



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306630-20

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<b>Development</b>	A two storey 83 room (94 bed space) Nursing Home
<b>Location</b>	Hunters Lane, Dunreagh, Ashbourne, Co. Meath
<b>Planning Authority</b>	Meath County Council
<b>Planning Authority Reg. Ref.</b>	AA181530
<b>Applicant</b>	Dolent Properties LP
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission (3 no. reasons)
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Dolent Properties LP
<b>Date of Site Inspection</b>	05/05/2020
<b>Inspector</b>	Conor McGrath

## Contents

1.0	Site Location and Description .....	3
2.0	Proposed Development .....	3
3.0	Planning Authority Decision .....	4
3.1.	Decision.....	4
3.2.	Planning Authority Reports .....	4
3.3.	Prescribed Bodies.....	5
3.4.	Third Party Observations .....	6
4.0	Planning History.....	6
5.0	Policy Context.....	7
5.1.	Meath County Development Plan 2013-2019 .....	7
5.2.	Ashbourne LAP 2009-2015 9 (as amended) .....	8
5.3.	Draft Meath County Development Plan 2020 .....	8
5.4.	The Planning System and Flood Risk Management Guidelines for Planning Authorities.....	9
5.5.	Natural Heritage Designations.....	10
5.6.	EIA Screening.....	10
6.0	The Appeal .....	10
6.1.	Grounds of Appeal.....	10
6.2.	Planning Authority Response.....	12
7.0	Assessment .....	12
8.0	Appropriate Assessment Screening.....	23
9.0	Recommendation.....	25
10.0	Reasons and Considerations.....	25

## 1.0 Site Location and Description

- 1.1. The appeal site is located to the east of Ashbourne town centre, within an area generally characterised by new residential development. This irregularly shaped greenfield site comprises a stated area of 0.945ha. A residential distributor road runs along the northern boundary leading to Ashewood to the north and Archerstown Wood to the east. Lands to the immediate west, are undeveloped and this boundary is currently undefined. Lands to the south comprise established single-storey houses.
- 1.2. A tributary stream of the Broadmeadow River, Channel C1/7, flows east along the southern site boundary, while a further drainage channel flows south along the eastern boundary, joining at the southeastern corner of the site. The southern and eastern boundaries comprise mature hedges and trees. Other boundaries are open.

## 2.0 Proposed Development

- 2.1. The proposal comprises the development of a nursing home and associated facilities on the site. Significant revisions to the design and layout of development were made at further information stage including a reduction in the number of bed spaces from 93 to 88.
- 2.2. The development is provided as a mainly two-storey linear block, approx. 142m long, facing the adjoining distributor road. The block generally comprises a central corridor flanked by bedrooms on either side, with three service cores along its length. These service cores rise to three-storeys providing access to a roof terrace / amenity area. Access is proposed primarily from a central point on the road frontage, with a surface car park occupying the north-eastern part of the site. 54 no. parking spaces are proposed, including 18 no staff car parking spaces. The site plans identify a secondary access at the western end of the site frontage and an emergency access at the northeastern corner.
- 2.3. Development is set back from the southern and eastern boundaries. These areas are to be landscaped and ground levels will be reduced in order to function as flood storage areas. Ground levels across the remainder of the site are to be raised.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

In considering the application, the planning authority sought further information in relation to a range of issues. It was subsequently decided to refuse permission for the proposed development for three reasons, as follows:

1. A sufficiently comprehensive SSFRA has not been submitted in order to determine that the development would satisfy the Justification Test in accordance with the Planning System and Flood Risk Management Guidelines.
2. Prematurity pending completion of the Ashbourne Flood Alleviation Scheme, which may be subject to design changes impacting on the subject site.
3. Failure to provide sufficient information to conclude that the development would not be likely to have a significant effect on European Sites. The development would materially contravene a development objective of the development plan for the conservation and preservation of a European Site(s).

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The proposal is consistent with planning policy and is acceptable given proximity to local services and amenities in the town centre. A substantial redesign of the proposal is submitted. The proposal reflects housing directly opposite, in Ashewood Walk. The roof terrace, side and rear open spaces address requirements for communal open space. No HSE response to the revised design was received. There will be little impact on adjoining residential amenities. Inconsistencies in the AA screening report are identified. The report concludes that with mitigation measures, negative impacts can be discounted. Having regard to the potential for flooding of the site, there is potential for impacts on Malahide Estuary SAC & Broadmeadow SPA. Refusal recommended.

