommodation, removal and modifications to existing boundary walls, new access road, new access gates and piers to each property, single storey detached garage and all associated site works on site.

2.2. The application also includes the following:

- Details and Drawings have been submitted from Tom Byrne Designs and a Planning Overview is provided.
- A Landscape Management and Maintenance Plan by Park Hood Landscape Architects has been submitted.

3.0 Planning Authority Decision

3.1. Decision

On the 20th of June, 2019 Fingal County Council granted permission for the proposed development subject to 12no. conditions. These generally concern design and layout, infrastructure (roads and drainage), landscaping, construction works, lodgement of a bond and development contributions.

3.2. Planning Authority Reports

The Planner's Report had regard to the locational context of the site, planning history and policy and to the inter departmental reports and the submissions made. Their Assessment included the following:

- They note the 'RS' Residential land use zoning and Local Objective 51.
- The date of this Local Objective has now passed and is no longer relevant being time limited and relating to a particular application.
- They have regard to a number of planning policies and objectives.

- They consider that the proposed dwellings are similar to those previously granted on the subject site.
- They are contemporary in design and will not detract from the visual amenity of the area.
- They note that excavation works to provide for these basement levels has already been undertaken.
- They consider that the applicant should be asked to amend the proposed boundary treatment, to retain as much of the remaining part of the existing boundary wall as possible.
- They note the proximity of the site to the Protected Structure No.422 Robswall Castle, Coast Road, Robswall. Also, that the Conservation Officer has no comment on the proposed development and considers it acceptable in principle.
- The applicant has sufficient private open space to serve the proposed dwellings. The existing host dwelling on the site would be served by an adequate level of private open space.
- They consider that the proposal had been sensitively designed and that overlooking or overshadowing is not expected to be an issue.
- They have regard to trees, landscaping and boundaries. They note that a revised boundary treatment is required showing the existing stone wall retained.
- They note the comments of the Transportation and Planning Department relative to maintenance of sightlines and accordance with the relevant standards.
- They note that the Water Section of the Planning Authority and Irish Water have no objections subject to conditions, including regard to surface water disposal and attenuation. Also, to issues concerning soakaways relative to the neighbouring septic tank.
- They have regard to and provide details of enforcement and note concerns about ownership issues.

- They do not consider that the development would be likely to have a significant effect individually or in combination with other plans or projects on any European Sites in the vicinity.
- They concluded that having regard to the RS zoning of the site as set out in the Fingal DP 2017-2023, in which residential development is permitted in principle and the planning history of the site, that the proposed development can be accommodated on the site. However, they noted issues outstanding in relation to water services within the area, specifically relating to neighbouring property. As such they recommend that a request for A.I be made.

Further Information request:

- To engage with the owner of the neighbouring property ('The Bungalow') to enter into an agreement to overcome the issue of the location of the water soakaways associated with the septic tank and provide for a connection to the mains which the 2no. proposed dwellings will connect to.
- To submit a revised site layout plan indicating a revised boundary treatment proposal to include the retention of the existing natural stone wall.

Further Information response:

Tom Byrne Designs response on behalf of the applicants includes:

- They attach an *Agreement* between Deanscastle Development Ltd and the Resident Mr Peter Smith of 'The Bungalow', Robswall, Malahide. This is relative to drainage, landscaping and boundary issues.
- Copies of revised drawings relative to the stone wall and the access.

Planner's response:

- They note the F.I submitted including revised drawings.
- They note Irish Water concerns relative to the drainage issues including relative to 'The Bungalow' and the need to provide for connections to separate systems.
- The applicant has submitted a revised landscape plan and the amended plan clearly shows the retention of the existing stone wall and amendments to lower the height of the front elevation as requested.

- They concluded that the applicant had not addressed item 1 relative to drainage of the F.I requested by the PA, adequately. They recommended that a request for C.F.I be made relative to outstanding issues relating to water services for the proposed development.

Clarification of Further Information request

- The applicant was requested to amend the proposed connection to house A to the water mains located along the Coast Road, to the north of the subject site, and House B to the water mains located to the south of the subject site, omitting the proposed connection which traversing the subject site.
- Also, to amend the proposed water mains connection to serve both of the proposed dwellings – details relative to Houses A and B.
- To demonstrate to the PA the development is in accordance with the relative Irish Water Guidance Documentation.

