



An
Bord
Pleanála

Inspector's Report ABP-306127-19.

Development

Demolition of dwelling house and an existing boundary wall. Construction of a replacement 2-storey dwelling house together with all associated site works. This application is accompanied by a NIS.

Location

St. Jude's, Tower Street, Rush, Co. Dublin.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F19A/0301.

Applicants

Damien and Helen Doyle.

Type of Application

Planning Permission.

Planning Authority Decision

Grant with Conditions.

Type of Appeal

Third Party.

Appellants

Lorraine Allen & Thomas Knape.

Observer(s)

None.

Date of Site Inspection

6th day of February, 2020.

Inspector

Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. Having inspected the appeal site on the 6th day of February, 2020, I consider that the site location and description as provided by the Boards Inspector under appeal case ABP Ref. No. PL06F.246722 is still applicable. It reads as follows:

“The appeal site is located in a coastal location on Tower Street in Rush. The site is roughly rectangular in shape and has a stated area of 0.165 ha. It is bounded by Tower Street to the west, the foreshore to the east, and existing residential development to the north and south. The site is relatively level, except at the eastern boundary, where there is a steep slope down to the foreshore. This slope is grassed, and there is no apparent evidence of recent erosion. The site currently accommodates a derelict detached single storey house fronting onto Tower Street, while the remainder of the site is undeveloped and overgrown.

The surrounding area is residential in character, with semi-detached housing located to the south and west. The sites immediately north and south of the subject site feature infill detached houses to the rear.

A Martello Tower is located c. 22m to the north of the site. This is a Protected Structure (RPS No. 265) and is included in the Record of Monuments and Places (Record No. DU008-015). The Tower is also recorded in the National Inventory of Architectural Heritage as being of ‘National’ interest (Reg. No. 11324023)”.

To this I note that the area of the site as stated in the Planning Application is smaller than that stated in the above description, i.e. 0.1576ha. The dwelling house on site together with its associated lands are referred to as ‘St. Jude’s’. There is no sign of recent habitation of the dwelling house on site and the lands are in an overgrown state. The roadside boundary consists of tall wire fencing that restricts entry into the site.

2.0 Proposed Development

- 2.1. Planning permission is sought for the demolition of an existing single storey dwelling house (Note: Gross Floor Area of 75m²); demolition of an existing boundary wall to Tower Street, closure of existing vehicular entrance; construction of a single replacement two storey dwelling house (Note: Gross Floor Area of 477m²) with an integrated garage; together with all associated site works and services including the

provision of a new boundary wall and new vehicular access onto Tower Street. This application is accompanied by:

- A soakaway design and accompanying report.
- A number of occupational reports.
- Natura Impact Statement.

2.2. The applicant submitted their additional information response on the 13th day of September, 2019, and this was deemed to be significant. As such revised public notices were sought and these were received by the Planning Authority on the 24th day of September, 2019. The revisions made relate to clarification/amendments of site boundaries.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. The Planning Authority **granted** permission for the proposed development subject to 14 no. conditions including:

Condition No. 2 That the entire premises be used as a single dwelling unit only.

Condition No. 7 Restricts the use of the flat roof to the rear.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The final Planning Officer's report is the basis of the Planning Authority's decision. The initial Planning Officer's report concluded with a request for additional information. This additional information request related to concerns over the land boundaries for the site and the potential for encroachment onto 3rd Party lands.

3.2.2. **Other Technical Reports**

- **Water and Drainage:** No objection.
- **Transportation:** No objection.

- **Conservation:** No objection. However, it recommends that the proposed buildings on site do not break the skyline set by the grant of permission P.A. Ref. No. F14A/0199.

3.3. Prescribed Bodies

3.3.1. None received.

3.4. Third Party Observations

3.4.1. The Planning Authority received 2 No. 3rd Party Submissions during their determination of this application. These raised civil matters, residential and visual amenity concerns.

4.0 Planning History

4.1. Relevant Planning History: The Site

ABP Ref. No. PL06F.246722 (P.A. Reg Ref. No. F15A/0408): On appeal to the Board planning permission was **refused** for a development consisting of the demolition of existing dwelling; construction of two new replacement dwellings *in situ*; construction of a new two-storey/dormer dwelling to the rear of the site; and, all associated alterations and site works, including vehicular access to south of the site. The Boards decision date was the 17th day of October, 2016, and the reasons and considerations for refusal read as follows:

“1. *The site of the proposed development is part designated as High Amenity and part residential in the Fingal Development Plan 2011 - 2017. The High Amenity zoning objective seeks to protect and enhance high amenity, which is considered reasonable. The site is also located in a coastal area designated as being a Highly Sensitive Landscape, and it is an objective of the Development Plan to protect the special character of the coast by preventing inappropriate development along the coast. Having regard to the location and layout of the proposed detached house and associated residential garden area, it is considered that the proposed development would seriously injure the visual amenities and landscape character of the area, would be contrary to the High*