#### **3.2.2. Other Technical Reports**

- Environment:

20/02/2019: The site is partially located in flood zone A and partially in zone B. The Ashbourne Flood Alleviation Scheme will positively impact on flooding in this area and is programmed for completion in Q2 2020. The scheme is partially complete and the planning application is assessed on the basis that the remainder of the scheme not being implemented. Revisions to the submitted SSFRA are required. The criteria in the Justification test have not been satisfied. The development is premature pending completion of the flood relief scheme.

16/01/2020: While Flood Alleviation Scheme (FAS) design reports have been provided to the applicants, these have changed. Culverts have been extended, trash screens introduced and cross-sections amended. Completion of the scheme by Q4 2020 is not guaranteed. Specific issues in the SSFRA are identified including inadequacies in the catchment and the contributing drainage channels, lack of allowance for climate change and in the extent of the study area. Refusal recommended.

- Water Services: Following receipt of further information, the development broadly meets Water Service requirements. Pre-commencement conditions recommended. The attenuation volume is undersized and should be revised. A 10m wide maintenance strip to be provided along the stream, with design of the emergency access ramp to be revised.
- Transportation: Combined footpath / cyclepath along the site frontage is not wide enough. Revised parking and service vehicle requirements to agreed.
- Housing: No Part V requirement.
- Public Lighting, Transportation: While car park won't be taken in charge, any lighting should accord with published standards.
- Fire Officer: A fire safety certificate is required.

### 3.3. Prescribed Bodies

- Irish Water: Confirmation of feasibility of connection was issued to the applicants. To connect to the water supply network, significant upgrades are

required. Connection is subject to completion of Irish Water Capital Programme in Ashbourne, due for completion in Q4 2020.

- Inland Fisheries Ireland: Broadmeadow River is an important salmonid system. The submission recommends measures to protect water quality therein, including a method statement in relation to the installation of the surface water headwall to the local watercourse.
- HSE: Communal space for residents is deficient. Construction management plan and measures to obviate nuisance during construction required.
- HSA: No observations.

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

Observations on the planning application raised the following issues:

- Traffic impacts on adjoining roads, including on-street parking.
- Provision of a cycle lane along the site frontage.
- Relationship with and impact on adjoining residential development.
- Flood impacts.
- Boundary treatment.
- Water supply and drainage infrastructure capacity issues.
- Visual amenity impacts.

## 4.0 **Planning History**

### 4.1. Appeal Site

PA ref. DA901874: Permission granted in 2010 for a 90-bedroom nursing home.

PA ref. AA151448: Extension of duration of permission of DA90174 was refused on the basis of the vulnerability of the site to flooding.

### 4.2. Other Relevant Cases

PA ref. P816001: Part 8 application approved for flood alleviation works in Ashbourne (Ashbourne Flood Alleviation Scheme).

PA ref. AA190915: Permission granted in January 2020 for 11 no. dwellings in Ashewood to the north of the appeal site.

## 5.0 Policy Context

### 5.1. Meath County Development Plan 2013-2019

Ashbourne is identified as a Moderate Sustainable Growth Town, which towns are intended to develop in a self-sufficient manner.

The lands are zoned **G1**: *to provide for necessary community, social and educational facilities*, wherein nursing home use is open for consideration.

Adjoining lands are zoned for residential use, while the zoning maps identify the lands as vulnerable to flooding.

Section 11.2.6 Nursing Homes, notes that these facilities should be located close to a range of easily accessible facilities in towns and villages where the residents can more easily access local services.

SOC POL 30 To encourage, support and facilitate the provision of a range of services for the aged population. The Council is committed to accommodating the needs of older people in rural areas by the provision, or facilitation of nursing homes and sheltered housing developments. These facilities should be located within settlements in order to enhance overall quality of life, increase links with, and accessibility to, local amenities, and reduce the likelihood of social isolation.

Car parking is required at a rate of 1 space per 3 beds and one space per employee.

In respect of flooding, policies WS POL 29 and WS POL 30 have regard to the Planning System and Flood Risk Management Guidelines and to the recommendations of the Strategic Flood Risk Assessment prepared as part of the County Development Plan.

## 5.2. **Ashbourne LAP 2009-2015 9 (as amended)**

The appeal site is zoned G1: Community Infrastructure - To provide for necessary community, social and educational facilities. Uses open for consideration include Residential / Sheltered Housing, Retirement Home / Residential Institution / Retirement Village.

