



An  
Bord  
Pleanála

## Inspector's Report ABP 306645-20

### Development

4-bedroom detached dwelling including relocating the existing front boundary wall and entrance to form a new footpath with associated siteworks all at a site to the north and adjoining the garden of Stone House.

### Location

Stone House, Streamstown, Malahide, Co. Dublin

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F18A/0560

### Applicant

Janine Jennings

### Type of Application

Permission

### Planning Authority Decision

Refuse Permission

### Type of Appeal

First Party

### Appellant

Janine Jennings

### Observer(s)

None

### Date of Site Inspection

02<sup>nd</sup> June 2020

**Inspector**

Brendan Coyne

## 1.0 Site Location and Description

1.1. The site (0.08 ha) comprises an undeveloped, rectangular shaped site located on the eastern side of Streamstown Lane, c. 2km south-west of Malahide. The roadside boundary of the site is defined with stone wall with some low growing shrubs to its front and a 3.5m wide vehicular entrance gate, set back c 0.6m from the road edge. The side and rear boundaries of the site are defined with a timber post and rail fence, mature trees and hedging. The site is relatively level and its ground surface is laid with gravel, currently overgrown with weeds and vegetation. Lands adjoining the site to the sides (north and south) and rear (east) contain 2 storey detached dwellings. An open stream flows in an easterly direction on lands opposite the site on the western side of the Streamstown Lane, before being culverted under the public road and subject site.

## 2.0 Proposed Development

2.1. Permission sought for the following;

- Construction of a detached 2 storey 4 no. bedroom dwelling (220 sq.m.),
- Relocation of the existing front boundary wall and vehicular entrance to provide a new footpath to its front,
- Associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Fingal County Council refused permission for the proposed development. The 2 no. reasons for refusal were as follows;

1. The subject site has a culverted tributary of the river Sluice traversing it. The most recent updated OPW flood mapping for the Streamstown area (the Sluice model fluvial flood extents during an 0.1% event) indicates that the proposed site is located entirely within flood zone B. As per best practice and the Planning System and Flood Risk Management Guidelines, development for houses within a flood

zone B area should be avoided. Therefore, the proposed development would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

2. The access proposed to serve the proposed dwelling from Streamstown lane suffers from inadequate sightlines. The proposed development would represent an intensification of the use of this substandard access/egress. Furthermore, the required sightlines are not achievable due to the location of the existing residential unit, the Stone House, to the south of the subject house in addition to the horizontal and vertical alignment of the road. As such the proposed development would endanger public safety by reason of a traffic hazard and is not in accordance with the proper planning and sustainable development of the area.

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

#### **3.2.1. Planning Report**

Basis for the Planning Authority's decision. Includes:

- The proposed residential development is acceptable in principle, in accordance with the 'RS' zoning objective for the site.
- The design of the proposed dwelling would integrate with existing dwellings located within the immediate vicinity.
- The proposed dwelling complies with Development Plan standards with regards minimum floor areas, room sizes and private amenity space.
- The proposal would provide a good quality of internal amenity for its future occupants.
- The proposed dwelling would not impact on adjacent neighbouring dwellings by way of overlooking or overshadowing.
- The site is located within noise zone B associated with Dublin airport and as such would require appropriate noise insulation in accordance with Objective DA07 of the Development Plan. This can be dealt with by way of Condition in the event of a grant of permission.

- Further to the Irish Water report, there is no capacity within the existing waste network to facilitate the proposed development.
- The site has a waterway running directly through it. This waterway is a tributary of the River Sluice which is currently culverted on the subject site. The applicant is proposing to re-direct the existing 750mm diameter culverted river to the north of its existing location within 2 no. 450mm diameter culverts, which is a reduction in the current potential capacity of the existing culvert.
- According to the most recent updated OPW flood mapping for the Streamstown area, during a 0.1% event, the entire subject site is located within flood zone B. As per best practice and *The Planning System and Flood Risk Management Guidelines*, development within a flood zone B area should be avoided.
- The Planning Authority share the concerns of the Water Services Section and consider that the proposed development should be refused permission.
- The applicant should be requested to investigate providing a connection to serve the proposed development to the alternative network which is located within the vicinity of the site. This can be achieved by way of a request for additional information.
- It is considered that the existing access is substandard and the required sightlines of 45m are not achievable as a result of the location of the existing dwelling located to the south (The Stone House) in addition to the horizontal and vertical alignment of Streamstown Lane.
- Having regard to the report received from the Transportation Planning Section, it is considered that the proposed development would give rise to a traffic hazard at this location and as such is not acceptable.

### 3.2.2. Other Technical Reports

#### 3.2.3. *Transportation Planning Section:*

- The site was a field with an old disused agricultural access and was cleared and levelled with hardcore and a new entrance was constructed without permission a few years ago.

- The access for the proposed development is substandard and the required sightlines are not achievable due to the location of the existing residential unit to the south as well as the horizontal and vertical alignment of the road. Furthermore, the forward visibility of vehicles using the entrance is restricted in the same manner.
- The Transportation Planning Section recommends that the proposed development is refused permission on the grounds that it would create a traffic hazard.