Amenity zoning objective, would constitute the overdevelopment of a restricted site within the residential zone, would be contrary to Objective Z04 of the Development Plan in respect of transitional zonal areas, would consolidate a poor pattern of development in proximity to a recorded monument, and would seriously detract from the character and setting of the monument, which is identified in the National Inventory of Architectural Heritage as being of national importance. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. *Having regard to the limited extent of the courtyard area and access requirements to serve three houses, which would be wholly hard paved, without provision for soft landscaping, and with high walls to the west, it is considered that the car parking arrangement for the proposed development would be seriously substandard by reason of cramped parking and manoeuvring arrangements, would result in poor residential amenity, would constitute the overdevelopment of a restricted site within the residential zone, would lead to conflict between vehicular traffic and pedestrians, and would endanger public safety by reason of traffic hazard.”*

4.2. In the Vicinity:

- 4.2.1. The following planning applications relate to the site immediately north of the appeal site:

- **P.A. Reg. Ref. No. F14A/0199:** Permission **granted** in August 2014 for revised dormer bungalow type dwelling including integrated garage and all associated siteworks to that approved under Ref. Ref. F14A/0067.
- **P.A. Reg. Ref. No. F14A/0067:** Permission **granted** in May 2014 for retention of demolition of existing dwelling and two garages; new replacement dwelling to rear; and all associated site works including new boundary walls and new vehicular access to new replacement dwelling.
- **P.A. Reg. Ref. No. F13A/0290:** Permission **granted** in October 2013 for demolition of existing dwelling and two garages; new replacement dwelling to rear; alterations including part demolition and construction of a new single storey extension to rear and south side of existing two storey dwelling; and all associated

alterations and siteworks including new boundary walls and new vehicular access to new replacement dwelling at rear.

5.0 Policy & Context

5.1. Local Planning Provisions

5.1.1. Development Plan

5.1.2. The policies and provisions of the Fingal Development Plan, 2017-2023, apply. The site is comprised of two land use zones with c60% of the site zoned 'RS' – Residential which is subject to the following objective to: *“provide for residential development and protect and improve residential amenity”*. Residential is a permitted in principle use in 'RS' zoned lands subject to safeguards. This portion of the site consists of the western portion of the site with the remaining c40% of the site zoned 'HA' – High Amenity which is subject to the following objective to: *“protect and improve high amenity areas”*. In addition, the stated vision for such lands is to *“protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored”*. Residential is a permitted in principle use in 'HA' zoned lands, subject to compliance with the rural settlement strategy.

5.1.3. Chapter 3 sets out the design criteria for residential development.

5.1.4. Chapter 8 deals with Green Infrastructure.

5.1.5. Chapter 9 deals with Natural Heritage.

5.1.6. Chapter 10 deals with Cultural Heritage.

5.2. National Planning Policy Provisions

5.2.1. The following are relevant to the development sought under this application:

- Project Ireland 2040.
- Sustainable Residential Development in Urban Areas, (2006).
- Architectural Heritage Protection Guidelines for Planning Authorities, 2011.

5.3. Natural Heritage Designations

- 5.3.1. The site is located c171meters to the west of Special Area of Conservation: Rockabill to Dalkey Island SAC (Site Code: 003000) and c0.8km to the north east of Special Area of Conservation: Rogerstown SAC (Site Code: 000208).

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows:

- Concerns are raised in relation to the site boundaries relative to 3rd Party lands.
- It is considered that the visual impact of such a large dwelling on their residential amenities has not been considered by the Planning Authority.
- The large windows at first floor level and the potential balcony would adversely impact on the appellants established residential amenities.
- The appellants property has not been accurately shown.
- The scale of this proposal is out of keeping with the area.

6.2. Applicant Response

- 6.2.1. The applicant's response can be summarised as follows:

- The Planning Authority's decision reflects the pattern of development in the area.
- The boundary issues raised by the appellant are no longer of consequence and was subject of additional information request.
- The site is a good infill site with services available.
- This application relates to the specific housing need of the applicant.
- The site of the proposed dwelling is positioned in the residential zoned portion of the site.
- Reference is made to the Boards previous decision which noted that two dwelling houses may be possible on this site.

- No undue visual and/or residential amenity impacts would arise from the proposed development.
- The appellant appears to suggest that a new boundary feature be provided by the applicant between the low stone wall and the existing screen wall along the southern boundary. This would be of no benefit and would result in a narrow no-man's corridor.
- It is requested that the Planning Authority's decision be upheld.
- This submission is accompanied by an Occupational Therapy Report.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised as follows:

- The issue of land ownership and boundaries was raised by way of an additional information request.
- It is not considered that the proposed development would give rise to any overlooking having regard to the design and layout of the proposed dwelling. In addition, Condition No. 5 of the grant of permission requires the use of opaque glass in bathrooms and storage rooms to prevent overlooking. This type of glass could be extended to the walk-in wardrobe, if deemed necessary.
- The proposed development is acceptable in terms of the character of the area, visual impact and impact on adjoining residential amenities.
- The Board is requested to uphold its decision and that Condition No. 14 be maintained.

6.4. Referrals

6.4.1. The Board referred this appeal case to An Chomhairle Ealaíon, Fáilte Ireland, An Taisce, The Heritage Council, Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht. This is due to the proximity of the site to a Martello Tower which is a Recorded Monument and due to the site's proximity to a number of Natura 2000 sites. No response was received from these Prescribed Bodies.