C.F.I response:

- They enclose a copy of JJ Campbell and Associates Engineers cover letter response to address all queries.
- They also include their drawing showing revisions to the drainage systems.

Planner's response

- They had regard to the C.F.I submitted and considered that the proposed development is acceptable and that it will not detract from adjoining residential amenity or adversely affect the character of the area subject to conditions. They considered that the proposed development is in accordance with the proper planning and sustainable development of the area and recommended permission subject to conditions.

3.3. Other Technical Reports

Transportation Planning Section

They note that the proposed development is located within the 50km/hr speed limit. Also, that adequate onsite parking is available in accordance with standards. While

they have no objections, they recommend conditions regarding visibility at the access, sightlines and boundary treatment.

Parks Division

They recommend that the stone wall along the public road be retained as it is a feature of the streetscape and matches with neighbouring historic properties on the shared access laneway. They recommend a landscaping plan be submitted with the F.I to include boundary treatments be conditioned.

Water Services Department

They refer to the F.I and C.F.I submitted and have no objections subject to conditions.

3.4. Prescribed Bodies

Irish Water

They recommended that F.I be submitted relative to drainage issues, taking into account connections to the adjoining property 'The Bungalow' and noted the requirements for separate systems. Also, that further details on drainage comply with current standards be submitted. They considered the details submitted relevant to the C.F.I to be acceptable and recommended the inclusion of notes/conditions.

3.5. Third Party Observations

Submissions have been received from the adjoining property 'The Bungalow' relative to drainage issues. They have also been received from the subsequent Third Party Appellant. Their concerns are noted within the context of the Planner's Report, and in the further details and drawings submitted. They are also further discussed relative to the grounds of appeal in the Assessment below.

4.0 Planning History

The Planner's Report provides details of the planning history of the site:

- Reg.Ref. F08A/1407 – Permission granted subject to conditions to Kevin and Fiona Flanagan for the construction of two single storey detached four

bedroom houses with basement level accommodation, and all associated works.

- Reg.Ref. F08A/1407E1 – Extension of duration of permission refused by the Council (March 2014) to Kevin and Fiona Flanagan for the following reason:

The proposed development no longer complies with the requirements of Section 42(a)(ii)(II) of the Planning and Development Act 2000 (as amended by the Planning and Development Act 2000). There have been significant changes in the Fingal Development Plan since the date of the permission such that the development would no longer be consistent with the proper planning and sustainable development of the area. The proposed development contravenes materially Objective RH07 of the Fingal Development Plan 2011-2017: Permit houses in area with a zoning objective H4, only to those who have a defined essential housing need based on their involvement in farming or exceptional health circumstances.

- Reg.Ref.F11A/0444 – Permission granted subject to conditions (February 2012) to K & F Flanagan for Revisions to approved planning permission for 2no. houses planning reference F08A/1407, the revisions include the rectification of southern boundary to Site A and the relocation of the approved vehicular access serving Site A. Condition no.2 was as follows:

Notwithstanding the amendments and revisions hereby permitted, the development shall be carried out in full compliance with the conditions of the grant of permission F08A/1407 insofar as they relate to this development.

Reason: In the interest of the proper planning and sustainable development of the area.

Copies of these decisions are included in the History Appendix to this Report.

- The Planner's Report notes that there is currently enforcement (ENF15/175A) on the subject site. An enforcement notice was issued on the 23rd of May 2016.

5.0 Policy Context

5.1. National Policy

- Project Ireland 2040 National Planning Framework (2018).
- Design Manual for Urban Roads and Streets (DMURS) (DECLG and DTTS 2013).
- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, (DEHLG 2009) and the accompanying Urban Design Manual: A Best Practice Guide, (DEHLG 2009).

5.2. Fingal County Development Plan 2017-2023

The development strategy for Malahide contained in Chapter 4 of the Plan seeks to promote the planned and sustainable consolidation of the existing urban form and the sensitive promotion of amenities. This includes Objective Malahide 3 which seeks to retain the existing centre with its mixed use and varied architectural character as the heart and focal point of Malahide.

Land Use Zoning

Sheet 9 Zoning Objectives refers. The site is zoned 'RS' Residential, surrounded by an area zoned 'HA' High Amenity. Local objective 51 relates to the site.

There is a Protected Structure (422 – Robswall Castle) located to the north west of the site. This described as a five bay two storey house connected to a 15th century stone tower house.

There is an indicative cycle/pedestrian route to the north along Coast Road.

