



An  
Bord  
Pleanála

## Inspector's Report ABP-306013-19

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<b>Development</b>	A scaffolding storage and distribution yard comprising 2 no. office containers, 6 no. car spaces, a new vehicular entrance and all associated site works.
<b>Location</b>	Junction of R132 & Turvey Avenue, Donabate, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F19A/0417
<b>Applicant</b>	Scafftex Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission (2 no. reasons)
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Scafftex Ltd.
<b>Observers</b>	Turvey Residents Group
<b>Date of Site Inspection</b>	26/02/2020
<b>Inspector</b>	Conor McGrath

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## **1.0 Site Location and Description**

- 1.1. The appeal site is located at the junction of the R132 (old N1) and Old Turvey Avenue, approx. 3km west of Donabate village. This linear site comprises a stated area of 0.82ha, with frontage of approx. 55m to the R132 and 210m to Old Turvey Avenue. The Turvey River bounds the site to the south, beyond which are industrial buildings within Turvey Business Park. The site falls generally toward the stream on its southern side and is at a lower level than adjoining roads. The site is generally overgrown and there is some evidence of dumping / deposition on the site however, the extent of same is not clear. There are existing residential properties located on the opposite side of Turvey Avenue to the appeal site.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the use of the site as a scaffolding storage and distribution yard, involving the surfacing of the western part of the site and installation of scaffolding storage racks. Two portacabin offices for administrative use are to be provided centrally on the site. A new on-site wastewater treatment plant is proposed on the eastern part of the site. Access is proposed from Turvey Avenue with on-site parking and a HGV loading / turning area.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to refuse permission for the proposed development for the following reasons:

1. The proposed development is located in an area which is at risk of flooding. A significant part of the site has been identified as being prone to flooding under the Fingal East Meath Flood Risk Assessment and Management Study. The planning Authority is not satisfied that the proposed development would be acceptable in relation to future flood risk at this location therefore it has not been adequately

demonstrated that the proposed development would not be prejudicial to public health having regard to flood risk concerns.

2. The proposed development, which would be located in an area at risk of flooding and which would require the removal of existing hedgerows and trees in order to achieve the required sightlines to accommodate the vehicular entrance would depreciate the value of property along Turvey Road and would set an undesirable precedent for other similar developments within the area, which would in themselves and cumulatively, be harmful to the residential amenities of the area and would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The use is permissible in principle. Adjoining lands are zoned RC, Rural Cluster accommodating residential development. Further information on vehicular movements and likely noise should be provided. The report of the Transportation section is noted, however, the removal of all existing hedgerow and trees along Turvey Avenue to achieve adequate sightlines would be excessive and unacceptable having regard to visual amenity and bio-diversity. It is not considered that the previous reasons for refusal with regard to flood risk have been overcome. Given the nature of development and location on Turvey stream providing a direct connection to a Natura site, a Stage II Appropriate Assessment is required. Refusal recommended.

#### 3.2.2. Other Technical Reports

**Water Services:** Considerable sections of the site are within the 1% & 0.1% flood plains. The flood risk assessment submitted fails to satisfy that the site is safe for development. The section is not satisfied that the development would be acceptable in relation to future flood risk.

**Transportation Planning:** Carparking does not meet development plan requirements. Potential vehicle activity at the site has not been outlined in the

application. The sightlines shown on drawings are incorrect and revised sightline drawings should be provided. Further information requested.

### 3.3. **Prescribed Bodies**

**Irish Water:** No objection subject to conditions.

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

Turvey Residents Group made an submission on the planning application which is reflected in the observation on the appeal.

