



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306622-20

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<b>Development</b>	Change of use from residential to restaurant use, demolition of extensions to the side and rear of the main dwelling, including sunroom and demolition of the existing single storey ancillary garage
<b>Location</b>	North Lodge, Strand Road, Carrickhill, Portmarnock, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F19A/0448
<b>Applicants</b>	Alison & Derry Kealy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	Alison & Derry Kealy
<b>Date of Site Inspection</b>	5 <sup>th</sup> May 2020
<b>Inspector</b>	Dolores McCague

## **1.0 Site Location and Description**

- 1.1.1. The site is located at Strand Road, Carrickhill, Portmarnock, Co Dublin. A building known as North Lodge occupies the site. The building is a dwelling not currently in use. The site is rectangular with the slightly longer western side aligned with the road. The northern and western boundaries adjoin the sand dunes at Portmarnock strand. Along the southern boundary is the public access used by visitors to access the strand and further south is the Portmarnock hotel and golf club, formerly St Marnock's House, with which buildings known as South Lodge and North Lodge were once associated.
- 1.1.2. The site is given as 0.2501ha.

## **2.0 Proposed Development**

- 2.1.1. The proposed development is the change of use from residential to restaurant use, it involves the demolition of extensions to the side and rear of the main dwelling, including sunroom, and demolition of the existing single storey ancillary garage, and provision of a second vehicular entrance to the site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The planning authority decided to refuse permission for one reason:

The subject site is located within the Outer Public Safety Zone for Dublin Airport in which the provision of restaurant/leisure facilities are limited to densities of less than or equal to 85 persons per half hectare development. The applicant is seeking permission for the provision of a restaurant facility which would provide for 55 covers equating to a density of 110 persons per half hectare. Furthermore, this figure does not take cognisance of the number of staff employed to cater for the running of the restaurant, which would, when added to the figure of 110, increase the density further over that stipulated in the ERM report. As such it is considered that the

proposed development is excessive in scale, would contravene Objective DA07 and Objective DA13 of the Fingal Development Plan 2017-2023, not be in accordance with Table 6.1 of the ERM report and would not be in accordance with the proper planning and sustainable development of the area.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports.

3.2.2. There are two planning reports, the first recommending a request for further information includes:

- Planning history outlined.
- Policies and objectives of the Fingal Development Plan considered relevant are cited:
  - Objective CH33 - promote the sympathetic maintenance, adaptation and re-use of the historic building stock.
  - Objective CH37 - seek the retention, appreciation and appropriate revitalisation of the historic building stock and vernacular heritage
  - Objective CH38 – scale, design etc of extensions to vernacular dwellings or historic building conversion to be sympathetic to existing.
  - Objective NH51 – protect high amenity areas from inappropriate development.
  - Objective NH52 - development to reinforce the sense of place of high amenity areas.
  - Objective ED58 – promote and facilitate tourism.
  - Objective DMS04 – change of use in urban and village centres assessed based on positive contribution to diversification and impact.
  - Objective DMS11 – Signage proposals and visual clutter.
  - Objective DMS160 – List of items to which regard must be had where development is being proposed for a site that contains historic buildings

and/or structures that contribute to the distinctive character of the rural or urban areas of Fingal.

- Objective DA07 - Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone.
- Objective DA13 - Promote appropriate land use patterns in the vicinity of the flight paths serving the Airport, having regard to the precautionary principle, based on existing and anticipated environmental and safety impacts of aircraft movements.
- Compliance with relevant objectives and policies – the building is considered to have architectural merit and considered a vernacular structure, café/restaurant is permitted in principle in HA zoning if it is ‘ancillary to tourism uses or conversion of protected or vernacular structures where appropriate’.
- Change of use – it would revitalise a vernacular structure and is considered acceptable.
- Environmental Resources Management Report (2005) & Outer Safety Zone -  
- within the Outer Airport Noise Zone and Outer Public Safety Zone and must comply with objectives DMSDA07 and DA13. It must also comply with Environmental Resources Management (ERM) Report (2005). Table 6.1 of the ERM report sets density restrictions for new development located within both the inner and outer noise zones. This is a leisure facility – per use classes. The applicant has referred to covers for 100 people. Drawing no PO2 ground floor plan shows seating for 58 people. The applicant should be requested to clarify how many people in total the restaurant will serve.
- Integration and Visual Amenity & Conservation – North Lodge was a gate lodge of the former St Marnock’s House, the home of John Jameson IV great

grandson of the founder of Jameson Irish Whiskey. It is likely to have been similar to South Lodge. North Lodge was badly damaged by fire and significantly altered. The applicant is proposing to amend the existing structure. The proposed works are considered acceptable. Conservation Officer's report is referred to.

- Impact on residential amenity – change of use and provision of one external terrace along the eastern elevation. The previous application sought two terrace areas. EHO recommends conditions. These will ensure that residents in close proximity are not affected by noise. Previous concerns over the location of the extractor fan have been addressed. EHO is satisfied.
- Transportation – 13 parking spaces required based on 190m<sup>2</sup> dining area at a rate of 1 per 15m<sup>2</sup> seated dining area – Table 12.8 of CDP. One-way access route is acceptable. Sightlines are achievable per DMURS. Re Sutton to Malahide Cycleway, objective to provide for this along the front boundary, a 6m set-back from the road kerb to be kept free of development to accommodate the future cycleway is indicated.
- Parks and boundary treatments - Parks and green Infrastructure Section report states that the landscape plan is acceptable; the arboricultural method statement and tree protection plan are acceptable. A tree bond of €10,000 is required.
- Water Services - Water Services Section and IW – no objection.
- Bio Diversity – no concerns.
- EIAR not required.
- AA – Screening report submitted. Impacts not considered likely.
- Further information – applicant to clarify how many people in total the restaurant will serve and how it complies with the density restrictions set out in table 6.1 of ERM report.

3.2.3. A further information request issued per recommendation.

3.3. Other Technical Reports

3.3.1. Report of the Water Services Department

- Surface Water: No objection subject to:
  - 1. Soakaways shall comply with BRE Digest 365, the GSDSDS, designed to accommodate the 30 year critical duration storm event, include for climate change, use local rainfall data and site specific infiltration values, and be at least 5m from any structure and 3m from any boundary. Prior to commencement of construction the developer shall confirm the site specific infiltration rate and submit an amended soakaway design as required.
  - 2. No surface water / rainwater is to discharge into the foul water system under any circumstances.
  - 3. The surface water drainage must be in compliance with the “Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April 2006.