Placemaking

Objective PM44 encourages the development of underutilised sites in existing residential areas subject to the protection of amenities, privacy and character, while objective PM45 promotes contemporary and innovative design in such areas.

Chapter 12 – Development Management Standards

Section 12.3 provides the Design Criteria for Urban Development and seeks to promote High Quality Urban Design.

- Objective SS16 seeks to: *Examine the possibility of achieving higher densities in urban areas adjoining Dublin City where such an approach would be in keeping with the character and form of existing residential communities, or would otherwise be appropriate in the context of the site.*

Section 12.4 provides the Design Criteria for Residential Development. This includes regard to the zoning objectives, mix of dwelling types and residential density. *In general the number of dwellings to be provided on a site should be determined with reference to the Departmental Guidelines document Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009). As a general principle and to promote sustainable forms of development, higher residential densities will be promoted within walking distance of town and district centres and high capacity public transport facilities.*

- Objective DMS24 seeks to - *Require that new residential units comply with or exceed the minimum standards as set out in Tables 12.1 (Houses), 12.2 (Apartments/Duplexes) and 12.3 (Minimum Room sizes and widths for Houses and Apartments).*
- Objective DMS39 provides that: *New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.*
- Objective DMS44 seeks to: *Protect areas with a unique, identified residential character which provides a sense of place to an area through design, character, density and/or height and ensure any new development in such areas respects this distinctive character.*

Objective DMS73 provides for the use of Sustainable Drainage Schemes (SuDS).

Objectives DMS84-86 refer to private open space and boundary treatment and to ensure that all residential unit types are not unduly overshadowed.

Objective DMS87 seeks to ensure minimum private open space provision for houses - 75sq.m for a 4 bedroom plus house.

Table 12.8 provides the Parking Standards. 2 spaces within the curtilage of the site would be required for 4 bedroom houses.

DMS126 seeks to restrict unnecessary new access directly off Regional Roads.

Objective MT44 refers to Development Contributions.

5.3. Natural Heritage Designations

The subject site is located approx. 67m to the south of the Malahide Estuary SAC (site code:000205) and the Malahide Estuary SPA (site code: 004025).

5.4. EIA Screening

5.5. Having regard to the nature of the proposed development and taking into account the residential land use zoning and the serviced nature of the site, and the distance of the site from nearby sensitive receptors, 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

O'Neill Town Planning have submitted a Third Party Appeal on behalf of Kevin Flanigan, Robswall Cottage. Their grounds of appeal include the following:

Procedural and Enforcement issues

- Invalidity of application due to applicant's lack of legal interest in the lands.
- The Public Notices are inaccurate and misleading. They do not comply with the Planning Regulations 2001 (as amended) and should have been invalidated.

- The site is still in the name of Kevin & Fiona Flanigan who are the registered owners.
- There is a *Lis Pendens* on the site and legal proceedings are in place to resolve it. It is the Appellant's view that the receivers were not entitled to sell the property or site.
- The boundary to the subject site is on the Appellant's land and is separate to the site which is the subject of the planning application and appeal.
- They note that there is still enforcement on file and have regard to non compliance with Local Objective 51.
- The wall at the front is of historic value and should not be removed in the manner proposed.
- Discrepancies in the documentation submitted.

Land use zoning and Planning Policy

- They have regard to the history of the land use zoning on the subject site between 2005 and now and note the proximity of the site to the high amenity area.
- They also consider that there is a material breach of Local Objective 51.
- Notwithstanding the procedural points raised, the planning application must be regarded as a material contravention of the Local Objectives and therefore should have been refused for this reason alone.
- They refer to Objective DMS126 relative to restricting entrances off regional roads.
- They note the High Amenity importance of the site relative to the coastal area and the 'Exceptional Landscape Value' and 'High Landscape Sensitivity' and refer to the relevant environmental/landscape character objectives NH33 and NH36.

6.2. Applicant Response

Manahan Planners Town Planning Consultants have submitted a response to the Third Party Grounds of Appeal. This includes the following:

- They note that the houses were previously permitted and need to be completed on site. These were put up for sale and the First Party purchased the site in good faith from the previous owners of the site. They are now seeking permission to complete the two dwellings generally in line with the original approval.
- They provide that the Planning Authority have granted permission following a thorough review of the proposal, seeking further information and clarification of such. Also, they now consider the proposal is consistent with the proper planning and sustainable development of the area.