The site is identified as being at risk of flooding. Policies in this regard reflect those of the county development plan. The plan noted the then extant planning permission for a residential care home on these lands and noted that any future planning application should be subject to a Flood Risk Assessment. Residual risk from culvert blockage was identified as significant for the many culverts and inspection and maintenance would help to reduce risk.

## 5.3. **Draft Meath County Development Plan 2020**

The draft plan zones the subject lands as **F1 - Open Space - *To provide for and improve open spaces for active and passive recreational amenities.***

The SFRA (Appendix 4) notes that the Ashbourne flood alleviation scheme is due for completion prior to the end of 2020. Section 4.10 notes that where development is proposed within Flood Zone A or B, a flood risk assessment of appropriate scale will be required taking account of climate change. For most development the medium-range climate change scenario (20% increase in flows and / or 0.5m increase in sea level) is appropriate.

Section 4.11 notes that for development in an area at moderate or high risk of flooding that is considered acceptable in principle, it must be demonstrated that appropriate mitigation measures can be put in place and that residual risks can be managed to acceptable levels.

Mitigation measures should only be considered once it has been deemed 'appropriate' to allow development in a given location. This will predominantly be relevant to existing developed areas as all other undeveloped sites in Flood Zone A have been re-zoned to a less vulnerable land use. The Planning Guidelines do not advocate an approach of engineering solutions in order to justify the development which would otherwise be inappropriate.



Section 4.11.2 identifies criteria to be met in respect of the modification of ground levels to provide compensatory flood storage.

#### **5.4. The Planning System and Flood Risk Management Guidelines for Planning Authorities**

The key principles of a risk-based sequential approach to managing flood risk in the planning system are:

- Avoid development in areas at risk of flooding; If this is not possible, consider substituting a land use that is less vulnerable to flooding. Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.
- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

Zone A - High probability of flooding. Development in this zone should be avoided and/or only considered in exceptional circumstances.

Zone B - Moderate probability of flooding. Highly vulnerable development would generally be considered inappropriate, unless the requirements of the Justification Test can be met.

Section 5.16 notes that where development has to take place in areas at risk of flooding, the risks should be mitigated and managed through the location, lay-out and design of the development to reduce such risks to an acceptable level. The residual risks should be considered carefully, taking into account the type of development and its vulnerability, how flood risks to the occupants will be managed, insurance provision, scale of the risks and the provision of flood defence works. A precautionary approach would be to set floor levels above the 1% flood level ignoring the moderating effects of flood defences.

Section 3.3.1 of Technical Appendix B sets out basic requirements for the design of compensatory flood plain storage.

## **5.5. Natural Heritage Designations**

The appeal site is not designated for any nature conservation purposes and there are no sites in the vicinity so designated. The watercourse bounding the site to the south is a tributary of the Broadmeadow River which flows to Malahide Estuary SPA and SAC, approx. 14km south of Ashbourne.

## **5.6. EIA Screening**

The appeal site comprises approx. 0.945ha, located in a residential area to the east of Ashbourne town centre. The development is to connect to mains sewerage services. The development does not exceed the thresholds for mandatory submission of an EIAR as set out in Schedule 5.

Having regard to the limited 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**

Dolent Properties LP make the following points in their appeal against the decision to refuse permission for the proposed development:

- Development of the site is being subverted in anticipation of the rezoning of the lands under the draft County Development Plan.
- There is a demand for elderly care services in this area, which is not reflected in the 2020 Draft Development Plan zoning objectives.

Flooding

- The proposal will reduce flood risk and severity of any flood event to below pre-development levels, notwithstanding completion of the Flood Alleviation Scheme.
- In conjunction with completion of the Ashbourne FAS, the development will reduce flood risk beyond that envisaged in the alleviation scheme.
- The conclusions of the SSFRA are not wholly based on the attenuation of surface water run-off.
- The site is not served by existing surface water drainage systems and account is taken of the existing storm drain crossing the site.
- Roads to the east will be in taken in charge and therefore available to provide access to the site.
- The Flood Alleviation Scheme will address flooding of roads to the west.
- The catchment area used in the assessment was calculated in line with best practice, while the flows used are based on the Ashbourne FAS.
- Climate change is accounted for, such that the finished floor level is above the 0.1% event plus freeboard of 300mm.
- In relation to the study area, completion of the FAS will obviate surcharging of upstream culverts, while the Flood Risk Management Guidelines do not require that potential culvert blockage be addressed.
- Culvert blockage was found not to be a critical factor in flooding of the site.
- Blockage of the downstream culvert would not exacerbate flooding of the site and in such an event, the proposed works would alleviate downstream flooding.
- Proposed flood containment volume is based on current flows. The flood risk assessment is not reliant on completion of the FAS.
- Development on these lands is justified, while addressing flood risk.
- The decision raises issues not raised at further information stage and communication from the planning authority on these issues was unsatisfactory.
- In relation to prematurity, the FAS would not significantly mitigate flooding of the appeal site and could have been addressed by condition rather than refusal.
- Notwithstanding completion of the FAS the development will still reduce flood risk.