### 3.3.2. Report of the Transportation Planning Section

- General - The proposed development is located in a 50km/hr speed limit.
- Parking - There is a demand for up to 13 parking spaces (rounded up) based on a seated dining area of c.190m<sup>2</sup> at a rate of 1 space per 15m<sup>2</sup> of seated dining area. The proposed development has parking provision for 13 parking spaces.
- Entrances - The proposed one-way system with a new access is acceptable to the Transportation Planning Section. Sightlines at the new exit are achievable with the proper boundary treatment.
- Cycleway - The Sutton to Malahide Cycleway runs along the site frontage of the proposed development. The applicant has indicated a 6m set back from the roadside kerb along the frontage of the proposed development that is to be kept free of development to accommodate the future provision of the Cycleway. This area should be kept free of permanent development and made available for the Cycleway when the project is under construction.
- Conclusion - The Transportation Planning Section has no objection to the proposed development subject to the following conditions:
  - 1) The 6m setback indicated on Aughey O’Flaherty Architects drawing P0.1 shall be kept free of permanent development and made available for the future provision of a Malahide to Sutton Cycleway.

- 2) No objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding a height of 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes.
- 3) The footpath and kerb shall be dished at the developer's expense to the satisfaction of the Planning Authority. All underground or overhead services and poles shall be relocated, as may be necessary, to a suitable location adjacent to the new boundary at the developer's expense.

### 3.3.3. Environmental Health Officer's Air Pollution & Noise Control Unit

The development is acceptable subject to the following conditions;

1. Any construction work required shall incorporate the following; no heavy construction equipment/machinery (to include pneumatic drills, construction vehicles, generators, etc) shall be operated on or adjacent to the construction site before 8.00a.m. or after 7.00p.m., Monday to Friday, and before 8.00 a.m. and after 2.00p.m. on Saturdays. No activities shall take place in site on Sundays or Bank Holidays. No activity, which would reasonably be expected to cause annoyance to residents in the vicinity, shall take place on site between the hours of 7.00p.m. and 8.00a.m. No deliveries of materials, plant or machinery shall take place before 8.00a.m. in the morning or after 7.00p.m. in the evening.

2. If there is any occasion when work must be carried on outside daytime hours, this department, local residents and businesses in areas which are likely to be affected by noise from the proposed works should be notified in advance e.g. in letter or leaflet or advertisement form, of:

- Name, address and telephone number of company carrying out works
- Nature of and reason for works
- Likely duration and times of work

3. Any construction work carried out shall have regard to B.S.5228: 2009 A1:2014 "Noise and Vibration control on construction and open sites to minimize noise from construction operations, developers shall have regard to best practice guidance in relation to Noise and Vibration control on construction and open sites. Should noise levels exceed this threshold steps will be taken by the contractor to review the works and implement additional mitigation measures where practicable.

4. During any construction work all necessary steps shall be taken to contain dust and airborne pollutants arising from the site and to prevent nuisance to persons in the locality. This shall include i) covering skips, ii) covering slack heaps, iii) netting of scaffolding, iv) regular road and pavement damping and sweeping, v) use of water spray to suppress dust, vi) proper paved or hard stand access for trucks and vehicles to and from the site to prevent dirt and dust from the site being carried from the site on to public roads etc. Should dust levels become excessive, steps will be taken by the contractor to review the works and implement additional mitigation measures where practicable.

5. Special consideration shall be taken to the siting of all mechanical services to prevent nuisance from noise or odours to the local businesses and/or residents in close proximity to the premises. Clearly audible and impulsive tones at noise sensitive locations during evening and night shall be avoided irrespective of the noise level.

6. Once the development is in operation all deliveries shall be limited to Monday-Friday 07.30-20.00 hrs Saturday 8.00-20.00 hrs Sunday 09.00-20.00 hrs.

7. The cumulative noise from the daily activities carried on within the proposed development shall not cause a noise nuisance to nearby residents/local businesses. The noise levels measured at any noise sensitive location shall not exceed the following-

(a) an LAr, 15 min value of 55 dB(A) during the period 0700 to 1900 hours Monday to Sunday

(b) an LAr, 15 min value of 50dB(A) during the period 1900 hours to 2300 hours Monday to Sunday

(c) an LAeq, 15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component. (As measured from nearest noise sensitive location/s).

8. It is recommended that restrictions are put in place on the hours of usage of the outdoor area to ensure that Residents in close proximity are not affected by noise nuisance. Alternatively, this area could be acoustically screened to reduce the noise levels. There shall be no amplified music in the outdoor area.



9. The development shall be so operated that there will be no emissions of malodours, gas, dust, fumes or other deleterious materials, no noise vibration on site as would give reasonable cause for annoyance to any person in any residence, adjoining unit or public place in the vicinity.

#### 3.3.4. Conservation Officer Section

The Conservation Officer was asked to examine this file. An application for change of use from residential to restaurant was submitted previously under F18A/0514 and the architectural conservation issues remain the same. The original North Lodge was a gate lodge to the former St. Marnock's House (now Portmarnock Hotel and Golf Club) which was the home of John Jameson IV, great grandson of the founder of Jameson Irish Whiskey. The original North Lodge is likely to have been similar in design to the South Lodge but was badly damaged by fire in the latter half of the 20th century and significantly altered, including the addition of an enlarged roof. The redbrick front façade with its granite surrounds to the window and door openings was retained but behind this façade the rest of the house is a late 20<sup>th</sup> century replacement. The building does not have any architectural protected designation. The Conservation Officer deems the proposed intervention to be sympathetic to the original design having taken direction for the redesign of the roof form from that of South Lodge but without the dormers and with a much deeper plan. The front elevation is being retained as this is the only surviving section of the original North Lodge. The elevational treatment of the replacement building is simple and plain. The Conservation Officer has no objection to the principle or any specific requirements as the historic façade is being retained along with the entrance gates and piers. However, should changes be required to the current vehicular entrance to facilitate the requirements of other departments then the Conservation Officer asks that the existing entrance gates and gate piers should be salvaged and re-located within the development.