Response A - The Legal Issue

- They provide that the Third Party Appeal seeks to insert a legal impediment in the processing of this application. Whatever the merits or not of that case, it is clear that it is not a matter for the planning system.
- The Planning Acts state clearly that a planning authority is confined; to processing a planning application based on planning issues alone. They also quote from the Development Management Guidelines on this issue.
- They refer to the documentation submitted and provide that the applicants have sufficient legal interest in the site to make this planning application and the planning authority treated it accordingly. A valid decision was made on that basis and that decision is now before the Board. There is no legal impediment to the processing of this file on purely planning matters by the Board.

Response B – The Specific Objective

- They provide some background details, having regard to the permissions previously granted on this site and the specific objective in the Fingal CDP that these two houses should be completed.

- They consider that the fact that this work has not been completed before the end of 2018 is not a fatal deficiency.
- The current application should be seen in the context of the existing residential zoning of the site, the provisions of the Development Plan and the proper planning and sustainable development of the area.

Response C – Assessment of Proper planning

- The proposed development accords with the ‘RS’ Residential land use zoning.
- They note the contemporary design of the proposed dwellings and provide they are to fit in with the topography of the landscape.
- They consider that they are appropriate in this location and enhance the visual amenities of this sensitive location.
- The proposed development complies with the objectives of the Fingal CDP exceeding the minimum floor areas, private garden areas etc.
- Given the sensitive design it will not impact adversely on neighbouring properties.
- The stone wall feature is now being retained.
- They note that the proposal has proved acceptable to the various divisions of the Council including Transportation, Parks, Conservation and Drainage.

Conclusion

- The appeal from the previous owner of the site is driven by issues that are more properly settled in a court of law.
- The local objective 51 was time-limited and is no longer relevant.
- A number of issues have been resolved at F.I stage.
- The proposal will have a positive impact on this site and will rectify a long outstanding issue, which it is clear Council policy to rectify and the application is welcome on this basis.
- They conclude that this proposal will not have an adverse impact on amenities and is consistent with the proper planning and development of the area.

6.3. Planning Authority Response

Their response includes the following:

- The application was assessed against the policies and objectives of the Fingal DP 2017-2023 and existing government policy and guidelines. It was also assessed having regard to the development plan zoning objective as well as the impact on adjoining neighbours and the character of the area.
- Having reviewed the grounds of appeal the PA remains of the opinion that the proposed development will not detract from adjoining residential amenity, subject to compliance with the conditions.
- In the event, that their decision is upheld, the PA requests that Conditions No. 11 and 12 (security for the provision of services and development contributions) be included in the Board's determination.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. The site is shown on Sheet 9 of the Fingal Development Plan 2017-2023 and is within the 'RS' Residential Zoning where the objective is to: *Provide for residential development and protect and improve residential amenity*. This area forms a small enclave of existing and proposed residential and the surrounding land area is within the 'HA' High Amenity land use zoning where the objective seeks to: *Protect and enhance high amenity areas*.
- 7.1.2. There is a Protected Structure 'Robswall Castle' located on the opposite side of the access road to the north west of the site. The site contains partially constructed dwellings and is accessed via the Coast Road to the east of Malahide town centre and there are views to the sea on the opposite side of the road. Local Objective '51' refers to the site. Note is had further to the significance of this objective relative to the proposed development in this Assessment below.
- 7.1.3. Regard is also had to the 'National Planning Framework Plan 2040' which seeks to increase housing supply and to encourage compact urban growth, supported by jobs, houses, services and amenities rather than continued sprawl and unplanned,

uneconomic growth. Chapter 4 refers to *Making Stronger Urban Places* and includes National Policy Objective 4 which seeks to: *Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.*

- 7.1.4. Also, of note is Section 5.9 of the 'Sustainable Residential Development in Urban Areas Guidelines, 2009' which provides: In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.
- 7.1.5. It is considered that the principle of an infill residential development is acceptable relative to the residential land use zoning. Any new application on the 'RS' zoned lands will be assessed on its merits based on the land use zoning and its suitability having regard to its location within a sensitive landscape. Regard is had further to the planning history, documentation submitted and to the issues raised by the Third Party including compliance with planning policy and guidelines, procedural issues, design and layout, impact on the residential amenities of neighbouring properties, access and drainage and impact on the pattern of development and character and amenities of the area in this Assessment below.