#### 3.2.4. **Water Services Section:**

- Records for the Streamstown area indicate that the site of the proposed development has a river running directly through it and according to the most recent updated OPW flood mapping for the Streamstown area, the proposed development is located in a flood zone B.
- As per best practice and The Planning System and Flood Risk Management Guidelines, development within a flood zone B area should be avoided and therefore refusal is recommended.

#### 3.2.5. **Parks Division:** No objection subject to Conditions.

### 3.3. **Prescribed Bodies**

#### 3.3.1. **Irish Water:**

- The site is located within the Connolly Lane Pumping Station catchment area.
- Currently, the Kinsealy Pumping Station discharges into a gravity sewer in the catchment but the flow will be diverted after the completion of the Kinsealy Local Network Reinforcement Project (LNRP).
- There are significant wastewater network constraints within the surrounding area.
- Kinsealy LRNP with a new Pumping Station has to be completed and connected to the North Fringe Sewer. This upgrade project is scheduled to be completed by Q4 of 2021, subject to change.

- A revised hydraulic model is required to assess future scenarios with the LRNP flow diversion, future peak flow from the existing estates; load from the proposed development and from other potential developments in the catchment.
- Swords-Malahide Drainage Area Plan with hydraulic modelling for the area is in progress and models for the existing network are expected to be available end 2019.
- A new connection to the waste network for the proposed development would only be feasible subject to (inter alia) the following;
  1. Kinsealy LRNP with a new Pumping Station has been completed and connected to the North Fringe Sewer.
  2. Completion the Swords-Malahide Drainage Area Plan and revised hydraulic modelling.
  3. All temporary permitted private pumping stations in the area, currently storing and pumping off peak flows, have to be decommissioned after completion of the LNRP.
  4. The upgrades and modelling outlined above must be completed and in function prior to the new waste connection.

### 3.3.2. ***Dublin Airport Authority:***

- The proposed development is located within Noise Zone B and is subject to the requirements of Objective DA07 of the Development Plan, with regards noise insulation. Conditions recommended in the event of a grant of permission.

## 4.0 **Planning History**

### 4.1.1. ***Subject Site and adjacent lands further to the north***

**P.A. Ref. F07A/0564** Outline Permission GRANTED in 2007 for 3 no. detached 2.5 storey houses (approx. 325 - 372m<sup>2</sup> each) on individual sites (approx. 0.16 - 0.26 Ac each) and all ancillary works.

#### 4.1.2. **Surrounding Area**

**P.A. Ref. F19A/0452 / ABP Ref. PL06F.307020** Adjoining lands to the north-east - Application currently on appeal to An Bord Pleanála.

Permission granted by Fingal County Council for the construction of 57 no. residential units of detached, semi-detached, and terraced housing comprising of 4 No. 2-bed units; 14 No. 3-bed units; 37 no. 4-bed units; and 2 No. 5-bed units. Vehicular access to the development is to be provided from Streamstown Wood to the South, and Park Avenue to the East. The Park Avenue entrance walls will be reconfigured. Two semi-detached dwellings will face onto Streamstown Lane. The boundary wall to the north of the site shall be 2.4 metres high. The boundary fence to the East shall be 2.4 metres high. The proposed development includes associated landscaping including the completion of the existing open space, public open space, boundary treatments, site infrastructure (including internal roads, storm and foul sewers, SuDS and connection to the public systems), utilities, and all associated site development works on a site of c. 2.65ha.

**P.A. Ref. F18A/0168** - Adjoining lands to the north-east.

Permission GRANTED in 2018 for alterations to previously approved development (Reg. Ref. F13A/0443/An Bord Pleanála Ref. No. PL06F.243435) which permitted 22 no. two storey plus attic level dwellings. The proposed alterations consist of: (i) an increase in the site area of the previously approved development from 2.44 hectares to 2.57 hectares, to include a portion of land immediately north-west fronting Streamstown Lane, and associated alterations to the application site boundary (red line area); and (ii) alterations to previously approved house types and unit mix to increase the number of dwellings from 22 to 32 no. (the development now comprising 2 no. two-storey, three bedroom, semi-detached dwellings fronting Streamstown Lane; 21 no. two and a half storey, five bedroom, detached dwellings and 9 no. two and a half storey, six bedroom, detached dwellings fronting Streamstown Wood and Park Avenue with on curtilage car parking, private open space, internal access roads, footpaths, landscaping, boundary treatment, street lighting, SuDS drainage and all ancillary site development works necessary to facilitate the development. Add Info received 13th June 2018. Clarification of Add Info received 6th November 2018.



**P.A. Ref. F14A/0059** - Adjoining lands to the north

Permission GRANTED for the construction of the following: (1) Site 1 - 1 no. new 2 storey detached house 314.3 sq.m. north of the existing farmhouse; (2) Site 2 - 1 no. new 2 storey detached house 314.3 sq.m., north of the existing farmhouse; (3) Site 3 - a 2 storey extension 142.5 sq.m. to the north and alterations to the existing farmhouse; (4) Site 4 - a new 2 storey detached house 306.1 sq.m. to the south of the existing farmhouse; (5) all ancillary site works.