#### 3.3.5. Report of Environmental Health

The development is acceptable subject to listed conditions which refer to lighting, ventilation, food preparation and sanitary accommodation.

### 3.4. **Response to further information request**

#### 3.4.1. The applicant's response includes:

The restaurant would accommodate 55 covers. The previous application sought 120 covers. The revised proposal represents 45.8% and is a significant reduction. Citing Objectives DA07 and DA13 and noting that neither the DAA nor the Irish Aviation Authority have raised an objection, the applicant considers the development appropriate.

### 3.5. **Prescribed Bodies**

#### 3.5.1. IW

No objection subject to conditions:

1. A 6m wayleave shall be maintained over the existing 150mm diameter cast iron rising foul sewer main.
2. Where the applicant proposes to connect directly or indirectly to a public water/wastewater network operated by Irish Water, the applicant must sign a connection agreement with Irish Water prior to the commencement of the development and adhere to the standards and conditions set out in that agreement.
3. In the interest of Public Health and Environmental Sustainability, Irish Water Infrastructure capacity requirements and proposed connections to the Water and Waste Water Infrastructure will be subject to the constraints of the Irish Water Capital Investment Programme.

### 3.6. **Third Party Observations**

#### 3.6.1. Third party observations have been read and noted. Issues raised include:

- A planning application Ref. F18A/0514 has been refused on this site under 3 conditions(s) and reasons(s):

1 Contravention of Table 12.8 Carparking Standards of the Fingal Development Plan 2017-2023 and overdevelopment. This application would provide for 120 covers equating to a density of 240 persons per half hectare is

the same number of covers and the same number of car parking spaces ,13 no. which was refused by Fingal County Council.

2 Location within the Outer Public Safety Zone for Dublin Airport and contravention of Objective DMS13 of the Fingal Development Plan 2017-2023.

3 HA zoning 'Protect and enhance high amenity areas'.

- It is residential and not zoned commercial.
- There are adequate restaurants in the immediate vicinity.
- Car Parking: Car parking for the proposed restaurant is totally inadequate. The proposed development will accommodate only 13 no. car parking spaces including 1 no. for disabled parking.
- There is a problem with parking in the summer months. The public car park cannot accommodate the large crowds using the car park during the summer months. There are yellow lines on both sides of the road in the area of the proposed development and the Gardai are constantly issuing parking tickets and having cars which are illegally parked towed away. This is a main road with regular buses and vehicular traffic going to and from supermarkets in the area. Delivery trucks entering and exiting the restaurant will also exacerbate the traffic problems on Strand Rd. With limited parking at this development Fingal County Council will be facilitating car parking for a commercial development at the expense of the public who use the car park.
- The proposed exit will greatly cause traffic congestion and problems. Exits on Strand Road have been restricted in the past.
- Noise, which is a problem at present, will affect residents even more: patrons leaving hotels and restaurants and anti social behaviour late at night and early morning. Patrons using the outdoor terraces would also cause more noise and disturbance.
- Removal of trees is a concern
- Loss of habitats and species.
- Litter.

- The examples given of The Boathouse, Farmleigh, Castleknock, The Phoenix Café, Tower Tea Rooms, Killiney Hill and Fallon & Byrne Restaurant in the People's Park are not situated in residential areas.
- The majority are in public lands and finish serving at 6pm.
- This development will not improve the vitality and amenity of the area, it is situated 750m from the village and this area is residential not commercial.
- It would conflict with the cycleway.

### 3.7. Further Report

#### Planning Report

##### 3.7.1. The second planning report includes:

Having regard to Table 6.1 of the ERM report which has a density restriction of less than or equal to 85 persons per half hectare, the applicant has not demonstrated to the satisfaction of the planning authority that the development complies with Table 6.1 of the ERM report. The provision of a restaurant which can accommodate 55 covers generates a density of 110 people per half hectare. Furthermore, this figure does not take cognisance of the number of staff employed to cater for the running of the restaurant, which would, when added to the figure of 110, increase the density further over that stipulated in the ERM report. As such it is considered that the proposed development is excessive in scale, would not be in accordance with the ERM report, would contravene Objective DA07 and Objective DA13 of the Fingal Development Plan 2017-2023, and should be refused.

### 4.0 Planning History

F18A/0514 – permission for extension and refurbishment change of use from residential to café/restaurant, demolition of non original extensions, provision of external terraces, new exit gate and circulation route 9 parking spaces, landscaping, drainage and all ancillary works, refused for the reasons:

15 parking spaces required 13 proposed, overdevelopment.

Zoned HA large restaurant and bar facility which is not considered ancillary would give rise to a significant negative impact on residential amenities in terms of noise levels.

The subject site is located within the Outer Public Safety Zone for Dublin Airport in which the provision of restaurant/leisure facilities are limited to densities of less than or equal to 85 persons per development. The applicant is seeking permission for the provision of a restaurant facility which would provide for 120 covers equating to a density of 240 persons per half hectare. As such it is considered that the proposed development is excessive in scale, would contravene Objective DMS13 of the Fingal Development Plan 2017-2023, not be in accordance with Table 6.1 of the ERM report and would not be in accordance with the proper planning and sustainable development of the area.

Pre-application consultation took place.

In Vicinity:

Portmarnock Hotel and Golf Links – within last 10 years:

F15A/0426 – increase in internal gross floor area, change of use to provide gym/spa, external alterations, new main entrance internal refurbishment, reconfiguration of car park and reduction in spaces from 91 to 74, relocation of southern vehicular access and modification of northern vehicular access, relocation and modification of signage and flag poles etc, granted permission.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. Fingal Development Plan 2017-2023 is the operative plan. Relevant provisions include:

Zoning Objective “Ha” High Amenity.

Objective: Protect and enhance high amenity areas.

Vision: 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.

Restaurant/Café permissible subject to footnote 13: 'Ancillary to tourism uses or conversion of protected or vernacular structures where appropriate'

Objective CH33 - Promote the sympathetic maintenance, adaptation and re-use of the historic building stock and encourage the retention of the original fabric such as windows, doors, wall renders, roof coverings, shopfronts, pub fronts and other significant features of historic buildings, whether protected or not.