7.2. Procedural issues

- 7.2.1. The Third Party are concerned about the validity of the application. That contrary to the Planning and Development Regulations 2001(as amended), and in particular Article 18(1)(c) of the said regulations, the public notices submitted as part of the planning application are inaccurate and misleading. Also, that this is clear from the reports submitted in support of the planning application and the drawings themselves. They consider that this application should be for the retention of now unauthorised and substantial works, and their completion and alteration. They note that there is a requirement as per Article 19 of the said regulations, to describe the proposed development in a manner which the general public can understand what is proposed by the applicant.
- 7.2.2. These concerns have been noted and I am of the opinion, that these are procedural matters for the Planning Authority to address. They accepted the application and the

description of development and a determination on whether the P.A decision is valid or not, would not be appropriate to make here. However, it must be noted that this application is now being considered on its merits de novo by the Board.

- 7.2.3. They note that there is still enforcement on the site, (Reg.Ref.15/175A refers) which was served on the Appellant for failing to complete the houses on the site before December 2018. However, it must be noted that Enforcement is not within the remit of the Board, rather within the remit of the Local Authority, in this case Fingal.

7.3. **Regard to Planning History and Local Objective**

- 7.3.1. As noted in the Planning History Section above there is a considerable planning history relevant to permissions for 2no. similar type detached dwellings on this site. The Public Notices submitted with the current application refer to F08A/1407 and F11A/0444. Both permissions have now expired. An extension of duration Reg.Ref. F08A/1407/E1 was refused by the Council in 2014, for reasons (as noted above) including that the proposed development contravened materially Objective RH07 of the Fingal DP 2011-2017. At that time the site was zoned 'HA' High Amenity. However, the land use zoning of the Fingal DP 2017-2023, includes the site within the 'RS' Residential land use zoning.
- 7.3.2. Appendix 6 of the current Fingal DP contains Map Based Local Objectives. Local Objective 51 which as shown on the mapping relates to the site seeks: *To permit the completion, before December 2018, 2(no.) residential units associated with planning permission reference number F08A/1407 only.* Therefore, unusually perhaps, there is a specific Development Plan local objective relative to the development of the subject site.
- 7.3.3. The Third Party have regard to the planning history of the land use zoning of the subject site between 2005 and now and include extracts from previous development plans showing the changes in the zoning. The specific objective on the lands was included in the Fingal County Development Plan 2017-2023 in order to allow the Appellants to complete the two unfinished detached dwellings. They contend that the subject application is an attempt to further extend the life of the 2009 permission, and that this is contrary to the Fingal CDP 2017-2023 and therefore contrary to the proper planning and development of the area.

- 7.3.4. They are concerned that the Planning Authority should not have been influenced in any way by the residential zoning, which predicates the Local Objective. Also, that in dealing with the subject application the PA should not have, without the necessary Variation of the CDP have issued a notification of decision to grant permission for the development, which they consider is clearly a material breach of the Local Objective on the lands.
- 7.3.5. The First Party response notes that work commenced on foot of the previous approvals but was not completed due to the economic downturn. These properties were put up for sale and their clients purchased the site in good faith and are now seeking permission to complete the two dwellings generally in line with the original approvals.
- 7.3.6. I would consider that this application relies on the planning history of previous permissions and note that this Specific Local Objective in the County Plan that has now expired. Also, that this objective is no longer relevant as it cannot be complied within the timeframe stated. However, as submitted, this application is for completion and alterations to that previously permitted, which as provided was not completed or regularised due to the downturn in the economy. As these permissions and this Objective have now expired, I would consider that while the principle of the construction of two dwellings on this site has been established and previously permitted and the site is now zoned residential, that it in order for the Board to look at this application 'de novo' from first principles.

7.4. **Legal Issues**

- 7.4.1. The appeal states that the former owners of the site have a continuing legal interest in the site and accordingly the application is flawed. The Third Party note that there is a *Lis Pendens* on the site and legal proceedings are in place to resolve it. It is their view that the receivers were not entitled to sell the site. They also provide that the boundary to the subject site is on their client's land and is separate to the site which is the subject of the planning application and appeal.
- 7.4.2. In response the First Party provide that having regard to the details submitted including the folio transfer number they are satisfied that the applicant has sufficient legal interest to make this application. Also, it is noted, that the Planning Authority

were satisfied that the subject lands are in the ownership of the applicants and so had sufficient legal interest to make this application. It is concluded that any outstanding legal proceedings are outside the remit of this planning application.