## 5.0 Policy and Context

### 5.1. Development Plan

Fingal County Development Plan 2017-2023 is the statutory plan for the area. The following provisions are considered relevant:

**Zoning:** The site is zoned objective 'RS' which seeks 'to provide for residential development and protect and improve residential amenity'.

**Objective DMS39** New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

**Objective PM44** Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.

**Objective PM45** Promote the use of contemporary and innovative design solutions subject to the design respecting the character and architectural heritage of the area.

**Objective PM65** Ensure all areas of private open space have an adequate level of privacy for residents through the minimisation of overlooking and the provision of screening arrangements.

**Chapter 12** Development Management Standards

**Objective DMS24** Require that new residential units comply with or exceed the minimum standards as set out in Tables 12.1, 12.2 and 12.3.

**Objective DMS2** A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy.

**Objective DMS29** Ensure a separation distance of at least 2.3 metres is provided between the side walls of detached, semi-detached and end of terrace units.

**Objective DMS87** Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows:

- Houses with 4 or more bedrooms to have a minimum of 75 sq.m. of private open space located behind the front building line of the house.

Narrow strips of open space to the side of houses shall not be included in the private open space calculations.

**Table 12.8** Car Parking Standards

**Strategic Policy 20** Ensure new developments have regard to the requirements of the Planning System and Flood Risk Management Guidelines.

**Objective SW02** Allow no new development within floodplains other than development which satisfies the justification test, as outlined in the Planning System and Flood Risk Management Guidelines 2009 for Planning Authorities (or any updated guidelines).

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

**Objective WQ05** Establish riparian corridors free from new development along all significant watercourses and streams in the County. Ensure a 10 to 15 metre wide riparian buffer strip measured from the top of the bank either side of all watercourses, except in respect of the

Liffey, Tolka, Pinkeen, Mayne, Sluice, Ward, Broadmeadow, Corduff, Matt and Delvin where a 30m wide riparian buffer strip from top of bank to either side of all watercourses outside urban centres is required as a minimum.

**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.

## 5.2. Other Relevant Government Guidelines

*The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)*

*Greater Dublin Strategic Drainage Study*

## 5.3. Natural Heritage Designations

The site is located c. 2km to the south-west of the Malahide Estuary SPA (Site Code: 004025) and SAC (Site Code: 000205).

## 6.0 Environmental Impact Assessment - Preliminary Examination

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.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

A first-party appeal was received from 2HQ Consulting Engineers, representing the applicant Janine Jennings, against the decision made by the Planning Authority to refuse permission for the proposed development.

The appeal submitted provides a revised proposal comprising the following;

- Relocation of proposed vehicular entrance 4.5m south to enable the provision of required sightlines.
- Relocation of the footprint of the proposed dwelling c. 1 metre south of its originally proposed location.

The main grounds of appeal seek to address the issues raised in the two reasons for refusal. The appeal submitted also addresses the issue of the existing surface water culvert that traverses the site, which while not cited in the reasons for refusal, was highlighted in the Planners Report. These are summarised under the headings below;

#### 7.1.1. *Re. Flood Risk*

- The reason for refusal refers to the most recent updated OPW Flood Mapping showing the site as being 'located entirely within Flood Zone B' and bases the rationale for the decision to refuse permission on the premise that 'as per best practice and the Planning System and Flood Risk Management Guidelines, development for houses within a flood zone B should be avoided'.
- The applicant wishes to question the validity of the Planning Authority's reason for refusal given that:
- The information on most recent OPW flood maps for the general Kinsaley/Streamstown/south Malahide area is 'under review following an objection, submission and/or further information received'.
- A rigid prohibition of development for houses within a flood zone B is not a correct application of the Planning System and Flood Risk Management Guidelines nor is

it in compliance with the Flood Risk Polices as set out in the Fingal County Development Plan.

### 7.1.2. **Re. Flood Maps**

- Fingal County Council appointed RPS Consulting Engineers in 2015 to undertake a Strategic Flood Risk Assessment (SFRA) and prepare a Strategic Flood Risk Assessment Report for its administrative area. The purpose of the SFRA was to inform the decisions of Fingal Co. Co with respect to the zoning of lands in the Fingal County Development Plan 2017-2023 as per the requirements set out in the Planning System and Flood Risk Management Guidelines.
- The SFRA prepared by RPS and adopted by Fingal Co. Co included a series of flood maps which were developed using highly accurate flood modelling techniques and software. These maps indicated the predicted extent of flooding under a number of different flood scenarios.
- An extract from the SFRA Flood Map for the general Streamstown/Kinsaley area is shown on Fig. 2.1 submitted.
- The SFRA flood map indicates that the subject site shall not be susceptible to flooding under any scenario up to and including the 0.1% AEP event. The SFRA Flood Map indicates that the subject site is located within a Flood Zone C and consequently suitable for all development types.
- The subject site was subsequently zoned as 'RS-Residential' in the Fingal County Development Plan 2017-2023.
- The flood map for the Streamstown Area prepared as part of the SFRA carried in support of the Fingal County Development Plan 2017-2023 does NOT identify the lands as being susceptible to flooding. It is noted that the SFRA forms part of the adopted Development Plan and the applicant is not aware of any subsequent adopted variation or amendment to the Plan that relate to these maps.
- Further Flood Maps for the general Malahide area were prepared by the OPW in 2019 as part of the Fingal East Meath FRAM Study. The flood maps produced as part of the FRAM study are available on the OPW Floodmaps.ie web portal.