7.0 Assessment

7.1. Introduction

7.1.1. I consider that the main issues in this appeal case are those raised in the grounds of appeal and I am satisfied that no other substantive planning issues arise. I propose to deal with the issues under the following headings:

- Civil Matters
- Principle of the Proposed Development
- Residential Amenity
- Visual Amenity

7.1.2. The matter of 'Appropriate Assessment' also needs to be addressed. For clarity purposes I note that the assessment below it deals with the proposed development as revised by way of applicant's further information response.

7.2. Civil Matters

7.2.1. In relation to the legal interest of the applicant to make the application, I consider that the applicant has provided sufficient legal interest to make the application by way of their response to the Planning Authority's further information request and they have amended the apparent anomalies in the site boundaries. In relation to the concerns raised in relation to the site boundaries the Board does not have jurisdiction on resolving disputes in relation to title and ownership of land.

7.2.2. In addition, I note that Section 34(13) of the Planning and Development Act 2000, as amended, states that 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'.

7.2.3. Outside of the proposed western boundary amendment the applicant seeks to maintain the existing southern and northern boundaries *in situ* and back plant them in places. Considering the level of screening these provide and the scope of the application sought which does not include the realignment or provision of new boundaries I consider this is a matter that is outside of the Boards remit in their determination of this appeal case. These matters constitute civil matters that can only be resolved by agreement between the parties or in the civil courts. I further note that the Development Management Guidelines make this clear and it states that "*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 by the courts”.

7.3. Principle of the Proposed Development

7.3.1. This appeal site has two land use zonings, with the western portion of the site which benefits from frontage onto Tower Street zoned for residential use and the rear portion of the site zoned high amenity. Clearly the proposal for housing on residential zoned lands is acceptable in principle and the footprint of the proposed dwelling house is entirely contained within the residential zoned portion of the site. In respect of the portion of the site that is subject to the ‘HA’ land use zoning, whilst limited residential development is permitted on ‘HA’ zoned land subject to demonstrating compliance with the relevant Development Plan standards, this would be maintained as rear garden space which is its established though now abandoned use. As such no change would occur to the use of the ‘HA’ zoned land nor is any proposed under the documentation submitted including new landscaping and the like.

7.3.2. Given the context of the site which includes:

- A vacant, poor in condition, modest single storey dwelling house;
- Residential land uses on the adjoining land to the north and south;
- Residential land uses on neighbouring land to the west;
- The planning history of the site. This includes a decision by the Board under appeal case ABP Ref. No. 246722 that despite recommending a refusal for a development essentially comprised of three dwelling units the Board’s decision was accompanied by a note that provided a level of direction as to what it envisaged was the latent potential of the site. In this regard it indicated that two dwelling houses might be considered on this site with a management plan to maintain the open coastal landscape within the high amenity area that also forms the setting for the Martello Tower;
- The elevated topography of the site and neighbouring ‘Residential’ zoned land relative to the coastline that the site fronts onto on its easternmost side;

- Local, regional through to national planning provisions which target significant proportion of future residential development on underutilised sites such as brownfield and infill sites within the built footprint of existing urban areas.

7.3.3. In my opinion, the principle of the proposal on both zonings pertaining on the site is acceptable and in relation to the demolition of the existing dwelling house on site, I note that this building is not protected, nor does it form part of any designated architectural conservation area. In its current form it detracts from the visual amenities of its streetscape setting as well as adds little to the vitality of this predominantly residential functioning locality.

7.3.4. Further the vacant and unkempt nature of the site does not contribute to the appreciation of a Martello Tower which is both a Protected Structure and a Recorded Archaeological Monument. This feature of built heritage significance is situated c22m from the northern boundary of the site. Though located to the rear of buildings addressing the eastern side of Tower Street it is an important man-made built feature of this locality that adds to its sense of identity as well as uniqueness of place.

7.3.5. I am also cognisant that despite the substantial floor area of the proposed replacement dwelling house, the site itself is a decent size being a stated 0.1576ha, it is in a streetscape setting that is largely characterised by 2-storey built forms of various types. It is also of a height that does not significantly exceed the 2-storey heights of built forms on the eastern side of Tower Street.

7.3.6. Further the rear elevation of the proposed dwelling does not exceed that of existing residential buildings located to the north and south of the site with the rear garden area extending c57.7m to the rear boundary of the site. As such the private amenity space serving the proposed dwelling house commences within the residentially zoned land and continues in an easterly direction towards the rear boundary encompassing all of the land that is subject to the high amenity land use zoning.

7.3.7. Based on the above considerations I consider that the proposal to demolish the existing dwelling structure on site and its replacement is acceptable.

7.4. Residential Amenity – Impact on Adjoining Properties

7.4.1. The appellant expresses concern in relation to the positioning of windows at first floor level in the 2-storey proposed replacement dwelling house and the impact that this

would have on the established amenity of their property. In addition, they raise a concern that there is also the potential for overlooking to arise should the flat roof be used as a private amenity space akin to a balcony.