- 7.4.3. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: “*A person shall not be entitled solely by reason of a permission under this section to carry out any development*”. Under Chapter 5.13 ‘Issues relating to title of land’ of the ‘Development Management - Guidelines for Planning Authorities’ (DoECLG June 2007) it states, inter alia, the following: “*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*”

7.5. Design and Layout and Impact on adjoining properties

- 7.5.1. The proposed development is to complete the construction of two single storey detached dwellings with basement accommodation on the subject site at Robswell to the east of Malahide town centre. As noted above a permission was granted for these two dwellings on foot of Reg.Ref. F08A/147 and as amended under Reg. Ref. F11A/0444. While work was commenced on foot of these approvals, the First Party provides that it was not completed due to the economic downturn. While on site I saw that work had commenced particularly on the more northern plot ‘House A’ as shown on the plans, this included the basement excavation. Having regard to the vegetation on site, these works do not appear substantially complete and appeared abandoned for some time.
- 7.5.2. Regard is had to the drawings submitted which show the locations of ‘House A’ set forward and ‘House B’ on the more elevated site to the rear. Floor plans and elevations, including existing and proposed contiguous elevations have been submitted. Both are shown as 5no. bedrooms at the excavated basement level with living accommodation on ground floor. The floor area of House A is shown on the plans as 377sq.m plus the detached garage 38sq.m (i.e total floor area 415sq.m). House type B is shown with an integral double garage at ground floor level (i.e total floor area 356sq.m plus the garage 49sq.m i.e. 405sq.m). The room sizes of the

dwellings comply or exceed the minimum standards for houses as per Tables 12.1 and 12.3 of the current Fingal DP.

- 7.5.3. The new design of the dwellings also includes the reduction of the previously approved ridge heights. Both dwellings are to be split level and of flat roof construction and to be completed using best practice low energy, solar passive design. As a result of this the large window openings as previously approved have been modified in scale in order to reduce the likelihood of heat loss/solar gain. The external appearance of the dwellings is proposed to be of a coloured render with natural stone, copper/bronze metal cladding and high-performance aluminium windows.
- 7.5.4. Each of the 2no. dwellings is to be provided with private gardens surrounding the dwellings. This exceeds the minimum of 75sq.m for a 4 bedroom plus house as per Objective DMS87 of the Fingal DP. Access to the proposed dwellings is to be via a shared vehicular entrance proximate to the junction with the Coast Road and with separate access for each dwelling onto a new private access road (inside the site boundaries). There is adequate space for two on-site car parking spaces on site.
- 7.5.5. It is noted that the submission from the adjoining residence to the east 'The Bungalow' has concerns that the new plan features changes to the windows and that this will lead to overlooking for this property. They note that in the original drawing any windows on the East side of 'House A' were either frosted or had a type of copper covering. However, it is proposed to construct a wall along the boundary with the access road to this property. In response to the concerns of 'The Bungalow' to the east, the details submitted at F.I stage also have regard to screen landscaping to be provided along the eastern site boundary. It is recommended that if the Board decides to permit that a condition be included regarding boundary treatment and landscaping. I would also recommend that it be conditioned that the proposed high level kitchen window on the east elevation be obscure glazed.
- 7.5.6. While the proposal will not increase housing density in the area in line with current guidelines, regard is had to the sensitive nature of the infill site within a small enclave of older mainly character residential properties, in proximity to the Coast Road, the sea and the Protected Structure, Robswall Castle. I would consider the contemporary, low profile design of these dwellings to be acceptable on this

sensitive site. Also, in view of their design and layout, low profile and set back from the site boundaries, and subject to boundary treatment and landscaping they will not impact adversely on neighbouring properties.