## 4.0 **Planning History**

### **PA ref. F11A/0127 ABP ref. PL06F.240518**

Permission refused in 2013 for the construction of two light industrial buildings, car parking, boundary wall and fencing, wastewater treatment plant and site developments for the following reasons:

1. Having regard to the planning history of the site and to the fact that a significant part of the site is identified as being prone to flooding under the Fingal East Meath Flood Risk Assessment and Management Study together with the lack of a detailed Flood Risk Assessment, the Board is not satisfied that the proposed development would be acceptable in relation to future flood risk or whether the measures proposed would have an adverse impact on the flood conditions elsewhere by reason of alterations to the existing natural floodplain along the water course. Furthermore, the Board considered that the measures proposed involving displacement onto a nearby site outside the ownership of the applicant could have an adverse impact on flood risk. It is considered that insufficient justification exists for the level of development proposed at this location having regard to its status in relation to flood risk.
2. Having regard to the location of the site adjacent to the Turvey River, the limited area available for percolation of treated effluent, the potential for risk of flooding at this location and, in particular, the inherent uncertainty as to the

precise nature and quantity of effluent to be produced by future occupants, the Board is not satisfied that the proposed development, on lands not served by a foul sewer, would not lead to an unacceptable risk of pollution of groundwater and surface water resources, and would not be prejudicial to public health. Furthermore, the proposed development would be premature pending the provision of public sewerage facilities under the Donabate West Scheme.

**PA ref. F08A/1304 ABP ref. PL06F.234146**

Permission refused in 2010 for the erection of three light industrial buildings with ancillary office accommodation, car parking, fencing, entrance and site developments, for the following reasons:

1. Having regard to the nature and scale of development proposed, location adjacent to the Turvey River, the ground conditions on site, the limited area available for percolation of treated effluent and, in particular, the inherent uncertainty as to the precise nature and quantity of effluent to be produced by future occupants of the proposed light industrial units, the Board is not satisfied that the proposed development, on lands not served by foul sewer, would not lead to an unacceptable risk of pollution of groundwater and surface water resources, and be prejudicial to public health.
2. The site is located adjacent to a significant stream which is of considerable importance for fisheries and which discharges to Newbridge Demesne a pNHA, and to Malahide Estuary a SAC. It is an objective of the GDSDS and of the Fingal County Development Plan, 2005-2011 to establish, where feasible, riparian corridors, free from development, along all significant watercourses and to maintain these areas in a natural state to allow riverbank ecology to flourish. The proposed development contravenes this objective and would be likely to give rise to deterioration in surface water quality, which could impact on the ecology of the stream and a European site.

**PA ref. F7A/0813 ABP ref. PL06F.226962**

Permission refused in 2008 for construction of three light industrial buildings, ancillary office accommodation, car parking, fencing, entrance and site development works for the following reason:

1. Having regard to the nature and scale of development proposed, the location of the site adjacent to the Turvey River, to the ground conditions on site, the limited area available for percolation of treated effluent and, in particular, the inherent uncertainty as to the precise nature and quantity of effluent to be produced by future occupants of the proposed light industrial units, the Board is not satisfied that the proposed development, on lands not served by foul sewer, would not lead to an unacceptable risk of pollution of groundwater and surface water resources, and be prejudicial to public health.

## 5.0 Policy Context

### 5.1. Fingal County Development Plan 2017-2023

The site is within an area zoned **GE** "General Employment", *Provide opportunities for general enterprise and employment.*

Vision: Facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment. General employment areas should be highly accessible, well designed, permeable and legible.

Uses permitted in principle on GE zoned lands include - Builders Provider/Yard

Lands to the north of the appeal site, are zoned **RC**: *Provide for small scale infill development serving local needs while maintaining the rural nature of the cluster.*

Objective Z04: Have regard to development in adjoining zones, in particular more environmentally sensitive zones, in assessing development proposals for lands in the vicinity of zoning boundaries.

Objective ED92: Prepare LAPs and Masterplans within the lifetime of the Development Plan for strategically important General Employment zoned lands in

collaboration with key stakeholders, relevant agencies and sectoral representatives. The Masterplans at **Turvey**, Milverton and Ballymadun will include a detailed flood risk assessment.

This is reflected in Donabate Objective 11.

Objective DMS171: Ensure that no development, including clearance and storage of materials, takes place within 10m – 15m as a minimum, measured from each bank of any river, stream or watercourse in the County.

Objective SW01: Protect and enhance the County's floodplains, wetlands and coastal areas subject to flooding as vital green infrastructure which provides space for storage and conveyance of floodwater, enabling flood risk to be more effectively managed and reducing the need to provide flood defences in the future and ensure that development does not impact on important wetland sites within river / stream catchments.