Appropriate Assessment

- Criticisms of the AA screening report are unwarranted and do not reflect the content of the PA further information request which specifically referred to Dundalk Bay SPA and SAC.
- The same mitigation factors will remove potential impacts on Broadmeadow / Malahide SAC and SPA, as Dundalk Bay.
- Given the management of construction operational run-off and wastewater treatment proposals, there can be no impacts on Natura Sites.
- Negative effects through particulate loading or enrichment of watercourses feeding the European site will be obviated through measures indicated in the Screening Reports.

## 6.2. Planning Authority Response

Meath County Council make the following response to the first party appeal:

- Issues of flooding are adequately addressed in internal reports.
- Incorrect reference to Dundalk Bay SAC and SPA in the further information request is acknowledged, however, robust screening of the development is still required.
- Site vulnerability to flooding gave rise to the request for screening.
- The planning authority was bound to refuse permission given the flooding issues arising and the failure to establish that the development would not be likely to have a significant effect on European Sites.
- The zoning of the lands under the Draft County Development did not influence the decision making process.
- It is agreed that elderly care services are required in Ashbourne. Design and layout issues had been addressed by way of further information.
- Only proposals on suitably zoned and serviced lands, free from onerous constraints, can be supported by the planning authority, however.

## 7.0 Assessment

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

- Land use and development principle
- Design and layout
- Drainage and flooding
- Other matters arising
- Material Contravention

## 7.2. Land Use and Development Principle

- 7.2.1. The current development plan zones the subject lands as G1: *to provide for necessary community, social and educational facilities*, wherein nursing home use is open for consideration. Adjoining lands are zoned A1, to protect and enhance the amenities of established residential communities.
- 7.2.2. While the written objectives of the 2013 development plan for Ashbourne indicate that there was a surplus of residentially zoned lands available, I note that the site is located close to the town centre (approx. 400m) and would generally accord with development plan policies regarding the location of elderly residential accommodation close to services and amenities. In this regard, the proposed use at this location may be regarded as acceptable in principle, subject to all other aspects of the development being satisfactory.

## 7.3. Design and Layout

- 7.3.1. The appeal site is irregular in shape and of narrow width, being approx. 35m wide at its narrowest point including the southern stream. Drainage constraints and the extensive road frontage also present challenges to the development on the site. The design and layout of development were substantially amended following a request for additional information by the planning authority.
- 7.3.2. The revised design comprises a primarily two-storey block extending for approx. 143m east-west across the site. This two-storey block is broken up at intervals with three-storey service elements. A large surface car park is provided in the northeastern part of the site fronting the road.
- 7.3.3. I note that the elevational treatment and form of the building reflects the design approach of housing to the north of the site in Ashewood. I consider, however,

having regard to the scale of the building and its relationship with adjoining roads, that the design approach is unsatisfactory. The overall length of the structure and the repetition in building form results in an unsatisfactory design solution for the site. Combined with the extensive hard landscaping proposals it is considered that the proposed development would be detrimental to the visual amenities of the area.

7.3.4. In terms of residential amenity for future occupants, the internal layout would appear to be satisfactory. I note that HIQA are the relevant authority for standards of residential care in this regard. Residential amenity / open space is provided within the lower flood relief areas and in the form of a roof terrace. The development plan does not set specific open space standards for nursing homes. HIQA standards refer to the provision of access to safe, accessible and appropriate outside spaces where residents may spend meaningful time outdoors. While I note the design aspects of the proposed roof terrace, I am not satisfied that this would constitute the most appropriate form of amenity space for nursing home residents. I have commented further below on the suitability of the flood relief areas to act as amenity areas for residents.

7.3.5. The further information response indicates that daylighting and sunlighting were considerations in the redesign of the building. Having regard to the scale of the proposal and the pattern of development in the surrounding area, I do not consider that the development would negatively impact on the amenities of surrounding residential properties. All trees are located on the opposite stream bank and no removal is required to facilitate the development.