7.6. **Boundary Treatment and Landscaping**

- 7.6.1. Initially it was provided that the site boundaries were to be treated with low level stone walls, contemporary metal fencing and selected landscaping. Also, that the existing site boundary wall to the south of the site be completed with a selected render finish to both sides. This included that the existing wall to the east of the boundary be modified to provide views of the sea. The proposal when first lodged proposed to remove part of the natural stone wall at the front of the property. It is considered that the retention of this old wall is an important feature. The aim insofar as possible is to retain as much of the original stone wall as feasible. The comments from the Council's Park's Division recommend retention of the existing natural stone wall as a feature of the streetscape. They also request that the landscaping plan and revised boundary treatments be conditioned. Following the Council's F.I request, this feature of the site which adds to the character of the area is being retained.
- 7.6.2. Landscaping and boundary treatment is referred to in the *Agreement submitted* as part of the applicants response to the F.I. This notes that the proposed boundary wall has been revised to take account of the concerns raised. The boundary walls to the eastern boundary of the subject site have been altered to remove the metal rails and introduce a stone wall of 1.2m high. They provide that the stone used in the new walls is to be the same as the existing wall to the front of the subject site.
- 7.6.3. A Landscape Management and Maintenance Plan and drawings showing proposed landscaping have been submitted with the application. This sets out the management aims and objectives for the site along with the specific management objectives for each landscape component (hard and soft landscape works), and the associated maintenance works required on an annual and occasional basis. This also has regard to Health and Safety issues to comply with current standards.
- 7.6.4. Subsequent to the F.I the Parks Division recommended that the Landscape plan be conditioned and implemented in the first planting season following completion of the

construction works. If the Board decides to permit it is recommended that a condition regarding landscaping and boundary treatment be included.

7.7. Access issues

- 7.7.1. The Third Party submit that the road network serving the area is totally deficient, and the addition of two driveways onto the road at this point would create a traffic hazard, contrary to the PA's own policies for accesses onto regional roads. Regard is had to Objective DMS126 which seeks to: *Restrict unnecessary new accesses directly off Regional Roads. Ensure premature obsolescence of all county/local roads does not occur by avoiding excessive levels of individual entrances. Ensure that necessary new entrances are designed in accordance with DMRB or DMURS as appropriate, thereby avoiding the creation of traffic hazards.*
- 7.7.2. As shown on the plans submitted both dwellings are proposed to be accessed via a new shared entrance from the set-back access and the junction that serves existing properties onto the R106 Coast Road to the north of the site. It is also noted that the entrance is proximate to a traffic light-controlled junction to the east and is within the 50km/hr speed limit.
- 7.7.3. It is proposed that each dwelling have its own individual gated access to the shared private roadway, that is shown inside the red line boundaries, to run alongside the private access road to the existing properties. It is noted that 'The Bungalow' to the east has its own separate private access road to the R106. As part of the *Agreement* submitted at F.I stage the applicants agree to make good any damage to the access road to Mr. P. Smith's site caused by works along the eastern boundary between the subject site and his site.
- 7.7.4. Having regard to the Transportation Planning Section comments as part of the F.I request the P.A requested some redesign to provide for the pedestrian accessibility, to reduce vehicular access width, to relocate the access away from the wall and where necessary to reduce the height of the existing wall to 900mm for a specified distance on either side of the shared vehicular access. Subsequent to the Transportation comments this was further revised at C.F.I stage, and they considered the proposal relative to access to be acceptable subject to conditions. I would concur with this.

7.8. Drainage issues

- 7.8.1. Subsequent to the Council's F.I request the applicants submitted a copy of an *Agreement* between Deancastle Developments Ltd and Mr Peter Smith – the owner of 'The Bungalow' to the east of the site. This includes that they agreed to connect the foul waste drainage from his house to the new pumped mains drainage system to be installed on the development site and they refer to the drawings submitted. They also agreed to relocate the mains water supply from below the foundations of 'House B' to the rear of The Bungalow. They include a drawing showing the proposed layout.
- 7.8.2. Irish Water's concerns about this proposal which was not part of the original planning application are noted. These include that it is required that each dwelling is connected to IW network via a separate and independently metered connection. Also, that in accordance with standards that it is required that each dwelling is connected to the IW sewer via a separate foul drain. They requested that the applicant should submit details of the proposed drain, including levels, pipe size and gradient, with all levels to Malin Head datum.
- 7.8.3. A response on behalf of the applicants (JJ Campbell & Associates Engineers) was submitted in response to the Council's C.F.I request. This included that connections to houses A and B have been separated so that there is no interconnection between the houses. They noted that the water connection for house A is amended to connect to the watermain in the Coast Road to the north of the site. The water connection to house B is amended to connect to the watermain located to the south of the site. They also provide that the water connection between the two houses has been omitted. They confirm that the development will be designed and constructed entirely in accordance with Irish Water specifications.
- 7.8.4. They have revised the foul drainage connections to each dwelling with a separate connection into the foul drain to the south of the site and no connections to be made to the pumped foul rising mains. They provide that all foul rising mains discharge into decompression manholes within the site before discharging by gravity to the foul sewer. In addition, they have revised the surface water drainage to include drainage channels to the entrance gates to both sites so that no surface water can flow onto the public roads. They include a revised drawing relative to drainage issues.