- 7.4.2. In respect of overlooking, I consider that the proposed dwelling has an east west orientation with the rear first floor level having a stepped profile and with a large flat roof structure over the single storey extension. The plans indicated that this flat roof structure would be finished with a green roof over. There is also an expansive clear glazed easterly projection at first floor level with the expanse of glass serving a large double bedroom. The remaining glazed elements are associated with a first-floor level hall which is setback c7.4m from the rear building line and a double bedroom which is labelled 'Bedroom 4' which is setback from the rear building line by circa 9.22meters.
- 7.4.3. The first-floor level of the southern elevation which lies immediately to the north of rear private amenity space of No. 1 'The Cove' contains three modest in dimension window openings. These serve two en-suites and a walk-in wardrobe.
- 7.4.4. The first-floor level northern elevation also contains three modest in size windows. These serve a family bathroom; an en-suite; and, a nappy and medical storage room. This elevation is setback a stated 1.1m from the northern boundary of the site with a detached dormer dwelling house located on the adjoining land as well as a 2-storey period terrace property located forward of the front building line of the proposed replacement dwelling house.
- 7.4.5. In relation to the appellants property the nearest glazed window has a measured lateral separation distance of c12.5m from the north westernmost corner of the appellants dwelling with the appellants dwelling, which is referred to as 'Island View'. The appellants property occupies a backland site behind the semi-detached pair which are referred to as No.s 1 and 2 'The Cove'. There is a garage type structure between the rear boundary with No.s 1 and 2 'The Cove' and the western elevation of 'Island View' is setback c14m from this shared boundary.
- 7.4.6. In relation to the dormer dwelling positioned to the north of the proposed dwelling the first-floor window serving 'Bedroom 4' has a measured lateral separation distance of c5.2m from this dwelling.
- 7.4.7. In relation to the Planning Authority's notification to grant of permission Condition No. 5 required that en-suite and bathroom windows be glazed permanently in obscure

glazing and the Planning Authority in their response to the grounds of appeal indicated that whilst it was of the view that no undue residential amenity impacts would occur from the proposed development this measure could also be extended to walk-in wardrobe on the southern elevation. Thus, further safeguarding the appellants residential amenity, should the Board be minded to grant permission.

7.4.8. While the development would represent a significant change to the current situation enjoyed by the appellants, I do not consider that there would be significant undue impacts on the amenities of the adjacent properties arising from overlooking subject to the Board, should it be minded to grant permission, including the requirements of Condition No. 5 of the Planning Authority's notification to grant permission. I also consider it appropriate that the obscure glazing also be imposed on the walk-in wardrobe and for the nappy/medical services room to further safeguard the established residential amenities of properties in the vicinity.

7.4.9. In addition, I also concur that the use of the large green roof as any form of private open space amenity would result in adverse diminishment of residential amenity for the appellants and for the adjoining dormer dwelling house to the north by way of resulting in significant overlooking. Moreover, should the Board be minded to grant permission for the proposed development I also recommend the imposition of a condition similar to Condition No. 7 of the Planning Authority's notification to grant permission. This restricts access to it and requires any private amenity space use of it be subject to a separate grant of planning permission.

7.4.10. In terms of overshadowing, having regard to the orientation of the site, the built form of the proposed replacement dwelling house which includes a staggered first floor rear building line, I consider that little additional overshadowing will take place on adjoining properties, particularly in relation to their private amenity space.

7.4.11. Based on the above considerations I am of the view that the proposed development subject to the above recommendations would not have any significant adverse impact on residential amenities.

7.5. Visual Amenity

7.5.1. The western portion of the site contains a modest vernacular single storey cottage. There was nothing to support that at the time of inspection that it was in use as a residential dwelling unit or for any other purpose. It is set on grounds that are unkempt

and access from the road is blocked along the entire roadside boundary by way of tall metal wire fencing. In its current state the appeal site as described contributes little to the visual amenities of its streetscape setting.

- 7.5.2. The eastern portion of the site forms part of larger parcel of land that bounds the shoreline that extends to the north and south of the site whose coastal character is identified as being of exceptional value and of high sensitivity as well as is zoned high amenity lands.
- 7.5.3. It is also a coastline that is at risk of coastal erosion and hence this may have given rise to the differences between the rear boundary of the site as provided for under the deeds and title for this land.
- 7.5.4. In relation to high amenity zoned lands the Development Plan requires careful consideration for developments in such landscapes including land that has a transitional zonal character.
- 7.5.5. Section 11.4 of the Development Plan in relation to where there are abrupt transitions in scale and use in the boundary areas of adjoining land use zones indicates that it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zone.
- 7.5.6. The existing dwelling for which demolition is sought is positioned in close proximity to Tower Street and the proposed dwelling house whilst setback c14.6m from the roadside boundary of Tower Street its rear building line has a lateral separation distance of c14.7m from where the high amenity land boundary. In addition, no works are proposed within the high amenity land use zone by way of this application including the proposed soakway.
- 7.5.7. However, whilst I consider the principle of residential development on 'RS' zoned land on the western portion of the site acceptable as is the proposed private amenity open space use between the rear building line of the proposed replacement dwelling house and the high amenity zoned lands boundary; notwithstanding, the remaining high amenity zoned lands to the east of the high amenity zoned boundary, for which no development works are proposed, will still form an important ancillary element of the residential use associated with this application.
- 7.5.8. There are also a number of Green Infrastructure designations applicable to this site and its setting.