- An extract from the FRAM Study Flood Extents Map for the general Streamstown Area is shown on Fig. 2.2 submitted.
- The SFRA and FRAMS Flood Extents Maps are generally similar and both identify flooding taking place in areas abutting the Sluice River. However, the OPW Map does identify further areas remote from the river, including part of the subject site, as being susceptible to fluvial flooding particularly under a 0.1% AEP scenario.
- In general, the most recent set of maps would be deemed the more accurate. However, in this case the intervening period between the two flood reports is only four years. It is also noted that the OPW background map does not include a number of developments constructed over the past decade including the Streamstown Woods development located to the immediate east of the subject site. New developments can materially change the topography of an area and it is not clear whether these changes are allowed for in the OPW assessment.
- It is further noted that the Flood Map Index Sheet on the OPW FloodMaps.ie Web Portal indicates that the FRAM Map for the Kinsaley/Streamstown/South Malahide area is one of a number of flood maps which are currently 'under review' following 'an objection, submission and/or further information received'. A screenshot of the Map Index Page is shown on Fig.2.3 submitted.
- The current version of the OPW FRAMS Map for the area can therefore not be deemed to represent a definitive final version.
- While not wishing to disparage the OPW FRAMS Map for the area it is considered that there is sufficient reason to exercise caution in depending on its accuracy. It is the applicant's view, that the appropriate flood map on which to base any decision is the SFRA Flood Map which forms part of the adopted Fingal County Development Plan 2017-2023.
- The SFRA Map indicates that the site is not susceptible to fluvial flooding under any scenario. On this basis the proposed development is not at risk of flooding and planning permission should not be withheld on a flood risk related reason.
- The applicant lives adjacent to the site and has never known the site to flood in the 20+ years that she has lived there.

**7.1.3. Re. Application of the Planning System and the Flood Risk Management Guidelines**

- The Fingal Co. Co. SFRA Map indicates that the site is not susceptible to flooding under any scenario. The OPW FRAMS Map does however show part of the site to be susceptible to fluvial flooding under a 0.1% AEP and consequently should be designated as a Flood Zone B.
- The Planning Authority has used the OPW FRAMS Flood Map rather than the SFRA Flood Map as the basis for making its decision. The applicant has concerns regarding the use of this map given its current 'under review' status.
- Nevertheless, should the OPW Map be deemed to be the appropriate map the applicant contends that the Planning Authority has incorrectly applied the Planning System and Flood Risk Management Guidelines and failed to comply with Policy SW02 of the Fingal County Development Plan 2017-2023 in making its decision.
- The OPW Map shows part of the site to be susceptible to flooding under a 0.1% AEP Flood Event and as such should be designated as a Flood Zone B. The extent of the affected area is shown on Fig. 2.4 submitted.
- As can be seen from Fig. 2.4 submitted, the reference in the Planning Authorities reason for refusal that 'the site is located entirely within a Flood Zone B' is not correct as only approximately half of the site is affected.
- The Planning Authority has, in this case, taken the approach that it is mandatory to refuse permission for a proposed residential development within a Flood Zone B.
- It is the applicant's view that such a rigid approach is not an accurate application of Planning System and Flood Risk Management Guidelines. These guidelines, while they promote avoiding the placing of residential developments within a flood zone area, do allow this practice in cases where a Justification Test(s) can be satisfied as summarised in Table 3.2 of the Guidelines – reproduced as Fig.2.5 submitted.
- A similar approach is enshrined as Objective SW02 of the Fingal County Development Plan 2017-2023 which allows for development within floodplains in established urban areas subject to the Justification Test being satisfied.