7.8.5. They refer to the previous permission granted on this site, in particular: Reg.Ref. F11A/0444 and request that should permission be granted that a condition similar to Condition 5(iii) of this permission relative to storm water be inserted. In response to the C.F.I submission, Irish Water have no objection subject to conditions (including water connection agreement) and the Council's Water Services Section has no objections. I would consider that if the Board decides to permit, in view of the drainage details submitted and as revised by the details and drawings submitted at F.I and C.F.I stages, the proposed development is acceptable subject to appropriate drainage conditions.

7.9. **Other issues**

7.9.1. The Council ask the Board to include Condition nos. 11 and 12 of their permission Reg.Ref: F18A/0744 relative to provision of a security bond and development contributions under the Council's Section 48 General Development Contributions Scheme. If the Board decides to permit, while a development contribution condition is relevant, I would not consider it appropriate in view of the small scale and nature of the proposed development to include Condition no. 11 relative to security/bond etc, also as it has not been stated that it is likely that this site area would be taken in charge of the Council.

7.10. **Screening for Appropriate Assessment**

7.10.1. The natural heritage of Malahide Estuary, a European Site, is designated a Special Area of Conservation (SAC – site code 00205) and a Special Protection Area (SPA – site code 004025). Chapter 4 of the Fingal CDP notes that future development must respect the natural heritage sensitivities. The subject site is located some 67m from the Estuary, on the land side of the Coast Road. This is a brownfield site in that it contains partially constructed (previously permitted) dwellings on residentially zoned lands. It will also be a fully serviced site and the new proposals aim to improve surface water drainage and attenuation. The Planner's Report submitted provides that there are no indicators that make any direct connection to the Natura 2000 sites and it is their considered opinion that the proposed development will have no potential impact on these Natura 2000 sites.

7.10.2. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the above European Sites, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. I recommend that permission be granted subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the residential zoning objective for the site as set out in the Fingal County Development Plan 2017 - 2023, and to the nature and scale of the proposed development on residentially zoned land, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 9th day of April, 2019 and the 20th day of June, 2019 and by the further plans and particulars received by An Bord Pleanála on the 11th day of September, 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed houses shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. Permission is granted for two dwellings only and the each shall be used as a single dwelling unit.

Reason: In the interests of clarity and the residential amenity of the area.

4. The proposed high level kitchen window in the east elevation of House Type A shall be obscure glazed.

Reason: In the interests of residential amenity.

5. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, including the rear garden area, without a prior grant of planning permission.

Reason: In the interest of the residential amenities of the area.

- 6.(a) No additional development shall take place above roof levels, including storage tanks or other external plant, unless authorised by a prior grant of planning permission.

(b) The flat roofs of the ground floor dwellings hereby approved shall be accessed for fire escape and maintenance purposes only.

Reason: To safeguard the amenities of surrounding occupiers and the visual amenities of the area in general.

7. Details of proposed boundary treatments at the perimeter of the sites, including heights, materials and finishes, and retention of the existing stone wall along the site frontage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

8. The landscaping scheme shown on drg no. 6514L-201 prepared by Park Hood Chartered Landscape Architects, as submitted to the planning authority on the 9th day of April, 2019 shall be carried out within the first planting season following substantial completion of external construction works.

In addition to the proposals in the submitted scheme, the following shall be carried out:

- (a) The establishment of a hedgerow, using only indigenous trees and hedging species along all side and rear boundaries of the sites (except where necessary to facilitate sightlines at the entrances).

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

9. The vehicular accesses and private access road, serving Sites A and B, including the new shared vehicular access shall comply with the requirements of the planning authority for such road works.

Reason: In the interests of amenity and of traffic and pedestrian safety.

10. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

11. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreements with Irish Water.

Reason: In the interest of public health.

12. All public services to the proposed development, including electrical, telephone cables and associated equipment shall be located underground throughout the entire site.

Reason: In the interest of visual amenity.

13. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise and traffic management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

14. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Angela Brereton
Planning Inspector

2nd of December 2019