- 7.5.9. In relation to the residential amenity for future occupants of the proposed replacement dwelling I am satisfied that the proposed development is of a good standard of contemporary design and build with good internal as well external amenities to meet the applicant's particular family circumstance.
- 7.5.10. Based on the above, I consider that subject to appropriate conditions including the agreement of the external palette of materials; landscaping; and, the restriction of any piecemeal development on the high amenity lands including the provision of additional extensions, shed structures through to hardstand areas without prior grants of permission would not have any significant adverse impact on the visual amenities of its streetscape setting or indeed when viewed from the shoreline adjoining the eastern boundary of the site.

7.6. **Built Heritage**

- 7.6.1. As previously noted, this appeal site is located c.22m to the south of a Martello Tower, which is designated a Protected Structure and a Recorded Archaeological Monument. As such the visual curtilage and setting of the Martello Tower is highly sensitive to change.
- 7.6.2. The curtilage of the Tower is defined by a circular enclosure, which is separated from the appeal site by the private open space associated with the detached house to the north of the appeal site. The appeal site itself does not form part of the curtilage or attendant grounds associated with the Martello Tower though there is potential for development on the site to impact on its appreciation within its urbanscape and coastline setting.
- 7.6.3. In terms of potential impact on the Martello Tower I considered that the positioning of the proposed replacement dwelling house despite it being significantly setback from the front building line of the existing dwelling site; being a substantially bigger in its gross floor area (Note: 402m² larger than the existing dwelling on site) in nature and extent dwelling; through to is more substantial building height with its maximum ridge stated as 8m which is 3.3m higher than the existing dwelling on site, it nonetheless is in keeping with the staggered building line that runs in a southerly direction from the Martello Tower. In particular the rear building line does not meet or extend beyond the detached dormer dwelling to the north and it is substantially set back when compared to the rear building line of the adjoining property to the south. Further as

mentioned previously in this report the predominant height of built structures in this locality is 2-storey and I also observed that some of the built structures including semi-detached structures which have similar footprints to that of the dwelling house proposed.

- 7.6.4. Having regard to the Planning Authority's Conservation Officer comments I consider their recommendations that the height of the proposed replacement structure should not exceed that permitted for the adjoining property under the grant of permission P.A. Reg. Ref. No. F14A/0199 is reasonable having regard to the context as described above together with the built form of the Martello Tower and its earthen enclosure. Should the Board be minded to grant permission, I recommend that this is provided for by way of an appropriately worded condition.
- 7.6.5. Outside of this concern and subject to the restriction of building on the high amenity zoned portion of the site I do not believe that the proposed development, if permitted, will adversely impact on the setting or character of the Martello Tower, its appreciation and legibility in its landscape setting.

7.7. Appropriate Assessment

7.7.1. Compliance with Articles 6(3) of the EU Habitats Directive

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

7.7.2. Natura Impact Assessment

The Stage 1 AA Screening Report submitted with the initial planning application described the site, the location and the proposed development, it summarised the regulatory context, it carried out field and a desk top surveys and identified the European sites located within a 15km radius of the works.

It confirmed that there are 17 such sites within a 15km radius of the subject site, that the eastern boundary of the site immediately adjoins the Irish Sea and that all of the 17 Natura 2000 sites are directly or indirectly dependent on the Irish Sea.

It indicated that owing to the scale and nature of the proposed development that the 'Zone of Influence' would normally be confined to the immediate vicinity of the development i.e. 100-meters. However due to the site being located immediately alongside the Irish Sea and having regard to the precautionary principle based on the ecological sensitivity of the receiving environment the 'Zone of Influence' in this assessment it considered it appropriate that it was expanded to 1,000-meters.

This assessment considered that the sources of potential impacts are:

- 1) Associated with contamination of surface and/or ground water during construction;
- 2) Importation of propagules of alien invasive plant species to the site; and,
- 3) Disturbance impacts, primarily on avifauna, which may utilise the shore adjacent to the proposed development site at low tide.

It indicated that the primary receptor of concern is the Irish Sea and associated habitats within 1,000 meters of the proposed development with any potential pollution and/or contamination events potentially resulting in the pollution and/or contamination of the Irish Sea and its associated habitats.

It screened out the sites that would not be affected by the proposed development and retained 3 that could be affected: 1) Rogerstown Estuary SAC; 2) Rockabill to Dalkey Island SAC; and, 3) Rogerstown Estuary SPA.

It described these sites in detail and their respective qualifying habitats and species, alongside listing their conservation objectives and targets and attributes.

In terms of direct impacts, it concludes that as the proposed development does not entail and direct land-take, habitat alteration and habitat removal there will be no direct impacts associated with the proposed development.

In terms of indirect impacts as the proposed site is immediately adjacent to a sensitive ecological receptor, i.e. the Irish Sea and its associated habitats, it considered that there is always a potential for negative impacts on water quality associated with development due to potential for pollution and/or contamination during the demolition

through to construction phases. In addition, there is a potential for the site to be used by bird species that are qualifying interests for SPA's within the zone of influence.

In relation to secondary impacts it indicated that there is potential for indirect impacts on water quality within the zone of influence and it sets out a scenario how impacts on water quality could give rise to bioaccumulation of contaminants by prey items for Harbour Porpoise which is a qualifying interest of the Rockabill to Dalkey Island SAC.