Objective CH37 - Seek the retention, appreciation and appropriate revitalisation of the historic building stock and vernacular heritage of Fingal in both the towns and rural areas of the County by deterring the replacement of good quality older buildings with modern structures and by protecting (through the use of Architectural Conservation Areas and the Record of Public Structures and in the normal course of Development Management) these buildings where they contribute to the character of an area or town and/or where they are rare examples of a structure type.

Objective DMS160 - Where development is being proposed for a site that contains historic buildings and/or structures that contribute to the distinctive character of the rural or urban areas of Fingal have regard to the following:

Objective DA07 - Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone.

Objective DA13 - Promote appropriate land use patterns in the vicinity of the flight paths serving the Airport, having regard to the precautionary principle, based on existing and anticipated environmental and safety impacts of aircraft movements.

Objective DA14 - Review Public Safety Zones associated with Dublin Airport and implement the policies to be determined by the Government in relation to these Public Safety Zones.

Objective DA15 - Take into account relevant publications issued by the Irish Aviation Authority in respect of the operations of and development in and around Dublin Airport.

Objective DA16 - Continue to take account of the advice of the Irish Aviation Authority with regard to the effects of any development proposals on the safety of aircraft or the safe and efficient navigation thereof.

## RURAL FINGAL – CHAPTER 5

### Objective

Restoration of Vernacular Buildings - The many vernacular buildings that are dotted throughout the countryside form a key part of Fingal's rural landscape. 'Vernacular' is a term used to describe something that is common to a specific place or area. When the term is used in relation to buildings or architecture it refers to the ordinary structures that functioned as the homes, farms, workplaces and community buildings of a locality. They were generally built using locally sourced materials, such as timber, stone, mud, lime and thatch. The buildings tend to be simple in design and form. Most of these structures date from the 18th, 19th and early 20th century. Fingal has a significant number of particularly attractive vernacular structures within the rural area some of which are on the Record of Protected Structures, either in their own right, or as part of the curtilage of a Protected Structure.

## 5.2. ERM Public Safety Zones Report

Available on the Department of Transport website, this report was published in 2007

It includes:

Inner PSZ (public safety zone) - prevent further development, but allow existing developments to remain (as per the UK); and Outer PSZ -- allow existing developments to remain, but prevent high density housing development, and the building of schools, hospitals and facilities attracting large numbers of people.

The types of developments proposed to be permitted within the PSZs are based on:

- a review of the assessment guidelines used by the UK Health and Safety Executive (HSE);

- communications with the Dutch and UK authorities, and the UK Department for Transport;
- evaluation of societal risks to account for society's aversion to accidents with multiple fatalities;
- a review of the established risk criteria used to protect the public from industrial hazards both in Ireland and internationally;
- a comparison of 'industrial' risk-based land-use criteria with those recently implemented at airports in the Netherlands and the UK;
- a consideration of expert opinions; and
- consideration of the potentially greater number of persons 'impacted' in an industrial accident compared with a crashing aircraft.

The shape and extent of each PSZ is based on the calculation of individual risk, so that within the outer PSZ no individual incurs a risk of death greater than ten chances per million per year (i.e. 10 cpm,  $10^{-5}$ , 1 in 100,000 per year). However, in determining criteria for permitted development, account also needs to be taken of society's aversion to accidents that harm many people in a single incident. For example, society's reaction/concern is likely to be very different for a single accident resulting in 246 fatalities, compared to the 246 fatalities in the 222 accidents on Irish roads in the year to 14th August 2002. The reasons for this are numerous, for example:

- public perceptions of the duty of care expected of pilots, airlines and airport operators compared with those responsible for road safety and maintenance;
- the degree to which exposure is voluntary or involuntary; and
- whether the travelling public can exercise some control over the chance of an accident.

To gauge 'aversion', the Health and Safety Authority has employed the Scaled Risk Integral (SRI) method also used by UK HSE. In addition to individual risk, the SRI takes into account the number of people exposed, the population density and the proportion of time the area is occupied.



Essentially, the SRI provides a simple numerical score. For an SRI above 2,400 HSE would advise against development, but would not prevent it provided the planning authority decided other factors warranted permission. However, above a score of 35,000 HSE would advise against and request intervention by the Secretary of State to prevent development (subject to a public inquiry). An SRI Score of 35,000 has been used to determine the criteria for permitted developments in the proposed PSZs.

An area of development (hectares), is taken as 0.5 hectares which approximates the assumed aircraft impact area (this is the crash area determined for aircraft movements associated with Dublin Airport).

*Table 6.1 Permitted Developments (applicable to new applications for development)*

Permitted Developments	Public Safety Zone (PSZ)	
	Inner PSZ	Outer PSZ
All developments	No further development (existing developments remain)	see below (existing developments remain)
		<b>Outer PSZ</b>
1. Housing		≤ 60 persons/half hectare
2. Holiday Accommodation		≤ 100 beds per development
3. Retail/Leisure Facilities		≤ 85 persons/half hectare
4. Working Premises		≤ 110 persons/half hectare
5. Institutional Accommodation		No further development
6. Sports Stadia		No further development
7. Limited Use		≤ 220 persons/half hectare
<b>No restrictions on development beyond Outer PSZ</b>		
<b>Notes</b>		
1. Housing - i.e. residential accommodation, persons at home.		
2. Holiday Accommodation - i.e. hotels, caravan parks.		
3. Retail/Leisure Facilities - i.e. shopping centres, sports halls, sports grounds, swimming pools, bowling alleys, golf clubs.		
4. Working Premises - i.e. factories, offices and facilities where persons are expected to congregate, such as railway stations.		
5. Institutional Accommodation - i.e. hospitals, schools, nurseries, care homes, prisons.		
6. Sports Stadia - i.e. football/rugby stadia.		
7. Limited Use - use not exceeding (approximately) a maximum of 12 hours in one week. i.e. Sunday markets, car boot sales, day fairs.		

### 5.3. Heritage Designations

- 5.3.1. The nearest Natura sites are Baldoye Bay SAC (site code 000199) and Baldoye Bay SPA (site code 0004016), 792m, and Malahide Estuary SAC (site code 000205) and Malahide Estuary SPA (site code 000205), 924m from the subject site.