Objective SW02: Allow no new development within floodplains other than development which satisfies the justification test, as outlined in the Planning System and Flood Risk Management Guidelines 2009 for Planning Authorities.

Objective SW07: Implement the Planning System and Flood Risk Management-Guidelines for Planning Authorities. A site-specific Flood Risk Assessment to an appropriate level of detail, addressing all potential sources of flood risk, is required for lands identified in the SFRA, located in the following areas.....

...Lanestown/Turvey..... demonstrating compliance with the Guidelines, paying particular attention to residual flood risks and any proposed site specific flood management measures.

Objective SW08: Implement the recommendations of the Fingal East Meath Flood Risk Assessment and Management Study (FEMFRAMS).

Objective SW09: Assess and implement the recommendations of the Eastern CFRAMS when complete.

## **5.2. Fingal County Development Plan 2017 Strategic Flood Risk Assessment**

5.2.1. With regard to lands at Turvey, the assessment notes the following:



Zoned Lands	SFRA Recommendations	FCC Decision
Lanestown / Turvey	Highly vulnerable development should be avoided in the Flood Zones A and B with less vulnerable development subject to a detailed FRA in Flood Zone A. The FRA should address surface water and drainage, mitigation measures, residual risk and appropriate land use with respect to vulnerability of the proposed development type.	The current land zoning objective is to be maintained. A Justification Test was carried out and passed by FCC. Specific Flood Risk Assessment was carried out. Further FRA will be completed as part of a Masterplan for the area. In line with Objective SW07, a site-specific Flood Risk Assessment to an appropriate level of detail, addressing all potential sources of flood risk, is required, demonstrating compliance with the <i>Planning System and Flood Risk Management-Guidelines for Planning Authorities (DoEHLG/OPW 2009)</i> or any updated version of these guidelines

### 5.3. Planning System and Flood Risk Management-Guidelines for Planning Authorities 2009

- 5.3.1. The guidelines promote a sequential approach to planning. Uses classified as less *vulnerable* include buildings used for: retail, leisure, warehousing, commercial, industrial and non-residential institutions; and land and buildings used for agriculture and forestry;
- 5.3.2. When considering proposals for development in areas at a high or moderate risk of flooding that include vulnerable development that would generally be inappropriate, the planning authority must be satisfied that the development satisfies all of the criteria of the Justification Test as it applies to development management.
- 5.3.3. Where development has to take place in areas at risk of flooding following the application of these Guidelines, the risks should be mitigated and managed through the location, lay-out and design of the development to reduce such risks to an acceptable level. The residual risks to the proposed development should be considered carefully, taking into account the type of development and its

vulnerability, how flood risks to the occupants will be managed, insurance provision, scale of the risks and the provision of flood defence works.

- 5.3.4. A precautionary approach would be to set floor levels above the 1% flood level ignoring the moderating effects of flood defences.

Permission should be refused where flood issues have not been, or cannot be, addressed successfully and where the presence of unacceptable residual flood risks remain for the development, its occupants and adjoining property. Only developments which are consistent with the overall policy and technical approaches of these Guidelines should be permitted.

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

The appeal site is not designated for any natural heritage conservation purposes. The closest sites are the Malahide Estuary SAC and SPA and Rogerstown Estuary SPA and SAC.

Rogerstown Estuary SAC extends west from the coast to the R132, approx. 400m north of the site. The SPA extends to approx. 0.9km northeast of the site. The adjoining Turvey River discharges to the Malahide Estuary SAC and SPA approx. 4km downstream from the appeal site.

#### **5.5. EIA Screening**

The site comprises approx. 0.8ha which is considerably below the thresholds set out in Class 10 of Schedule 2 of Part of the regulations. The lands are not designated or immediately adjoining lands designated for natural heritage or conservation purposes. The site is connected to European sites via the Turvey Stream, approx. 4km downstream, and a Stage II NIS has been prepared.