- It is the applicant's view that the Planning Authority failed to take these policies/guidelines into account by not offering the applicant the opportunity to demonstrate compliance of the development with the appropriate Justification Test. Indeed, the application of the approach adopted by the Planning Authority in this particular case to all planning applications would prevent development on significant tracts of serviced and zoned lands throughout all urban areas within the administrative area of Fingal County Council.
- The Planning System and Flood Risk Management Guidelines also require the flood risk associated with placing a development within a flood zone 'should be mitigated and managed through the location, layout and design of the development to reduce such risks to an acceptable level'.
- The OPW Flood Depth Map indicates that any flooding within the site shall be to a depth of less than 250mm as shown on Fig. 2.6 submitted.
- Superimposing the flood depth map onto the topographical map of the site, as shown on Fig. 2.7, shows that the flooding is restricted to areas of the site that are lower than 10.9m in elevation and that, on this basis, 10.9m represents the TWL of the 0.1% AEP Flood event.
- The Flood Maps are based on current climate conditions and make no allowance for the expected increase in rainfall and rising sea levels due to climate change. It is generally accepted that the current 0.1% AEP flood event represents the future 0.5% AEP flood event and that 10.9m can be selected as the appropriate design flood level at the site.
- The current proposed finished floor level (FFL) of 11.3m for the house offers a freeboard of 0.4m above the design flood level. This freeboard is slightly below the recommended value of 0.5m as set out in the Greater Dublin Strategic Drainage Study (GDSDS). It is therefore proposed that the FFL of the house is lifted to 11.6m so as to exceed the recommended freeboard thus ensuring the safety of residents remaining within the house during a flood event and preventing any flood damage to the property. Such a proposal can be easily accomplished without any material impact on the proposal.
- Having part of the site flooding to a depth of less than 0.25m under extreme flood would not block access to/from the site even in the event of an extreme flood event



and would therefore not represent a danger to persons. Flooding of part of the site to such a shallow depth shall cause no economic or environmental damage particularly as the proposed development shall be linked to a public water supply and public sewer network.

- It is considered that any flooding that may occur at the site shall be localised and shallow and that any danger to persons and/or property can be effectively countered by the simple precaution of lifting the FFL of the house by 300mm to 11.6m.

#### **7.1.4. Re. Application of the Justification Test**

- The OPW FRAMS has identified that part of the site is located within Flood Zone B. It is therefore necessary, in order to comply with both the Flood Guidelines and Policy SW 02 of the Fingal Development Plan 2017-2023, to demonstrate that the proposed development satisfies all of the criteria of an appropriate Justification Test.
- The appropriate Justification Test in this case is therefore the Justification Test for Development Management (Box 5.1 of the Planning System and Flood Risk Management Guidelines). The application of this Justification Test to the subject development is set out hereunder:

##### **Criterion No.1**

***(i) The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied, taking into account these Guidelines.***

- The site is located within the defined development boundary of Malahide which is a designated Moderate Sustainable Growth Town within the Metropolitan area of Dublin.
- The site is zoned as 'RS- Residential' in the Fingal Development Plan 2017-2023. The objective of this zoning is to 'provide for residential development and protect and improve residential amenity'. The proposed development fully meets this objective.

- The decision to zone the lands as 'RS-Residential' was subject to a Strategic Flood Risk Assessment which confirmed that the zoning satisfied the criteria set out in the Development Plan Justification Test i.e. the zoning was deemed acceptable from a flood risk perspective.

### **Criterion No.2**

#### ***(i) The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk***

- The predicted flooding is restricted to only a portion of the site and shall be shallow in depth. The proposed development shall result in a maximum loss of 140m<sup>2</sup> of the floodplain area and potentially cause the maximum displacement of circa 20m<sup>3</sup> of flood water. Both values are extremely low and any displaced water could be easily accommodated within the remaining floodplain area through negligible increases (circa 50mm) in the depth of the flood water and/or by minimal re-profiling of levels within the western portion of the site.
- All surface water run-off from the development shall discharge into a series of soakpits located throughout the site with no surface water run-off entering either a piped or open watercourse. The development shall not increase the loading on any existing surface water infrastructure or conveyance channel. It would be important that soakpits are located outside of the identified flood area

#### ***(ii) The development proposed includes measures to minimise flood risk to people, property, the economy and the environment as far as is reasonably possible.***

- The proposed amended FFL of 11.6m for the house offers a freeboard of 0.6m above the design flood level. This freeboard is in excess of the recommended value of 0.5m as set out in the Greater Dublin Strategic Drainage Study (GDSDS) and shall ensure the safety of residents remaining within the house and shall prevent any flood damage to the property and/or its contents.
- Flooding of part of the site to a maximum depth of 0.25m would not block access to/from the site even during an extreme flood event nor shall it represent an unacceptable danger to persons passing through the flood waters either on foot or in a vehicle.

- Persons, particularly emergency services, shall have no undue difficulty in entering/exiting the site even in the event of an extreme flood. It is noted that the surrounding road network offers a number of escape routes from the site that lead away from the source of the flooding. Any flooding that may occur at the site shall therefore not represent an unacceptable danger to persons.
- Flooding to the predicted depth within the garden area of a domestic dwelling site shall cause no economic or environmental damage particularly as the proposed development shall be linked to a public water supply and public sewer network

***(iii) The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and provisions for emergency services access.***

- The proposed development shall not block access to nor adversely impact on the adequacy and effectiveness of any existing private or communal flood management infrastructure.
- The proposed development shall not impede access to the existing twin pipe surface water culvert that traverses the site.
- The proposed development shall have no impact on any existing emergency services access route.