#### **7.4. Drainage and flooding**

##### **7.4.1. Flood Zone and Vulnerability of Proposed Use.**

All studies undertaken in this area indicate that the site is subject to flooding for the 1% AEP. This risk extends to the area beyond the appeal site boundaries. The proposed use on the site is a highly vulnerable one, particularly given the likely mobility issues for the majority of residents. The Flood Risk Management Guidelines clearly direct highly vulnerable uses away from sites at risk of flooding, and Flood Zone A in particular.

The subject lands are currently undeveloped. As noted above, the site is zoned for community, social and educational facilities, wherein nursing home use is open for consideration rather than permissible in principle. I understand this zoning objective as not specifically accommodating residential homes but facilitating such uses all else being equal. Nursing homes use is also permissible or open for consideration in other land use zones (A2, A1, B1, and C1).

The use may be regarded as appropriate given the proximity of the site to services and amenities, however, there is no specific requirement for the development on the subject lands. I consider that the avoidance and substitution principles of the Floor Risk Management Guidelines are applicable in this case.

#### **7.4.2. Ashbourne Flood Alleviation Scheme.**

The Ashbourne Flood Alleviation Scheme (FAS) was approved in 2016. The scheme is partially complete and is currently scheduled for completion later this year. This scheme relates to works along the C1/7 tributary of the Broadmeadow River which runs along the southern site boundary. The scheme design reports are not publicly available, however, extracts are included in the applicant's SSFRA. The works involve channel improvements, culvert upgrades and other works, including the diversion of a proportion of floodwaters from the channel, approx. 1.2km upstream of the appeal site. The FAS identifies existing flow rates and predicted post-completion flow rates along the watercourse, including at the culvert under Hunters Lane to the west of the site. At time of inspection, works had been undertaken at the channel upstream of Hunters Lane. Mapping of pre and post completion flood extents was developed, which indicate that the scheme will only partly alleviate the flood risk for the subject site. A large proportion of the site will remain within Flood Zone A on completion of these works.

As part of an adjacent application for residential development on lands to the north of the appeal site (PA ref. AA190915), the applicants referenced discussions with the OPW in October 2019 and identified updated details of proposed flood alleviation works. It was confirmed that completion of the current phase of works would relieve flooding on Hunters Lane. The details provided in that application also identified that channel improvement works were to be undertaken along the stream to the

immediate west / upstream of the appeal site. I note that these updated design details were not identified in the subject application.

#### **7.4.3. The proposed development**

The application recognises the flood risk associated with the site. In this regard, the development proposes the reduction of ground levels along the southern and eastern boundaries in order to provide compensatory flood storage. Ground levels elsewhere on the site will be increased. It is stated that this will be sufficient to accommodate storage lost as a result of the development and that it would reduce the extent of flooding on adjoining lands. Maintenance access will be provided from the northeastern corner of the site.

SUDS measures to be incorporated into the development include in particular, use of an attenuation / detention tank catering for a 1% flood event, with discharge limited to greenfield rates. I note that internal reports indicate that the volume of such storage should be increase. The site is traversed by an existing surface water outfall from adjoining development to the north, which discharges to the stream on the southern site boundary. This surface water line is to be rerouted through the site as part of the proposed development.

#### **7.4.4. Site Specific Flood Risk Assessment (SSFRA)**

A SSFRA was submitted with the application. The assessment identifies the existing 1% and 0.1% flood risk zones without the development, based on the reduced future flow rates predicted in the Ashbourne Flood Alleviation Scheme at Hunters Lane (3.5m<sup>3</sup>/sec). The predicted SSFRA 1:100 year flood extent is greater than that identified in the Flood Alleviation Scheme post-completion of works, notwithstanding the use of the same flow rates. It is considered appropriate to take a conservative / worst-case scenario for the purpose of this assessment, which would equate to the flood extents described in Section 5.2 of the SSFRA.