## 5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The appeal, lodged by Hughes Planning & Development Consultants on behalf of the applicant, includes:
- The development presents a high standard of commercial development which has no undue impacts on the amenities of the area.
  - The proposal is compliant with the relevant development plan provisions, both regarding restaurants and development in high amenity lands.
  - The density is appropriate in the context of the ERM report. The relevant standards have been improperly applied by Fingal Co Co.
  - The site, which is shown in an aerial photograph, has significant road frontage along Strand Road and pedestrian access through a gate in the eastern boundary to Portmarnock Beach.
  - The dwelling was part of a pair of similar structures built as lodges. The other is located c800m south and retains much of its original design features.
  - Planning history is presented:
    - F08A/0190 The Coachman's Inn, Dublin Road, Cloghan, Swords. The development including a new four storey hotel over basement car park to provide 100 new bedrooms, was within the outer public safety zone. The planner's report is quoted 'The ERM report on public safety recommends that Holiday Accommodation is limited to a maximum of 100 beds. However it is not specifically stated if this is per every 0.5ha as per other developments.

The new development equates to 100 beds and there are no beds in the existing development. On a 0.73ha site the bedrooms per 0.5ha ratio works out at c 68.5 bedrooms for the subject development.' Permission was granted 68.5 bedrooms, appropriate to accommodate up to 137 guests. Taking staff and guests and staff of the restaurant and public house into consideration it is likely that it could be accommodated in excess of 200 people on a half acre site. They contrast this with the refusal.

- F06A/1246, F12A/0141 and F16A/0202 at Bramley Wood, Kinsealy Lane, Kinsealy, within the outer public safety zone – various planning permissions for a large residential care facility. No commentary was provided in the planners' reports on the outer public safety zone. Table 6.1 of the ERM states that there shall be no further development of institutional accommodation in the zone.
- F07A/0377 and F16A/0587 Turnapin Great, Old Airport Road, Cloghran, Co Dublin. In F07A/0377, 13 executive conference rooms was refused. The planner's report includes 'table 6.1 ERM report holiday accommodation 100 beds – the existing hotel has 100 beds and is therefore at the maximum allowable. The conference facilities for 130 persons would exceed the guidelines. An Bord Pleanála 06F.223973 Inspector's report 'I can accept that there will be overlap in persons using the conference facilities and staying at the hotel at the same time but I am concerned at the scale of development that could be contained on this site in the context of the ERM Guidelines. I accept that it is reasonable to include ancillary facilities within a hotel development but the total conference capacity of 290 persons in addition to the bedroom accommodation and other facilities is, I consider, far in excess of what could be deemed to be reasonable here under any fair interpretation of Table 6.1. I therefore find that the development as proposed is contrary to the policies and provisions of the approved development plan with regard to development within the Outer Public Safety Zone.

F16A/0587 – planning permission was granted (15th January 2018) for a new standalone five storey over basement hotel comprising 100 bedrooms etc. Further information, specifically requesting the applicant to demonstrate compliance with the ERM report was requested. The planner's report states

'the applicant states that table 6.1 of the report and Table B1.1 of Annex B set out the parameters for new development within the Outer and Inner Public Safety Zones associated with Dublin Airport. In this regard, holiday accommodation such as hotels is permitted in developments comprising 100 bedrooms or less. Further notes on Table B1.1 indicate that the assessment allowing for holiday accommodation relates to sites extending to 0.5ha.

The annex document associated with the ERM report does not appear to be readily available for review and they cannot comment on its contents. The ERM report itself provides no indication that the assessment of holiday accommodation relates to sites extending to 0.5ha. They consider the decision to grant F16A/0587 following refusal of F07A/0377 to be nonsensical.

The planner's report also notes that the ERM report was not formally adopted and remains a draft publication.

- They state that the present proposal has been revised to provide a much reduced density. The site adjoins amenity space and represents the only site in the vicinity with development potential.
- Zoning provides for Restaurant/Café as permitted uses, subject to being ancillary to tourism uses or conversion of protected or vernacular structures where appropriate.
- The development will improve the vitality and viability of Portmarnock Village. The unit will provide a service principally to members of the visiting public and tourists visiting Portmarnock Beach.
- Development plan objectives to preserve views and protect & preserve trees, woodlands and hedgerows – the proposed development will improve visual amenity within the site and from the principle areas of the public realm directly adjoining, improved view towards Portmarnock Strand from Strand Road and adjoining housing. A number of trees will be removed to accommodate the development. These have been kept to a minimum. The necessary removal of trees which are in poor condition will improve the visual amenity and allow for further resources to be utilised to ensure the protection of remaining trees and allow for new tree planting.

- Precedents for restaurant on 'HA' lands are listed: The Boathouse Farmleigh, The Phoenix Café Ashtown Castle, Tower Tea Rooms Killiney Hill, Fallow and Byrne in the Peoples Park Glasthule.
- The Dublin Airport Safety Zone is referred to and an expert report attached. The ERM report referred to in the planner's report is a 15 year old report which was never formally adopted and in relation to the proposed development is both inflexible and incorrect. The planner's report finds the development appropriate with the exception of clarity regarding density in the context of the ERM report. There is no reference to the ERM report in the development plan. Assuming the ERM report is to be used, the refusal reason is based on an incorrect application of the occupancy analysis in that report. The 0.25ha site occupancy does not equate to 110 persons per half hectare, for public safety zone purposes and would do so only if the immediately surrounding quarter hectare were also to contain 55 more persons, which is not the case; the site being completely surrounded by unoccupied land. The occupancy of the half hectare is 55 covers plus 6 staff - 61 persons per half hectare, which is lower than the 85 persons proposed for retail/leisure facilities in table 6.1.
- Seats or covers do not equal persons unless constantly occupied and table occupancy rate must also be considered. A 70% occupancy (applicable throughout the day in a typical busy restaurant) applied to a 110 seat provision plus staffing of 8 persons would come to 85 persons per half hectare, and would be applicable under a strict application of the ERM guidelines. An additional aspect is time. an opening hour after 9am will be outside the current peak air traffic movement time of 6.00 to 9.00 am at Dublin Airport, with consequent lessening of risk. Other factors to consider are the topography. Air crash risk data indicates that a coastal location, not directly adjacent to a runway, will have less air crash risk due to the efforts that any pilot near or above water will make to ditch his/her stricken aircraft into open water rather than on land. The site's location within 150m of the Irish Sea and the presence of elevated sand dunes would protect the site.