Having regard to the nature and scale of the proposed development it is considered that the issues arising from connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood of other significant effects on the environment. 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 first party make the following points in their appeal against the planning authority decision to refuse permission:

- The site area and accessible location meets business requirements.
- The revised FRA concludes that with the adoption of mitigation measures, the development is suitable with regard to flood risk management.
- The main structures, access and foul drainage elements are predicted to be outside the 0.1% flood extent. Only 25% of yard area, swale and riparian corridor are within flood Zone A with insignificant flooding impacts.
- The uses are less vulnerable and appropriately located within flood zones B & C.
- The site has been consistently zoned for employment uses, notwithstanding the adjoining RC zoning and the subject use is permissible in principle.
- Sightlines can be achieved at the proposed entrance without the removal of hedgerows. Hedgerow will be retained and supplemented to provide screening.
- There is a footpath on the opposite side of the road. There is no obvious need for a footpath along the site frontage, however, this may be subject to condition with possible impacts on hedgerows.
- Access from Turvey Avenue did not form part of previous refusals on the site.
- Given the circumstances of this case, the development would not create a precedent for development elsewhere.
- Vehicle movements would be relatively small - 3/4 deliveries per week and 5/6 customer journeys per day. There will be three employees on-site.
- Noise emissions would arise from vehicle and forklift movements and stock movements.
- Car parking has been increased to seven spaces, with potential for more.

- The appeal is accompanied by a Stage II Natura Impact Statement. Subject to mitigation measures the proposed works will not impact significantly on the conservation objectives of the SAC / SPA.
- The development won't compromise the making of a Masterplan for this area.

## 6.2. Planning Authority Response

The planning authority had no further comment to make on the appeal.

## 6.3. Observations

Turvey Residents Group make the following points in their observation on the appeal:

- The refusal reasons do not address all issues with the development.
- The appeal introduces new materials. Regard should be had to S.132 in accepting documents which constitute unsolicited additional information.
- Previous reasons for refusal on this site have not been adequately addressed.
- This temporary, poor quality proposal is an inappropriate way to develop a sensitive riparian corridor directly connected to Natura Sites.
- A right of way should be provided along the adjoining stream.
- The description of the development was inadequate and the planning application was deficient in the information provided.
- Operational details submitted were inadequate, including traffic generation and HGV access at the junction of Old Turvey Avenue and Turvey Avenue.
- The development will impact on adjoining residential amenity.
- The development is premature pending the preparation of a Masterplan which will address access to industrial lands including this site, and particularly given the known flooding issue on the lands.
- The lands are intrinsically part of Turvey Business Park and its associated road network and should not be treated as an independent site.
- Roadside hedgerows should be retained and transportation department requirements are not met .
- Providing access over Turvey Avenue would impact on its rural character, resulting in an abrupt change in land uses at this transitional location.

- There is a failure to adhere to development plan requirements regarding access and for high quality sustainable design on GE zoned lands.
- The wastewater disposal arrangements may impact on groundwater and on the adjoining salmonid river.
- No detail regarding the watermain traversing the percolation area was provided.
- The flood impact implications are significant.
- The development would act as a precedent for further development on zoned lands to the east accessed from Turvey Road.

#### 6.4. Further Submission

- 6.4.1. There were no further submissions received on foot of the public notices published on 05/02/2020.

### 7.0 Assessment

- 7.1. It is proposed to consider the appeal under the following broad headings:

- Lands use and development principle
- Traffic and Transportation
- Surface Water Drainage and Flooding
- Wastewater

#### 7.2. Land Use and Development Principle.

- 7.2.1. The proposed use is permissible in principle on GE zoned lands. Observers raise the issue of prematurity pending the preparation of a Masterplan for these lands. I note that while this has been an objective of the development plan since 2017, no timeframe for commencement and adoption of such Masterplan has been identified. The site is not subject to, or critical for the provision of specific infrastructure or other development under the Masterplan and I note the extent of permitted development to the south of the site. The planning authority have not raised the issue of prematurity

in this regard. I do not therefore consider that it is reasonable to conclude that the proposed development would be the premature pending its adoption.

- 7.2.2. Adjoining lands to the north are zoned for residential use (RC) and the objectives of the plan with regard to transitional development are noted. The proposed use would be a low intensity use with minimal structures, without significant visual impacts or emissions. In this context it could be regarded as a suitable transitional use on the edge of this employment / industrially zoned area. Traffic and transportation impacts are considered separately below.