Flood levels predicted in the SSFRA, based on the flow rates used in the Ashbourne Flood Alleviation Scheme and allowing for the proposed flood storage, are as follows:



	<b>Without development</b>	<b>With development</b>
Flood level 1:100	66.227m AOD	65.95m AOD
Flood Level 1:1000	66.517m AOD	66.04m AOD
Proposed finished floor level	<b>FFL 66.35m AOD</b>	

When the proposed development, including proposed flood storage, is modelled (Figure 5-3 of the SSFRA), the assessment indicates that the extent of flooding on the site and in the surrounding area is reduced and that flood depths across the site are reduced. Similarly, it is indicated that the flood storage will reduce surcharge at a downstream culvert and thereby reduce downstream flood risk. The SSFRA indicates that finished floor levels of 66.35m are set above to 1:1000 year flood level plus 300m freeboard, subject to completion of the flood scheme, thereby placing the property in flood zone C. Figure 5-3 does not, however, identify the internal roads and car park across the site whose ground levels are also to be raised significantly.

In considering the application, the planning authority requested that the flood risk assessment use an increased flow rate of 3.63m<sup>3</sup>/sec. When these flow rates are modelled, the SSFRA indicates that they would result in a minor increase in the depth of flooding across the site, being approx. 30mm deeper than original estimates. The applicants dispute the use of these increased levels, however, as no basis or justification for their use has been provided by the planning authority. I note that the planning authority response to the appeal does not address this matter directly and does not clarify the basis for use of this increased flow rate. The flow rate used in the assessment is based on the published Flood Alleviation Scheme and I consider it reasonable to adopt this rate in the absence of any justified alternative.

#### 7.4.5. **Flood Storage**

Having regard to the vulnerability of the site to flooding, the development proposes raising ground levels across a significant area of the site above predicted flood levels. This relates to the building footprint as well as car parking, open spaces and internal roads. Conversely, ground levels on the southern and eastern parts of the site are to be reduced in order to provide compensatory flood storage.

The level of flood storage to be provided on site is quantified as 2,306m<sup>3</sup>, compensating for a stated loss of 2,018m<sup>3</sup> of storage. The basis for these stated volumes is not provided, and the SSFRA states that a detailed assessment of storage requirements will be undertaken at detailed design stage. I note that the stated ground floor area of the nursing home is 2257.6-sq.m.

I have difficulty reconciling these stated storage volumes requirements with

- a site area of 0.9450ha,
- existing and proposed ground levels identified on survey drawings and site plans, and
- a “without development” 1:100 AEP flood depth of 66.227m to be accommodated.

I note also that the submitted drawings are not consistent in terms of existing and proposed ground levels within this flood storage area – in particularly dwg. 102A - *Proposed Site Levels, Services* and 103A – *Proposed Site Sections & Details*. The scale on some of the submitted section and detail drawings are also incorrect.

The applicants argue that the flood extent predicted in the FAS is smaller, therefore requiring a reduced level of storage. I consider, however, that the basis for these flood storage volumes is critical to the assessment of the proposal as this is the principle flood mitigation measure proposed for this site. I am not satisfied that the adequacy of the proposed storage areas has been adequately demonstrated or that the efficacy of the solution can be verified. In this regard, I note also the guidance provided section 3.3.1 of the technical appendices of the flood risk management guidelines in relation to the basic requirements for compensatory flood plain storage.

These flood storage areas are proposed to act as amenity space for future residents. While surveys of the existing stream profile were undertaken, the presentation of the survey data in the submitted drawings and SSFRA makes it difficult to assess fully.

Providing necessary flood storage involves reducing the northern bank of the watercourse by 1m+ along most of the site boundary, thereby increasing the frequency of inundation of these lands. No assessment has been undertaken of the likely frequency of such events, thereby potentially impacting on the usability and suitability of the space for residential amenity.

#### 7.4.6. **Site Access**

The principle access to the site is via Hunters Lane to the west, which is currently within Flood Zone A. Flood alleviation scheme mapping indicates that completion of the scheme will address this risk. Modelling undertaken by the applicants indicates, however, that Hunters Lane will still lie within Flood Zone A for 1:100 and 1:1000 year events following completion of the flood alleviation scheme and proposed development.

The proposed ground levels on the site will elevate car parking and internal access roads above predicted flood levels. An alternative access route to the site from the east is now available via Archerstown Wood. This leads through recently constructed residential development to Milltown Road. Having regard to the nature of these roads, I would regard such an alternative emergency access route as acceptable in the event of a significant flood event.

#### **7.4.7. PA Decision**

The planning authority decision identifies a number of issues in relation to the SSFRA, however, I would query the level of analysis undertaken in relation to the submitted documentation.