- The extent of the public safety zones for Dublin airport is greater than other airports, which are listed.
- The lack of review of the public safety zones in the Fingal County Development Plan 2017-2023 is referred to, as is the 2007 planning permission for airport development and conditions of operation, to indicate inconsistency in relation to airport safety.

The grounds is accompanied by a report titled 'Aviation Report Concerning Dublin Airport Public Safety Zone(s) re. Proposed Restaurant at North Lodge, Strand Road Portmarnock, Co Dublin by O'Dwyer & Jones Design Partnership Aviation Planning & Architecture Consultants, signed by J Declan O'Dwyer B Arch, MBA, RIBA.

- The report refers to the nature and purpose of Airport Public Safety Zones, which are based on controlling the number of people on the ground at risk of death or injury in the event of an aircraft accident on take-off or landing. There is no established international standard. Time is a factor – the amount of time people are in a risk location. Topographical shielding is a factor. Paragraph 6.2 of the ERM report 2005 states a half hectare was chosen as this approximates the average maximum aircraft crash area. The maximum density should be applied to any single half hectare within which the proposed development is located.

The 0.25ha site occupancy does not equate to 110 persons per half hectare, for public safety zone purposes and would do so only if the immediately surrounding quarter hectare were also to contain 55 more persons which is not the case; the site being completely surrounded by unoccupied land. Seats or covers do not equal persons unless constantly occupied and table occupancy rate must also be considered. A 70% occupancy (applicable throughout the day in a typical busy restaurant) applied to a 110 seat provision plus staffing of 8 persons would come to 77 diners plus 8 staff or 85 persons per half hectare, and would be applicable under a strict application of the ERM guidelines.

- An additional aspect is time. an opening hour after 9am will be outside the current peak air traffic movement time of 6.00 to 9.00 am at Dublin Airport, with consequent lessening of risk.
- Other factors to consider are the topography. Air crash risk data indicates that a coastal location, not directly adjacent to a runway, will have less air crash risk due to

the efforts that any pilot near or above water will make to ditch his/her stricken aircraft into open water rather than on land. The site's location within 150m of the Irish Sea and the presence of elevated sand dunes would protect the site.

- The extent of the public safety zones for Dublin airport is greater than other airports, which are listed.

Public comments were invited on the draft ERM report, in 2003, and the present consultant pointed out then that the recently adopted UK practice at all large UK airports did not apply  $10^{-6}$  (one in a million) risk contours, but only the much smaller  $10^{-4}$  and  $10^{-5}$  (one in ten thousand and one in one hundred thousand) risks. He also pointed out that the  $10^{-6}$  contour extends over a huge area of almost 1,000 hectares beyond the runway ends with variations of 10 times crash risk from one part to another and the application of the same development restrictions equally over these huge areas were unrelated to the risk and would produce planning inconsistencies. He holds to this view and believe the  $10^{-6}$  contour should be reconsidered.

There is no established international standard but other airports which are listed have public safety zones of less extent than that for Dublin airport and this is considered in some detail. The consultant questions why three risk zones were not plotted:  $10^{-4}$  and  $10^{-5}$  and  $10^{-6}$ . The  $10^{-4}$  being the most critical. This may be due to lack of clarity in the ERM report and the difficulty of distinguishing the colour use for  $10^{-4}$  and  $10^{-5}$  in that report.

Fingal has recently (2017) posted a safeguarding map for Dublin but no reference is made to it in the Development Plan.

Objective DA14 is quoted, and the consultant states that a review of the public safety zones is overdue. Re. DA14, the IAA made no comments. There is no stated seating limit in the DA Dublin Airport zoning for restaurant /café.

The current proposals for Dublin's north runway are considered. This is likely to remove the outer safety zone from the Portmarnock area. The conditions of the 2007 permission are considered. Noise contours vis a vis public safety zones are referred to. All of which the report states will reduce the safety zone.

## 6.2. Planning Authority Response

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

- Permission was refused as the proposed development is excessive in scale and would contravene Objective DA07 and Objective DA13 of the Fingal Development Plan 2017-2023, would not be in accordance with Table 6.1 of the ERM report and therefore would not be in accordance with the proper planning and sustainable development of the area. The comments made in relation to the ERM report are noted.
- The planning authority has consistently applied the density restrictions set out within this document in order to ensure that the uses permitted within the airport safety zones adhere to the findings in relation to risks to persons on the ground from potential aircraft crashes. It is contended that the density restrictions within the ERM report have been consistently applied and upheld by An Bord Pleanála on numerous occasions most notably within the assessments of 2 Strategic Housing Developments permitted for the Portmarnock South LAP lands on Station Road Portmarnock.
- If the appeal is successful they wish a development contribution to be attached by condition.

## 7.0 Assessment

7.1.1. The issues which arise in relation to this appeal are appropriate assessment, the principle of the development, nature conservation, the outer safety zone and residential amenity and the following assessment is dealt with under these headings.

### 7.2. Appropriate Assessment

7.2.1. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority in this case, to consider the possible nature conservation implications of the proposed development



on the Natura 2000 network, before making a decision, by carrying out appropriate assessment.

- 7.2.2. To facilitate the Board in carrying out this function the applicant has submitted a Screening Report. It states that there are seventeen Natura 2000 sites within 15km of the appeal site.
- 7.2.3. The nearest Natura sites are Malahide Estuary SAC (site code 000205) 370m from the subject site and Malahide Estuary SPA (site code 004025) 1.08km from the subject site northwards; and Baldoyle Bay SAC (site code 000199) and Baldoyle Bay SPA (site code 0004016), located 1.33km from the subject site southwards
- 7.2.4. The qualifying interests of the Malahide Estuary SAC and Malahide Estuary SPA are as follows:

**Malahide Estuary SAC (000205):**

Mudflats and sandflats not covered by seawater at low tide

Salicornia and other annuals colonising mud and sand

Spartina swards

Atlantic salt meadows

Mediterranean salt meadows

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)

Fixed coastal dunes with herbaceous vegetation (grey dunes)