In relation to potential cumulative impact it notes that there are no active planning permission applications in the immediate vicinity of the development and having had regard to the planning history of the setting it concluded that there are no cumulative impacts foreseen.

This Stage 1 AA Screening Report concluded that following examination, analysis and evaluation of the relevant information and the potential for significant effects on the conservation objectives of Natura 2000 sites together with applying the precautionary principle that *"it is not possible to exclude, on the basis of objective information and in the absence of specific prescribed precautionary/ mitigation measures, that the proposed development individually or in combination with other plans or projects, will have a significant effect"* on the three identified Natura 2000 sites, i.e. Rogerstown Estuary SAC; Rogerstown Estuary SPA and Rockabill to Dalkey Island SAC. As such having identified potential impacts of the proposed development upon these Natura 2000 sites, in accordance with Article 6(3) of the Habitats Directive a Stage 2 Appropriate Assessment was deemed to be required and that it was therefore necessary for the authors to proceed to Stage 2.

7.7.3. **Stage 2 NIS Report**

The Stage 2 NIS report (which was submitted with the original application) went on to assess the potential for significant impacts of the proposed development on the ecological integrity of Rogerstown Estuary SAC; Rockabill to Dalkey Island SAC and Rogerstown Estuary SPS.

It identified the potential sources of direct and indirect impacts on them and listing other plans and projects in the wider area for the purpose of identifying cumulative impacts.

It assessed the potential impacts relative to the Conservation Objectives for these sites during the demolition, construction and operational phases, in-combination impacts and the significance of impacts.

It proposed mitigation measures including but not limited to:

- 1) The preparation of a method statement that provides measures for the protection of water quality;
- 2) That all works be undertaken in accordance with best guidelines for working alongside watercourses;
- 3) That the proposed development works be undertaken between the months of April and October to minimise any potential impacts on overwintering waterfowl utilising the coastline;
- 4) Before demolition it is recommended that it should be ensured that there are no nesting birds or roosting bats present in the structure.

The Stage 2 NIS concluded formally concluded that it is not considered likely that the demolition, construction and operation the proposed development will result in adverse effects to the integrity of three European sites examined in detail or any other such sites within a 15km radius subject to the assumption that the implementation and preventative measures outlined are adhered too. Nor was it considered that there would be adverse risk on Qualifying Interest habitats or species, nor on the attainment of specific conservation objectives, either alone or in-combination with other plans or projects for the European sites.

7.7.4. **AA Screening Assessment**

Having reviewed the NIS and the supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, does clearly identify the potential impacts, and does use best scientific information and knowledge to inform its assessment as well as to make its conclusions.

Details of mitigation measures are provided, and they are by largely summarised in Section 3.5 of the NIS. I am satisfied that the information is sufficient to allow for appropriate assessment of the proposed development and I concur with its findings.

The proposed development would not be located within or immediately adjoin an area covered by any European site designations and further the works sought under this application are not relevant to the maintenance of any such sites.

As discussed above there are 17 European sites are located within a 15km radius of the site and their relevant Qualifying Interests and separation distances are listed below.

Table 1:

SACs and SPAs in the vicinity of the site and their Qualifying Interests.

| European Site | Site Code | QI's & CI's | Distance |
|------------------------|-----------|---|---------------------------|
| Rogerstown Estuary SAC | 000208 | Estuaries [1130]; 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 maritima) [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]. | c0.72km to the south east |
| Rogerstown Estuary SPA | 004015 | Greylag Goose (Anser anser) [A043]; Light-bellied Brent Goose (Branta bernicla hrota) [A046]; Shelduck (Tadorna tadorna) [A048]; Shoveler (Anas clypeata) [A056]; Oystercatcher (Haematopus ostralegus) [A130]; Ringed Plover (Charadrius hiaticula) [A137]; Grey Plover (Pluvialis squatarola) [A141]; Knot (Calidris canutus) [A143]; Dunlin (Calidris alpina) [A149]; Black-tailed Godwit (Limosa limosa) [A156]; Redshank (Tringa totanus) [A162]; Wetland and Waterbirds [A999]. | c0.72km to the south east |

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| Rockabill to Dalkey Island SAC | 003000 | Reefs [1170] and Phocoena (Harbour Porpoise) [1351] | c0.46km to the east |
| Rockabill SPA | 004014 | Purple Sandpiper (<i>Calidris maritima</i>) [A148]; Roseate Tern (<i>Sterna dougallii</i>) [A192]; Common Tern (<i>Sterna hirundo</i>) [A193]; Arctic Tern (<i>Sterna paradisaea</i>) [A194]. | c5.1km to the north east |
| Baldoyle Bay SAC | 000199 | Mudflats and sandflats not covered by seawater at low tide [1140]; <i>Salicornia</i> and other annuals colonising mud and sand [1310]; Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]; Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]. | c11.9km to the south. |
| Howth Head SAC | 000202 | Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]; European dry heaths [4030]. | c14.5km to the south. |
| Lambay Island SAC | 000204 | Reefs [1170]; Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]; <i>Halichoerus grypus</i> (Grey Seal) [1364]; <i>Phoca vitulina</i> (Harbour Seal) [1365]. | c4km to the south west |
| Malahide Estuary SAC | 000205 | Mudflats and sandflats not covered by seawater at low tide [1140]; <i>Salicornia</i> and other annuals colonising mud and sand [1310]; Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]; Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]; Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]; Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] | c6.6km to the south west. |
| North Dublin Bay SAC | 000206 | Mudflats and sandflats not covered by seawater at low tide [1140]; Annual vegetation of drift lines [1210]; <i>Salicornia</i> and other annuals colonising mud | C14.8km to the south. |