***(iv) The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.***

- The proposed development shall support the proper planning and sustainable development of the Streamstown Area and urban settlement of Malahide for the following reasons:
- It encourages and promote the development of an underutilised infill site in an existing residential area in a manner that protects the character of the area and the environment in accordance with Policy PM44.
- It accords fully with Objective DMS24 of the Development Plan with respect to quality of internal amenity

- It complies fully with Objective DMS87 of the Development Plan with respect to private rear amenity spaces.
- It avails of existing infrastructure and services (i.e. no need for new infrastructure to facilitate the development).
- It supports a compact urban form and the prevention of unnecessary urban sprawl whilst simultaneously promoting sustainable transport choices.
- Overall, it is concluded that the proposed development fully satisfies the criteria set out in the Justification Test for Development Management and accordingly should be deemed an 'appropriate development' despite its possible location within a Flood Zone B as provided for in both Table 3.2 of Flood Risk Management Guidelines and Policy SW02 of the Fingal Development Plan 2017-2023.

#### **7.1.5. Site Entrance / Access**

- The current front (roadside) boundary of the subject site comprises of a 1.2m high stone wall. This wall incorporates a 3.5 wide gate that provides access to the subject site. Both the wall and boundary wall are set back c 0.6m from the road edge.
- The submitted application proposes to set back the existing wall and entrance gate to be c. 2.5m back from the road edge. It is also proposed to extend the existing footpath, which currently terminates to the immediate north of the site, across the entire frontage of the subject site.
- This proposal offers clear betterment for all road users relative to the current position.
- No sightlines were shown on the submitted drawings on the basis that the proposal effectively provided for the continued use of an existing entrance. The views of the Planning Authority with respect to intensification of use of the entrance is however noted and accepted and it is important that adequate visibility is available at the entrance.

- The existing/proposed entrance is located within a 50km/hr speed limit zone. The appropriate design manual in such circumstances are set out in the Design Manual for Urban Roads and Streets (DMURS).
- Section 4.4.5 of DMURS sets out the visibility available to a driver exiting an entrance located within a 50km/hr speed limit zone to be 45m x 2.4m x 1.05/0.6m when measured along the inside running edge of the main road (Streamstown Lane).
- A further requirement with respect to visibility at a site entrance is that drivers travelling along the main road (Streamstown Lane) should have adequate forward visibility or stopping sight distance when approaching the entrance. In particular, it is important that a northbound driver has sufficient advance warning of a vehicle that may be stopped on the main road while waiting to make a turn into the entrance. The appropriate forward visibility/stopping sight distance within a 50km/hr speed limit zone is 45m.
- In summary the appropriate visibility provision at the site entrance should be:
  - a driver exiting the site should have full visibility for 45m in each direction along the main road when positioned at a set-back of 2.4m from the main road edge.
  - A driver travelling north along the main road should have advance or forward visibility of 45m as they approach the entrance.
- A full topographical survey was carried out along Streamstown Lane for circa 75m either side of the site entrance in order to allow for the accurate determination the available visibility.
- This exercise showed that while the required 45m visibility along Streamstown Road is available towards the north that only 41m is available towards the south at the required set-back of 2.4m due to the obstruction offered by the gable end of Stone House and the stone wall fronting its site.
- However, shifting the proposed entrance location by 4.5m towards the south will ensure that the full visibility requirement (45m x 2.4m x 1.05/0.6m) to be achieved

in both directions as shown on Drg. No. P002. This visibility can be achieved without any impact on existing 3rd party boundaries.

- It is also demonstrated on Drg. No. P002 that forward visibility in excess of 45m is available to northbound drivers as they approach the entrance.
- In summary, the proposed slight adjustment to the location of the site entrance shall ensure full compliance with all appropriate standards pertaining to visibility. It is difficult in these circumstances to continue to contend that the proposed development would endanger public safety by reason of a traffic hazard.
- The proposed shifting of the site entrance can be accommodated within the existing site boundary and has no material impact on the site size, site layout or description of the proposed development.
- The proposal represents a valid and effective response to the issue raised by the Planning Authority in relation to visibility at the site entrance and it is requested than the Bord make its decision on the basis of the proposed new location for the site entrance.
- The proposed setting back of the existing front wall shall facilitate the ongoing phased upgrade of the Streamstown Lane as set out in the Streamstown Local Area Plan at no cost to the Roads Authority. In particular there shall be no need to use public funds to acquire land and construct a new wall which would be the case if the existing front boundary wall was retained in the event of permission for the proposed development not being forthcoming.

#### **7.1.6. *Surface Water Culvert***

- While not cited as a reason for refusal, both the Planners Report and the Drainage Section Report refer in negative terms to the proposal to divert a section of the existing surface water pipe(s) that runs in an east west direction along the northern portion of the subject site.
- The proposal was to divert a short section of the existing surface water pipe(s) in order to retain a 6m wide wayleave along the route of the pipe(s) and in particular

to retain a minimum 3m clearance between the pipe(s) and the nearest external wall of the proposed house.