### **7.3. Traffic and Transportation**

- 7.3.1. The site is bounded by the R132 to the west and Old Turvey Avenue to the north. Turvey avenue was realigned southwards some time ago such that the main east-west route from Donabate now runs through Turvey Business Park to a roundabout junction with the R132, south of the appeal site. Old Turvey Avenue, now functions as a local access road, joining the realigned route at a priority junction approx. 325m east of the site. The road is of rural character and traffic levels are low. There is no right turn at the priority junction with the R132, nor is there a right turn from the R132 onto Old Turvey Avenue.
- 7.3.2. The achievement of adequate sightlines at the proposed entrance is referenced in the planning authority decision. As part of the appeal, the first party argue that the necessary sightlines are achievable at a 2.4m set-back without significant hedgerow removal. I note that the drawing submitted in this regard is not to scale, however. Notwithstanding this deficiency, I consider that adequate sightlines could be achieved at this location without significant removal of hedgerows, having regard to the alignment, character of this road and current low traffic volumes. I do not consider that there is a requirement for the provision of a footpath along the northern frontage of the site arising from the proposed development.
- 7.3.3. The proposed operations on the site relate to the storage and distribution of scaffolding equipment. This involves delivery to the site and collection by customers. The predominant vehicular movements would therefore be commercial goods vehicles of varying sizes. The application describes low frequencies of traffic

movements, however, these are not based on any identified reference sites or related to quantities of goods to be stored on the site.

7.3.4. Observers argue that access over Turvey Avenue is inappropriate however, I note this was not raised as a reason for refusal in previous applications on these lands. The appeal site comprises part of a wider block of GE zoned lands and the Turvey River separates the site from the immediately adjoining industrial lands to the south. Zoned lands to the east do however, adjoin the site directly. The preferred approach would be to co-ordinate access to GE zoned lands, however, providing access from lands to the south would require a crossing of the watercourse.

7.3.5. The R132 is a very busy route. There are two southbound lanes on the R132 at this location, with no hard shoulder or deceleration lane on the approach to the Turvey Road junction. Due to constraints at this junction there is a restriction on north bound traffic turning right onto Turvey Avenue, and on traffic turning right / north onto the R132 from Turvey Avenue. Notwithstanding these restrictions, at time of inspection, I observed illegal right turning movements from the R132. I note also that the eastern junction of Old Turvey Avenue with the realigned Turvey Avenue is a relatively sharp turn and its suitability for HGV movements should be demonstrated. I would have concerns about the proposed access arrangements and the directing of commercial vehicle movements onto this junction, although the transportation section of the planning authority raised no issue in this regard.

This is effectively a new issue in the consideration of this appeal and having regard to the substantive flooding and public health reason below, the Board may not wish to include this in their determination of the case.

#### **7.4. Surface Drainage and Flooding**

7.4.1. The site is currently under vegetation. Hard or impermeable surfaces provided as part of the proposed development comprise:

- Storage yard of 0.415ha with hardcore surface, with a stated run-off rate of 50%.
- Main yard and access road of 0.0544ha with impermeable surface.
- Building roof area 86-sq.m.

Surface water run-off is to be collected and managed on-site with the use of a swale to the north of the stream, which will attenuate flows and provide storage up to the critical 1% event. Discharge to the adjoining river will be via a separator (Downstream Defender) to provide additional treatment. Notwithstanding the descriptions of the proposed works, I note that the swale is located between 7m and 10m of the adjoining riverbank, contrary to the mitigation measures identified in the NIS. It is considered that this matter could be subject to condition.