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| | | and sand [1310]; Atlantic salt meadows (Glaucopuccinellietalia maritima) [1330]; Mediterranean salt meadows (Juncetalia maritimi) [1410]; Embryonic shifting dunes [2110]; Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]; Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]; Humid dune slacks [2190]; <i>Petalophyllum ralfsii</i> (Petalwort) [1395] | |
| Irelands Eye SAC | 002193 | Perennial vegetation of stony banks [1220]; Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]. | c11.9km to the south. |
| North Bull Island SPA | 004006 | Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]; Shelduck (<i>Tadorna tadorna</i>) [A048]; Teal (<i>Anas crecca</i>) [A052]; Pintail (<i>Anas acuta</i>) [A054]; Shoveler (<i>Anas clypeata</i>) [A056]; Oystercatcher (<i>Haematopus ostralegus</i>) [A130]; Golden Plover (<i>Pluvialis apricaria</i>) [A140]; Grey Plover (<i>Pluvialis squatarola</i>) [A141]; Knot (<i>Calidris canutus</i>) [A143]; Sanderling (<i>Calidris alba</i>) [A144]; Dunlin (<i>Calidris alpina</i>) [A149]; Black-tailed Godwit (<i>Limosa limosa</i>) [A156]; Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]; Curlew (<i>Numenius arquata</i>) [A160]; Redshank (<i>Tringa totanus</i>) [A162]; Turnstone (<i>Arenaria interpres</i>) [A169]; Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]; Wetland and Waterbirds [A999]. | c14.7km to the south. |
| Baldoyle SPA | 004016 | Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]; Shelduck (<i>Tadorna tadorna</i>) [A048]; Ringed Plover (<i>Charadrius hiaticula</i>) [A137]; Golden Plover (<i>Pluvialis apricaria</i>) [A140]; Grey Plover (<i>Pluvialis squatarola</i>) [A141]; | c11.6km to the south west. |

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| | | Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]; Wetland and Waterbirds [A999]. | |
| Broadmeadow/Swords Estuary SPA | 004025 | Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]; Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]; Shelduck (<i>Tadorna tadorna</i>) [A048]; Pintail (<i>Anas acuta</i>) [A054]; Goldeneye (<i>Bucephala clangula</i>) [A067]; Red-breasted Merganser (<i>Mergus serrator</i>) [A069]; Oystercatcher (<i>Haematopus ostralegus</i>) [A130]; Golden Plover (<i>Pluvialis apricaria</i>) [A140]; Grey Plover (<i>Pluvialis squatarola</i>) [A141]; Knot (<i>Calidris canutus</i>) [A143]; Dunlin (<i>Calidris alpina</i>) [A149]; Black-tailed Godwit (<i>Limosa limosa</i>) [A156]; Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]; Redshank (<i>Tringa totanus</i>) [A162]; Wetland and Waterbirds [A999]. | c6.6km to the south west. |
| Lambay Island SPA | 004069 | Fulmar (<i>Fulmarus glacialis</i>) [A009]; Cormorant (<i>Phalacrocorax carbo</i>) [A017]; Shag (<i>Phalacrocorax aristotelis</i>) [A018]; Greylag Goose (<i>Anser anser</i>) [A043]; Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]; Herring Gull (<i>Larus argentatus</i>) [A184]; Kittiwake (<i>Rissa tridactyla</i>) [A188]; Guillemot (<i>Uria aalge</i>) [A199]; Razorbill (<i>Alca torda</i>) [A200]; Puffin (<i>Fratercula arctica</i>) [A204]. | c4km to the south west |
| Howth Head Coast SPA | 004113 | Kittiwake (<i>Rissa tridactyla</i>) [A188]. | c14.5km to the south. |
| Irelands Eye SPA | 004117 | Cormorant (<i>Phalacrocorax carbo</i>) [A017]; Herring Gull (<i>Larus argentatus</i>) [A184]; Kittiwake (<i>Rissa tridactyla</i>) [A188]; Guillemot (<i>Uria aalge</i>) [A199]; Razorbill (<i>Alca torda</i>) [A200]. | c12.9km to the south. |
| Skerries Island SPA | 004122 | Cormorant (<i>Phalacrocorax carbo</i>) [A017]; Shag (<i>Phalacrocorax aristotelis</i>) [A018]; Light-bellied Brent | c5.3km to the north. |

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| | | Goose (Branta bernicla hrota) [A046]; Purple Sandpiper (Calidris maritima) [A148]; Turnstone (Arenaria interpres) [A169]; Herring Gull (Larus argentatus) [A184] | |
|--|--|--|--|

Having regard to the nature and scale of the proposed development, to the separation of the application site from European sites, to the nature of the qualifying interests and conservation objectives of the European sites and to the available information as presented in the application regarding ground and surface water pathways between the application site and the European sites and other information available, I concur with the assessment carried out that the proposed development has the potential to affect Rogerstown Estuary SAC; Rockabill to Dalkey Island SAC; and, Rogerstown Estuary SPA having regard to the conservation objectives of the relevant sites.