- The submitted drawings and associated Engineering Report indicate that the existing 750mm diameter pipe would be replaced by 2 no. 450mm diameter pipes. The Fingal Co. Co reports correctly point out that that this would represent a reduction in the internal bore area with consequential reduction in the capacity of the diverted section of the pipe.
- Both the notation on the relevant drawing and the references in the Engineering Report are however incorrect and represent an inversion of the actual position. Instead the proposal should have been to replace the existing 2 no. 450mm pipes with a single new 750mm pipe.
- The Applicant regrets and apologises for this error in the submitted report and drawing.
- Photograph submitted detailing a view of the manhole located within the site showing that the existing culvert passing through the site comprises of 2no. 450mm pipes (Fig. 4.1).
- Further confirmation that the existing piped culvert comprises of 2 no. 450mm pipes is provided on the drainage drawings associated with a recent Planning Permission granted for a residential unit located to the immediate east of the subject site (Unit 22 of Streams Town Woods – Planning Ref: F13A/0378) as shown Fig.4.2.
- The corrected proposal (replace 2no. 450mm pipes with a single 750mm pipe) would therefore result in an increase in the capacity of the diverted section of pipe.
- It is accepted that diverting short sections of large diameter live pipes and the introduction of additional manholes along its length is not good practice and has the potential to adversely impact on the operation of the Surface water network in the area. It is therefore now proposed to retain the existing 2 no. 450mm pipes in situ and to instead slightly adjust the footprint of the proposed house so as to retain a minimum separation distance of 3m between the nearest external wall and the pipes as shown on Drg. No. P001A submitted. This drawing also demonstrates that the foundations of the proposed house shall not place any loading onto the 2 no. 450mm pipes.

- It is noted that a 3m clearance being provided to the 2 no. 450mm pipes exceeds the clearance accepted in a number of planning permissions to the east of the subject site.
- Overall the proposal to retain the existing 450mm pipes in situ and ensure that a minimum 3m clearance is provided, should remove any concerns the Planning Authority may have regarding the potential adverse impact the proposed development may have on the operation of the existing surface water network in the area.

## 7.2. Planning Authority Response

- Having reviewed the grounds of appeal, the Planning Authority remains of the opinion that the proposed development would be prejudicial to public health.
- Having regard to the most recent updated OPW flood mapping for the Streamstown area, during an 0.1% event, the entire subject site is located within flood zone B.
- As per best practice and the Planning System and Flood Risk Management Guidelines, development within the flood zone B area should be avoided and as such permission should be refused.
- The access proposed to serve the proposed dwelling from Streamstown Lane suffers from inadequate sightlines.
- The proposed development would represent an intensification of the use of this substandard access / egress.
- The required sightlines are not achievable due to the location of the existing residential dwelling 'Stone House' to the south of the site, in addition to the horizontal and vertical alignment of the road. As such, the proposed development would endanger public safety by reason of a traffic hazard.

## 7.3. Observations

7.3.1. An observation was received from Dublin Airport Authority. Issues raised are summarised as follows;

- The proposed development is located within Noise Zone B.



- Policy Objective DA07 of the Fingal County Development Plan seeks to strictly control the provision of new residential development and other noise sensitive uses within Noise Zones B and C.
- The Dublin Airport Authority request the following requirements be implemented by way of a request for further information and / or planning Condition, as appropriate;
  1. The existing and predicted noise environment of the site be fully assessed with consideration for future airport growth.
  2. Demonstrate that internal noise levels appropriate for habitable rooms can be achieved and maintained.
  3. Appropriate noise mitigation measures be proposed by the Applicant and implemented.

## 8.0 Assessment

8.1.1. I have reviewed the proposed development and the correspondence on the file. I note that the scale, form and design of the proposed dwelling complies with Development Plan residential standards. I am satisfied that the layout and design of the proposed dwelling would not impact on the residential amenity of neighbouring dwellings or the visual amenity of the surrounding area. Having regard to the location of the site within the Dublin Airport Noise Zone B, the requirements of the Dublin Airport Authority can be dealt with by way of Condition. I consider, therefore, that the main issues for consideration in this appeal relate to the following;

- Flood Risk
- Sightlines at the vehicular entrance

These are addressed below.

### 8.2. Flood Risk

8.2.1. The Planning Authority refused permission for the proposed development on the grounds that the appeal site is located entirely within a flood zone B. The reason for refusal states that, as per best practice and the Planning System and Flood Risk

Management Guidelines (2009), development for houses within a flood zone B area should be avoided. On these grounds, the Planning Authority refused permission for the proposed development by reason that it would be prejudicial to public health. The applicant contests this reason for refusal, as set out in Section 7.1 above.