- 7.4.2. The planning application was accompanied by a Flood Risk Assessment, an updated version of which was submitted with the first party appeal. This notes that the site is located within flood zones A, B & C in respect of coastal and fluvial flooding (Turvey River). The report notes that CFRAM predictions for coastal flooding indicate that for 0.5% and 0.1% flood events, the site will be subject to partial flooding due to backing-up of the Turvey River. Tidal levels are predicted as 3.18m for 0.5% AEP and 3.36m for 0.1% AE. The analysis indicates that this flooding will be contained within the riparian strip and that no development works are proposed within coastal flooding zones A or B.
- 7.4.3. For fluvial flooding, it is predicted that 1% and 0.1% flood events will also encroach upon the site. Predicted flood levels are 4.05m for the 1% AEP and 4.63m for the 0.1% AEP. The analysis of flood extent is based on a topographical study of the site and application of the FEM FRAMS flood prediction levels. These are indicated to give a more accurate site specific prediction of flood extent than the mapping contained in the FEM FRAMS, which weren't based on the same detailed site surveys. Proposed development on the site occurs within flood zones A and B.
- 7.4.4. The scaffolding storage yard will be hard surfaced and levels on the site will not be raised. Scaffolding materials are described as water compatible and the yard is to be permitted to flood. In order to off-set the loss of flood storage arising from office accommodation and the storage of scaffolding materials within the flood zone, the revised FRA indicates that higher lands at the western end of the site will be lowered to increase flood capacity within the site. It is indicated that materials stored on the site will be new only and used / returned materials will not be stored on the site, thereby reducing risk of pollution to watercourses by construction debris. No potentially hazardous materials will be stored outside of Flood Zone C.



7.4.5. In terms of climate change allowance, the mid-range future scenario requires a 20% increase in flood flows. Finished floor levels of offices are therefore to be provided at 5.28m, which provides 650mm freeboard over 0.1% AEP, allowing for the mid-range scenario.

7.4.6. Having regard to the location of part of the development within the Flood Zone, a justification test in accordance with the Flood Risk Management Guidelines is undertaken, which concludes that the development on this site is suitable in respect of flood risk management. Recommended mitigation measures include,

- Reduce ground levels on the western part of the site to provide compensatory flood storage.
- Do not reduce levels in the riparian corridor.
- Locate office space outside the post-development 0.1% flood area and increase finished floor levels.
- Locate the WWTP in flood zone C, with sealed manholes to prevent water ingress.
- Suitable fencing to be provided around the site and storage of hazardous materials only in flood zone C.
- Agree flood management plan with the planning authority.

7.4.7. Conclusion

The site is at risk of flooding, however, the uses proposed as part of this development are not regarded as vulnerable to flooding. The conclusions of the Site Flood Risk Assessment submitted are considered to be reasonable and in accordance with Development Plan objective SW02 and the Fingal County Development Plan Strategic Flood Risk Assessment. It is not considered that the development would give rise to a risk of flooding elsewhere, either upstream of further downstream of the site, or give rise to risk to public health and safety. I consider the issue of wastewater disposal separately below.

7.5. **Wastewater:**

- 7.5.1. The application was accompanied by a site characterisation report. The site overlies a locally important aquifer of low vulnerability and the groundwater protection response is R1. The area is served by mains water supplies. Site suitability tests were undertaken in July 2019. Trial holes were dug to 2.1m without encountering bedrock, however, the water table was encountered at 1.3m below ground level. T-values of 48.33 were recorded and due to the highwater table, p-tests were undertaken recording a result of 28.78.
- 7.5.2. The solution proposes the installation of a proprietary treatment plant discharging to a polishing filter, catering for a pe of 2. The layout of the percolation area has been revised at appeal stage due to the identified location of a private watermain crossing the site to the east of the polishing filter. The polishing filter is to include raised ground levels to achieve the minimum required depth of unsaturated sub-soils below the pipe invert, based on the site suitability test results.
- 7.5.3. Having regard to the susceptibility of adjoining lands to inundation, I consider that site characterisation tests should have been undertaken during the winter season when ground would have been more likely to be saturated to determine worst case scenario. The site characterisation report does not expressly consider the potential for increases in the level of the water table at this location or consider the effects of inundation of adjoining lands in terms of the functioning of the treatment system and polishing filter.
- 7.5.4. At time of inspection, I note that the site was wet underfoot throughout, although the adjoining stream was not in flood. The trial hole was still open and was full, almost to existing ground level. Notwithstanding the possibility of raising levels of the polishing filter, on this evidence I am not satisfied that the site is suitable for the installation of an on-site treatment and disposal solution and it is considered therefore that the proposed development would be prejudicial to public health.
- 7.5.5. While the planning authority decision refers to the risk of flooding, the issue of the functioning of the wastewater treatment plant was not expressly identified as a reason for refusal. This may therefore be considered to be a new issue in the consideration of this appeal, however, I regard this as a fundamental issue which is associated with the risk of flooding and further note that the disposal of wastewater was raised as a reason for refusal in previous applications on these lands.