The conservation objectives for the Rogerstown Estuary SAC is “*the maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level*”; the conservation objectives for the Rockabill to Dalkey Island SAC is “*the maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level*”; and, the conservation objectives for Rogerstown Estuary SPA is “*the maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level*”.

The potential impacts which would result from the project would arise during the demolition and construction phase would be indirect and would relate to the transport of pollutants/contaminants in ground or surface water flowing into the SAC/SPA via on-site surface water run-off; disturbance from noise, light pollution and emissions; and, ex-situ impacts on qualifying species outside the SAC/SPA but which is an integral and connected part of the population of qualifying interest species.

The Appropriate Assessment Screening report accompanying the application considers that the development, subject to the mitigation measures it recommends,

will have negligible impact on the nearby SACs and SPAs as well as those within a 15km radius.

I consider the conclusions of the report are reasonable given the brownfield nature of the site, urban location of the development with all building works being confined to land zoned 'RS' and with no works proposed to the high amenity zoned lands, the serviced nature of the site and the surplus capacity in the public mains water and drainage to meet the demands the proposed development would generate, the measures proposed to deal with the surface water drainage requirements of the site, and the nature of the development itself. In addition, I note that the report findings have been accepted by the Planning Authority.

In conclusion I am satisfied that the proposed development will have no significant adverse effects (direct, indirect or in-combination) on the Conservation Objectives, Qualifying Interests or Conservation Interests for the Rockabill to Dalkey Island Special Area of Conservation ('SAC': Site Code 003000); Rogerstown Estuary SPA (Site Code 004015) and SAC (Site Code 000208), in view of their specific Conservation Objectives, or for any other European Site.

7.7.5. **Appropriate Assessment 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 European site Nos. 003000; 004015 and SAC 000208 or any other European site, in view of these site's Conservation Objectives.

8.0 **Recommendation**

8.1. I recommend that permission be **granted**.

9.0 **Reasons and Considerations**

Having regard to the provisions of the Fingal Development Plan, 2017-2023, and to the nature, and scale of the proposed development, it is considered that subject to compliance with the following conditions, the proposed development would not

seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. 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 and as amended by the further plans and particulars submitted on the 13th 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. The proposed dwelling shall be occupied as a single residential unit and it shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the extension in the interest of residential amenity.

3. 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 proposed replacement dwelling house and within its rear garden area, without a prior grant of planning permission.

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

4. All windows on the northern and southern elevation at first floor level shall be fitted and permanently maintained with obscure glass. The use of film is not acceptable.

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

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

Reason: In the interest of visual amenity.

6. 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.

7. The flat roof to the rear of the dwelling shall not be used as a balcony/additional amenity space and no access from the house shall be provided from the first-floor level internal space without a prior grant of permission.

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

8. The following requirements of the Planning Authority shall be complied with in full:

- (a) The front boundary wall shall not exceed a maximum height of 900mm.
- (b) No objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes.
- (c) A footpath shall be provided by the applicant as part of the proposed development along the front boundary of the proposed development, in line with the existing footpaths to the north and south. Details shall be agreed with the Area Engineer.
- (d) The footpath and kerb shall be dished at the developer's expense to the satisfaction of the Planning Authority.
- (e) No gate shall open across a public footpath/roadway.
- (f) All underground or overhead services shall be relocated, as may be necessary, to a suitable location adjacent to the new boundary at the developer's expense.

(g) All stormwater shall be disposed of to soak pits or drains within the site and shall not discharge onto the public road.

(h) All the above works shall be carried out at the developer's expense according to the specification and conditions of Fingal County Council.

Reason: In the interests of public health and in order to ensure adequate drainage provision.

9. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated. This plan shall also provide details of the mitigation measures set out in the document titled 'Natura Impact Statement in Support of the Appropriate Assessment' submitted with this application, the details of the intended demolition and construction practice for the development, including hours of working, noise and dust management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of sustainable waste management.

11. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground throughout the entire site.

Reason: In the interests of visual and residential amenity.

12. The areas of open space shown on the lodged plans shall be reserved for such use, in particular the open space located on lands zoned high amenity to the rear of the site and shall be landscaped in accordance with the detailed requirements agreed with the planning authority, prior to the commencement of development on site. All landscape works shall be completed before the replacement dwelling is occupied. The submitted landscaping scheme shall include:

- (a) Details of all proposed hard surface finishes;
- (b) Details of all external lighting, if any, within the curtilage;
- (c) Proposed locations of trees and other landscape planting in the development, including details of proposed species and settings. In this regard, preference should be given to indigenous species within the planting scheme suitable for such a coastal location.
- (d) Details of proposed boundary treatments at the perimeter of the site, if any, including heights, materials and finishes as well as any back planting proposed.
- (e) Established planting to be maintained.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In order to ensure the satisfactory development; in the interests of visual amenity and biodiversity.

13. 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.

Advisory Note:

Insert - Section 34(13) of the Planning and Development Act 2000, as amended.

Patricia-Marie Young
Planning Inspector

27th day of February, 2020.