In particular, I note references to issues with the study area and catchments used in the study. It is suggested that the critical flows used in the assessment are too small, however, the flow rates modelled followed from the request of the planning authority for further information. Reference is also made to the failure to identify all culverts which may potential surcharge and impact on the appeal site. It is not clear from the reports on file whether there are specific issues which are not otherwise addressed in the flood alleviation scheme which may impact on the appeal site. I consider that additional information from the planning authority reports would be useful to identify such deficiencies.

Planning authority reports indicate that there was no allowance for climate change in the assessment. I note that the FAS provided for the effects of climate change and that these conditions are achieved in the proposed design. The proposed finished floor levels exceed the relevant flood levels identified in the FAS and in the applicant's assessments.

With regard to prematurity, I note that the Flood Alleviation Scheme is currently under construction and is due for completion by OPW in Q4 2020. There may be

some delay to works in the current crisis however, it can be assumed that completion will occur in a reasonable period. I note also documentation submitted in respect of the adjoining application for residential development on lands to the north, in this regard. I consider that there is a reasonable expectation that the flood alleviation scheme will be completed, and I do not therefore consider that the development can be regarded as premature in this regard.

#### **7.4.8. Conclusion**

While the location is generally suitable for nursing home use, I do not consider that a requirement for the development of this highly vulnerable use on these Flood Zone A lands has been demonstrated, having regard to the criteria set out in the flood risk management guidelines. I consider that the principle avoidance and substitution are applicable in this case.

The proposed development is predicated upon mitigation through the creation of compensatory storage within the appeal site. The SSFRA indicates that such works will reduce overall flood risk to both the appeal site and adjoining lands, however, the adequacy of proposed compensatory storage capacity has not been satisfactorily demonstrated. The frequency of inundation of the flood storage area has not been determined such that it may not serve as a suitable residential amenity area.

Having regard to the foregoing, I am not satisfied that development of the nature proposed would comply with the provisions of the flood risk management guidelines, would not present a risk to public health and would not provide an adequate standard of development.

#### **7.5. Other Matters Arising**

##### **7.5.1. Car parking**

7.5.2. The development provides 88 no. bedspaces, requiring the provision of 29 parking spaces at 1 per 3 no. bedspaces. Staffing levels for the revised scheme are not detailed, however, the original planning application indicated that 18 no. staff, working on rota, would serve the 94 bed spaces originally proposed. Engineering reports submitted with the application indicate that occupancy would include 50 no.

staff. 51 no. parking spaces are provided on the site. Based on bed space requirements, the further information response indicates that this would leave 22 no. parking spaces for staff use. While this may provide a satisfactory level of provision, clarification on overall staffing numbers should be provided.

- 7.5.3. At further information stage, the applicants were requested to provide a 3m wide cycle path and footpath along the frontage of the site. In the event of a decision to grant permission in this case, final design of such should be subject to agreement with the planning authority.

## 7.6. **Material Contravention**

- 7.6.1. Reason no. 3 of the planning authority decision to refuse permission states that insufficient information had been provided to enable the planning authority to determine that the development would not be likely to have a significant effect on a European Site and that it would therefore materially contravene development plan objective NH OBJ2. This objective is as follows:

To ensure an Appropriate Assessment in accordance with Article 6(3) and Article 6(4) ....., is carried out in respect of any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect on a Natura 2000 site(s), either individually or in-combination with other plans or projects, in view of the site's conservation objectives.

- 7.6.2. An NIS was submitted in response to the planning authority request for further information, however, I note that the planners report raises issues in respect of the conclusions reached therein.
- 7.6.3. S.37(2)(a) of the 2000 Act, as amended, states that the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.
- 7.6.4. S.37(2)(b) states that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the

development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

- (i) The proposed development is of strategic or national importance,
- (ii) There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

7.6.5. Having regard these matters, I would comment as follows:

- (i) The proposed development is not of strategic or national importance,
- (ii) The development plan objective is clear that the planning authority will ensure that AA is undertaken in respect of development likely to have a significant effect on a Natura 2000. This was requested by the planning authority at further information stage, in compliance with this objective. The planning authority do not concur with its findings, however, this would not materially contravene the stated objective.

In respect of this application, I do not concur that the stated objective has been materially contravened.

- (iii) There are no guidelines, policy directives or otherwise which indicate that permission for this development should be granted. The Planning and Flood Risk Management Guidelines would discourage such uses in areas at risk of flooding.
- (iv) Since the making of the current development plan surrounding residentially zoned lands have been developed, however, there is no compelling reason to grant permission on the basis of such development.