**Malahide Estuary SPA (0004025):**

Great Crested Grebe

Light-bellied Brent Goose

Shelduck

Pintail

Goldeneye

Red-breasted Merganser

Oystercatcher

Golden Plover

Grey Plover

Knot

Dunlin

Black-tailed Godwit

Bar-tailed Godwit

Redshank

Wetland and Waterbirds

- 7.2.1. The Conservation Objectives for both the SAC and SPA are to maintain or restore the favourable conservation condition of the qualifying interests for which the SAC/SPA has been selected.
- 7.2.2. Potential impacts on the SAC and SPA, considered in the Screening Report, are primarily considered in relation to impairment of water quality during construction and operation.
- 7.2.3. The conclusion is reached in the screening report that the proposed planning application has been designed to ensure that the effects arising from this development (either individually or in combination with other plans or projects) shall not give rise to significant adverse impacts on the integrity of the Natura 2000 sites considered, specifically the adoption of appropriate mitigation and best practice measures will ensure no significant negative effects on the protected habitats; and also that the main potential indirect risk from the development of the subject site to any Natura 2000 site is the indirect hydrological connection of the development to the surrounding Natura sites, which the proposed development will ensure that there is no detriment caused to by the installation of a new EPA compliant wastewater treatment system, together with SuDS principles and soakaway for surface water management. It is worth noting that the application form states that the development will be connected via an existing connection to the public sewer and this appears to be the case.
- 7.2.4. These conclusions require consideration of mitigation measures and such being required indicate the need for Stage 2 Appropriate Assessment.
- 7.2.5. The appropriate test is to consider whether the development is capable of affecting the integrity of the protected site. Mitigation cannot be considered at screening stage. Therefore, it is not possible to screen out either the construction impacts or

the operational impacts on Malahide Estuary SAC and SPA, and stage 2 appropriate assessment is required, with the submission of a NIS.

### **7.3. The Principle of the Development**

- 7.3.1. The site is in an area where zoning objective “Ha” High Amenity, applies.
- 7.3.2. The objective is intended to protect and enhance high amenity areas. The vision elaborates on this objective stating the objective to be protecting these highly sensitive and scenic locations from inappropriate development and reinforcing their character, distinctiveness and sense of place. It is also stated that in recognition of the amenity potential of these areas opportunities to increase public access will be explored. It seems likely that it is in this context that restaurant/café might be permissible, subject to being ancillary to tourism uses or conversion of protected or vernacular structures.
- 7.3.3. In support of this application it is stated that the proposed development is a sympathetic conversion of a vernacular building.
- 7.3.4. In chapter 5 of the development plan which deals with rural Fingal the term vernacular is defined.

'Vernacular' is a term used to describe something that is common to a specific place or area. When the term is used in relation to buildings or architecture it refers to the ordinary structures that functioned as the homes, farms, workplaces and community buildings of a locality. They were generally built using locally sourced materials, such as timber, stone, mud, lime and thatch. The buildings tend to be simple in design and form. Most of these structures date from the 18th, 19th and early 20th century. Fingal has a significant number of particularly attractive vernacular structures within the rural area some of which are on the Record of Protected Structures, either in their own right, or as part of the curtilage of a Protected Structure.

A similar definition is found in Wikipedia 'vernacular architecture is architecture characterised by the use of local materials and knowledge, usually without the supervision of professional architects. Vernacular architecture represents the majority of buildings and settlements created in pre-industrial societies and includes a very wide range of buildings, building traditions, and methods of construction'.

- 7.3.5. In my opinion the subject building does not come within the term vernacular.
- 7.3.6. I accept that the building is of interest because of its relationship with the former St. Marnock's House (now Portmarnock Hotel and Golf Club) for which it was a gate lodge, and its historic/cultural associations, having been the home of John Jameson IV, great grandson of the founder of Jameson Irish Whiskey. I note that the Conservation Officer has reported that the building does not have any architectural protected designation. I accept that the sympathetic adaptation of the building is desirable but in my opinion it does not come under the umbrella of being permissible by being a conversion of a protected structure or a vernacular structure.
- 7.3.7. As regards being ancillary to tourism uses, the application is supported by details of permitted developments in similar zonings. The examples given are: The Boathouse at Farmleigh, The Phoenix Café at Ashtown Castle, The Tower Tea Rooms at Killiney Hill, Fallon and Byrne at The Peoples Park, Park Road, Glasthule and the redevelopment of Clontarf Baths. As presented in the details submitted, it appears that the facilities, refer to facilities which are ancillary to the use of the amenity area, which users of the high amenity zoned lands would be likely to frequent.
- 7.3.8. This is not so obvious in the subject case. It is far less clear that the restaurant is intended for similar casual use: to serve those who flock to Portmarnock beach.
- 7.3.9. I am not satisfied that the proposed change of use comes under the umbrella of being permissible by being ancillary to tourism uses in this high amenity area, where protecting these highly sensitive and scenic locations from inappropriate development and reinforcing their character, distinctiveness and sense of place are the primary considerations. The proposed development, as detailed, does not demonstrate that it meets the test of being acceptable in principle.

#### **7.4. Nature Conservation**

- 7.4.1. No ecological survey has been carried out on the site which might inform the Board as to the relationship of the site to the protected sites nearby.
- 7.4.2. The Arboricultural Report, includes proposals to remove shrub areas on site, and on attached drawings, labels areas, outside the site as shrub thickets associated with dune seral succession, does not indicate whether or not any of the shrubbery within the site is of similar composition.

7.4.3. The development plan includes an objective to protect & preserve trees, woodlands and hedgerows. The loss of the Leyland Cypress trees along the front of the site does not appear to be a loss to nature conservation and appears a safety benefit. However not all the trees and shrubs being removed can be justified as a benefit. A survey of the ecology of the site would be necessary to reach a conclusion on the impact of the proposed development on nature conservation.

## 7.5. **Public Safety**

7.5.1. The reason for refusal relates to the density of development in this the Outer Public Safety Zone for Dublin Airport contravention of Objective DA07 and Objective DA13 of the Fingal Development Plan and Table 6.1 of the ERM report.

7.5.2. The Fingal Development Plan includes:

Objective DA10 restricts development which would give rise to conflicts with aircraft movements on environmental or safety grounds on lands in the vicinity of the Airport and on the main flight paths serving the Airport, and in particular restricts residential development in areas likely to be affected by levels of noise inappropriate to residential use.

Safety - The Council will continue to follow the advice of the Irish Aviation Authority regarding the effects of proposed development on the safety of aircraft and the safe and efficient navigation thereof.