## 8.0 Appropriate Assessment

The application was initially accompanied by a Natura Impact Screening Statement. The first party appeal was subsequently accompanied by a Stage II NIS, Appropriate Assessment Report.

### 8.1. Screening

The project is not directly connected with or required for the management of any European site. The screening assessment identifies seventeen Natura sites within 15km of the appeal site. It notes that the appeal site is hydrologically connected to Malahide Estuary SAC / SPA and that impacts on those sites cannot be ruled out. All other sites are screened out from the assessment based on separation and location of the development outside the zone of influence of these sites.

Potential impacts on the Malahide Estuary SAC / SPA are identified as follows:

- Deterioration in water quality from contaminated run-off during construction and operational phases of the development.
- Cumulative impacts with other development.

I consider this screening conclusion to be reasonable.

### 8.2. Stage II – Appropriate Assessment

Malahide Estuary SAC Qualifying Interests:

- Mudflats and sandflats not covered by seawater at low tide [1140]
- Salicornia and other annuals colonising mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

The assessment considers each of the conservation objectives for the sites, noting that water quality is not a target for the maintenance of the qualifying interests within the SAC and that there will be no impacts on those interests by virtue of changes to

the physical structure of the habitat or vegetation structures defining its favourable conservation status.

Malahide Estuary SPA Special Conservation Interests:

- Great Crested Grebe (*Podiceps cristatus*) [A005]
- Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]
- Shelduck (*Tadorna tadorna*) [A048]
- Pintail (*Anas acuta*) [A054]
- Goldeneye (*Bucephala clangula*) [A067]
- Red-breasted Merganser (*Mergus serrator*) [A069]
- Oystercatcher (*Haematopus ostralegus*) [A130]
- Golden Plover (*Pluvialis apricaria*) [A140]
- Grey Plover (*Pluvialis squatarola*) [A141]
- Knot (*Calidris canutus*) [A143]
- Dunlin (*Calidris alpina*) [A149]
- Black-tailed Godwit (*Limosa limosa*) [A156]
- Bar-tailed Godwit (*Limosa lapponica*) [A157]
- Redshank (*Tringa totanus*) [A162]
- Wetland and Waterbirds [A999]

Common conservation objectives for each of the bird species of interest are identified for this site, while the wetland habitat area is subject to a separate objective. The assessment notes that the development will not occur in an area used by identified bird species and that habits on the site are not suitable for these wading bird species. There will be no impact on distribution, range or intensity of use of areas by these birds and the development will not lead to the loss of any wetland habitat.

### 8.3. Potential Impacts:

Notwithstanding the conclusions in relation to the qualifying interests, mitigation measures are required to maintain water quality in the stream and downstream receptors (SAC / SPA). The most likely sources during operations arise from the

wastewater treatment plant and contaminated run-off impacting on water quality in the stream, as well as pollutant mobilisation during flood events.

In terms of cumulative impacts, the assessment notes that a review of planning applications in the area was undertaken and concludes that the proposed development will not lead to any cumulative impacts when considered in combination with other such plans and projects. Having regard to the nature and scale of the proposed development and the conclusion above that the proposed development is not likely to have significant impacts on the conservation objectives of any European Sites, it is not anticipated that significant in-combination effects are likely to arise.

#### 8.4. Mitigation measures:

The assessment identifies measures to ensure the integrity and fishery habitats of the Turvey Stream and protection of habitats of Malahide estuary and avoid possible significant effects on the conservation objectives of the Natura Sites. The identified measures include

- Standard, best practice construction management measures,
- Adherence to IFI guidelines for the protection of fisheries during construction and development works.
- Maintenance of a 10m buffer between site works and the stream.
- Adherence to the FRA mitigation measures.

#### 8.5. Conclusion

I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Malahide Estuary SAC (000205) and Malahide Estuary SPA (004025), or any other European site, in view of the site's Conservation Objectives.

## 9.0 Recommendation

- 9.1. That permission be refused for the proposed development for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

Having regard to the characteristics of the site including the high water table and the vulnerability of the site to flooding, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

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Conor McGrath  
Planning Inspector

28/02/20202