Having regard to the above and in accordance with S.37(2)(b), I consider it is open to the Board to grant permission for the proposed development where the Board were so minded.

## 8.0 **Appropriate Assessment Screening**

- 8.1. I note that the site is not designated for any nature conservation purposes and is not necessary for, or connected to, the management of any European site. The closest European sites / connected sites are Malahide Estuary SAC (000205) and SPA (004025). The Broadmeadow River discharges to the estuary site, approx. 14km downstream of Ashbourne. Rogerstown Estuary SPA and SAC occur a similar distance from the appeal site, however, they are not hydrologically connected thereto.
- 8.2. A Natura Impact Statement was submitted at further information stage. Site surveys were undertaken in November 2019 and flora and fauna encountered and observed are identified. Stage I screening identifies one European Site within the possible zone of impact of the site – Dundalk Bay SAC and SPA. I note that there is no direct connection between the appeal site and Dundalk Bay and the report fails to consider the hydrologically connected site of Malahide Estuary SAC and SPA. While I note that this may be partly due to an error within the planning authority request, a complete screening assessment would have identified all sites connected to / within the zone of influence of the proposed development. I therefore regard the screening stage of the submitted NIS as deficient.
- 8.3. The qualifying interests for Malahide Estuary SAC are:
- Mudflats and sandflats not covered by seawater at low tide [1140]
  - Salicornia and other annuals colonising mud and sand [1310]
  - Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]
  - Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
  - Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
  - Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

8.4. The special conservation interests for Malahide Estuary SPA are:

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

8.5. There is no evidence of the site being used as an ex-situ foraging or roost site for species of conservation interest and it is considered that watercourses are the pathway for potential impacts on the Natura network. The proposed development involves significant earthworks along an approx. 170m stretch of the southern watercourse and along approx. 90m of the eastern drain, with significant filling works proposed across the remainder of the site. The primary potential impacts arising from these works are increased sedimentation / particulate run-off to the watercourse and accidental pollution of the watercourse, discharging to the European Site.

8.6. Stage II of the NIS identifies measures to mitigate potential negative impacts on Natura Sites. Operational impacts are mitigated via connection of the development to mains wastewater services. Construction impact are noted to potentially give rise to increased particulate loading in drainage ditches and mitigation measures are identified, which generally comprise standard construction measures.

8.7. The NIS conclusion statement notes that there is potential for impacts on Dundalk Bay SAC / SPA but that subject to identified mitigation measures negative impacts



can be eliminated. The failure to consider the Malahide Estuary site is a fundamental flaw in the assessment. At appeal stage, the first party contend that the same mitigation measures would address potential impacts on the estuary site and there is no rationale not to grant permission for the development. I would accept that there is likely to be overlap between the potential effects of the development and associated mitigation measures identified in respect of Dundalk Bay SPA / SAC and those in respect of Malahide Estuary SAC / SPA. Having regard to the location and differing conservation interests of these sites, however, a proper assessment of potential impacts would be required. Where the Board were minded to consider a grant of permission in this instance, it would be open to them to request such a revised assessment.

- 8.8. In the absence of same, I am not satisfied that it has been demonstrated that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of Malahide Estuary SAC or SPA in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

## **9.0 Recommendation**

- 9.1. That permission be refused for the proposed development. Note, reason no. 2 below is a new issue, not raised in the planning authority decision.

## **10.0 Reasons and Considerations**

1. The site of the proposed development is located within an area which is at risk of flooding. The Board is not satisfied, on the basis of the information lodged with the planning application and with the appeal, that the proposed development would not give rise to a heightened risk of flooding either on the proposed development site itself, or on other lands. In particular, the Board are not satisfied that the design and capacity of the proposed flood storage measures have been adequately detailed or that their effectiveness has been satisfactorily

demonstrated in the documentation submitted. The proposed development of this highly vulnerable use would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

2. Having regard to the pattern of development in the vicinity, it is considered that, by reason of the extensive linear form and layout of the proposed nursing home and relationship with the adjoining roads, the extent of hard landscaping and car parking provision to the front of the building line, the proposed development fails to provide an appropriate form of development for this location and would detract from the streetscape and visual amenities of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
  
3. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that adequate information has been provided on the impact of the proposed development on Malahide Estuary SAC (000205) and Malahide Estuary SPA (004025). It is therefore considered that the Board is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the proposed development will not adversely affect the integrity of a European Site and it is therefore considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

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Conor McGrath  
Senior Planning Inspector

11-5-2020