Objective DA13 promotes appropriate land use patterns in the vicinity of the flight paths serving the Airport, having regard to the precautionary principle, based on existing and anticipated environmental and safety impacts of aircraft movements.

Objective DA14 - This objective is that the Public Safety Zones associated with Dublin Airport and implement the policies to be determined by the Government in relation to these Public Safety Zones be reviewed.

Objective DA15 - This objective is to take into account relevant publications issued by the Irish Aviation Authority in respect of the operations of and development in and around Dublin Airport.

7.5.3. The ERM report is available on the Department of Transport website and appears to have informed the map designations in the Fingal Development Plan. In table 6.1 of the report permitted developments (applicable to new applications for development)

within the public safety zone (PSZ) are listed and the density of such development within the outer PSZ is stated in persons per half hectare. In the case of restaurant/leisure facilities development the limit is to densities of less than or equal to 85 persons per half hectare.

- 7.5.4. The planning report notes that the applicant is seeking permission for the provision of a restaurant facility which would provide for 55 covers on a site of c0.25ha which equates to a density of 110 persons per half hectare. It also states that this figure does not take cognisance of the number of staff employed to cater for the running of the restaurant, which would, when added to the figure of 110, increase the density further over that stipulated in the ERM report. The decision is based on this assessment.
- 7.5.5. The grounds of appeal challenges the basis for the estimation of density, stating that there is no other development in a 0.5ha area which includes the subject site. It argues for the use of a 70% occupancy as being reasonable to use for calculating the density in the PSZ; that the topographical conditions have not been taken into account whereby a stricken aircraft would likely ditch into the sea and the site would also be protected by the dunes; and that the use of the premises would not coincide with peak time airport use.
- 7.5.6. Further arguments are made regarding the ERM report, which has not been reviewed (since it was published in 2007); that it was never formally adopted; is not mentioned in the county development plan; is out of step with international examples although no international standard exists; and that it is too broad brush and encompasses a large area of the county.
- 7.5.7. Regarding the use of table 6.1 and the fact that the ERM report is not referred to in the Fingal Development Plan 2017-2023. The ERM report has been incorporated into the map designations of the Development Plan and these only have a meaning if used in conjunction with the table.
- 7.5.8. The consultant states that some of the arguments made in his report were submitted in relation to the draft ERM report. It appears that his submissions were not incorporated into the final report. In its conclusions at 6.3 of the ERM report it states:  
  
It is the Consultant's view that the proposed inner and outer PSZs provide appropriate consistency with established risk criteria and zoning practice around

airports, and around chemical installations in Ireland (set by the Health and Safety Authority), whilst recognising the differences between hazards presented by chemical installations and aircraft approaching and departing airports.

Acknowledging that the proposed PSZs might impact upon existing and proposed land-use, the implications of the zones calculated for Cork, Dublin and Shannon airports have been investigated. It is concluded that adoption of the PSZs would not require any changes to existing land-use around the airports, and would only require minimal changes to proposed development plans.

- 7.5.9. Regarding the application of a pro rata density from the quarter hectare site to a half hectare standard, the assumption that there is no occupancy of the adjoining car park does not appear to be reasonable since patrons of the car park, either leaving from, sitting in, or collecting their cars would need to be accounted. The use of a pro-rata standard is also a more reasonable way to account for development potential of adjoining lands.
- 7.5.10. It appears to me to be beyond the compass of this assessment to comment on the fact that the report was not formally adopted, that it has not been reviewed, or that it may not align with standards applying to other European airports. Except to note that it is a designation in the Fingal Development Plan maps and Objective DA10, which impacts on land use.
- 7.5.11. In relation to the topography of the site, the argument that the pilot of a stricken aircraft would likely try to ditch into the sea, does not convince me that this shore line area would not therefore be an area of potentially greater safety concern, notwithstanding the proximity to dunes. In relation to the likely times of use of the premises and peak time airport use, this may take the land use designation into further detail than the designation intended.
- 7.5.12. In my opinion being within the outer PSZs, and not according with Table 6.1 of the ERM report, is a reason for refusal.

## 7.6. Residential Amenity

- 7.6.1. Observers to the planning authority had concerns regarding the additional night time use of the premises and associated noise, and other nuisance which could arise and would be likely to impact on their amenities. The site is separated from the nearby

housing by a busy distributor road. The established night-time uses at the hotel in the vicinity are referred to by observers. In my opinion impact on residential amenity should not be a reason to refuse permission.

## 8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that planning permission should be refused for the following reasons and considerations.

## 9.0 Reasons and Considerations

- 1 The subject site is located within the Outer Public Safety Zone for Dublin Airport in which the provision of restaurant/leisure facilities are limited to densities of less than or equal to 85 persons per half hectare development. The applicant is seeking permission for the provision of a restaurant facility which would provide for 55 covers equating to a density of 110 persons per half hectare. Furthermore, this figure does not take cognisance of the number of staff employed to cater for the running of the restaurant, which would, when added to the figure of 110, increase the density further over that stipulated in the ERM report. As such it is considered that the proposed development is excessive in scale, would contravene Objective DA07 and Objective DA13 of the Fingal Development Plan 2017-2023, not be in accordance with Table 6.1 of the ERM report and would not be in accordance with the proper planning and sustainable development of the area.
- 2 On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site Nos. 000205 and 004025, or any other European site, in view of the sites Conservation Objectives. In such circumstances the Board is precluded from granting permission.
- 3 The site is in an area where zoning objective "Ha" High Amenity, applies. Protecting and enhancing these areas by protecting highly sensitive and scenic locations from inappropriate development and reinforcing their character, distinctiveness and sense of place is the primary objective; but in recognition of



the amenity potential, opportunities to increase public access will be explored. Although restaurant/café is a permissible use subject to being ancillary to tourism uses or conversion of a protected or vernacular structure, the proposal does not involve the conversion of either a protected structure or a vernacular structure; neither would it be ancillary to tourism use that would reinforce the character, distinctiveness or sense of place of the area, or increase amenity potential or public access.

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Planning Inspector

27<sup>th</sup> May 2020

#### Appendices

Appendix 1 Photographs

Appendix 2 Fingal Development Plan 2017-2023, extract.

Appendix 3 ERM Public Safety Zones Report, extract.