- 8.2.2. Strategic Policy 20 of the Fingal County Development Plan 2017-2023 seeks to ensure new development has regard to the requirements of the Planning System and Flood Risk Management Guidelines (2009). In accordance with the Guidelines, a Strategic Flood Risk Assessment (SFRA) was commissioned by Fingal County Council as part of the Development Plan to assess flood risk within the plan area. Map 16 of the SFRA identifies that the site is located in a Flood Zone C area where the SFRA states that probability of flooding from rivers and the sea is low (less than 0.1% annually or 1 in 1000 years for both river and coastal flooding). Flood Zone C covers all areas of the plan which are not in zones A or B.
- 8.2.3. Table 3.2 of the Flood Risk Management Guidelines provides a matrix of vulnerability versus flood zone to illustrate appropriate development and that which requires a Justification Test. As the site is located within Flood Zone C a justification test is not required, on this basis.
- 8.2.4. The Planning Authority report states that the site is located entirely within a flood zone B, as indicated in most recent updated OPW flood mapping for the Streamstown area. In 2018 the OPW published a Streamstown Mapping Update Report 2018, which is available to view on the OPW's FloodMaps.ie website. This report details that a culverted watercourse flows directly through the appeal site. The Fluvial Flood Extents Maps (2018 and updated in 2019) shows that the appeal site is susceptible to fluvial flooding under a 0.1% AEP and consequently should be designated a Flood Zone B.
- 8.2.5. The Fingal Water Services Department report confirms that a culverted tributary of the river Sluice traverses through the site and that according to the most recent updated OPW flood mapping for the Streamstown area, the entire site is located within a flood zone B area. The report states in accordance with best practice and the Planning System and Flood Risk Management Guidelines, development in a flood zone B area should be avoided. On this basis, the Water Services Department recommend that the proposed development be refused permission.

- 8.2.6. The applicant proposes to retain the existing 2 no. 450mm pipes in situ and to instead slightly adjust the footprint of the proposed house so as to maintain a minimum separation distance of 3m between the nearest external wall and the 2 no. 450mm pipes, as shown on Drg. No. P001A submitted. The drawing submitted by the applicant puts forward that the foundations of the proposed house would not place any loading on the 2 no. 450mm pipes.
- 8.2.7. The applicant contests the Planning Authorities reason for refusal that ‘the site is located entirely within a Flood Zone B’ is not correct, as only approximately half of the site is affected.
- 8.2.8. Having regard to the OPW Fluvial Flood Extents Maps (2019), it is apparent that the location of the proposed dwelling is located directly on lands susceptible to fluvial flooding under a 0.1% AEP and consequently on a flood zone B (moderate probability of Flooding). The OPW Fluvial Depth Map (2019) indicates that flooding within the site shall be to a depth of less than 250mm.
- 8.2.9. Objective SW02 of the Development Plan seeks to ensure no new development within floodplains other than development which satisfies the justification test, as outlined in the Flood Risk Management Guidelines (2009) for Planning Authorities (or any updated guidelines). Section 5.15 of the Guidelines requires that where a vulnerable development which includes housing is located in a flood zone A or B, the planning authority must be satisfied that the proposed development complies with the requirements of a justification test in that the lands are (i) zoned; (ii) will not increase flood elsewhere; (iii) includes measures to minimise flood risk; (iv) that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design and (v) development is compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes. The Guidelines categorises dwellings as ‘highly vulnerable’.
- 8.2.10. The applicant has set out how the proposed development satisfies the criteria set out in the Justification Test as detailed in Section 7.1 above. This can be summarised as follows;

- The site is zoned objective 'RS' which seeks 'to provide for residential development and protect and improve residential amenity'. The proposed development is acceptable in principle under this zoning.
- The zoning of the subject lands under the current Fingal County Development Plan was subject to a Strategic Flood Risk Assessment, in accordance with the Planning System and Flood Risk Management Guidelines (2009).
- The OPW Fluvial Extant Map (2019) shows that not all of the site is located within the flood zone B area.
- The proposed development will not increase flood risk elsewhere. The proposed dwelling would result in a maximum loss of 140sq.m. of the floodplain area. Any displacement of flood water would be accommodated within the remainder of the site, some of which is outside the flood zone B area. The applicant proposes that all surface water run-off from the development shall discharge into a series of soakpits located throughout the site with no surface water run-off entering either a piped or open watercourse. Soakpits would be located outside the flood risk B area.
- The proposed development includes measures to minimise flood risk. The OPW Flood Depth Map indicates that any flooding within the site shall be to a depth of less than 250mm. While the proposed dwelling would be located within the flood zone B area, the applicant proposes to raise the finished floor levels of the proposed dwelling 0.6m above the 10.9m total water level of the flood zone area. This would comply with the requirements of Section 4.4.3 of the SFRA which recommends a 500mm freeboard above fluvial flood levels.
- Flooding to the predicted depth of 0.25m during an extreme flood event would cause no economic or environmental damage.
- Flooding of the site to a maximum depth of 0.25m would not block access to the front /western section of the site, which is located outside the flood zone B area. Access for emergency services would be maintained.
- Access to the surface water culvert traversing the site would be maintained.

8.2.11. Having regard to the foregoing, I consider that the applicant has appropriately applied the requirements of the justification test in order to demonstrate that the risk of flooding to the proposed development is low and will not exacerbate flood levels within the site or surrounding area. The applicant has proposed appropriate flood mitigation measures including the provision of SuDS and the provision of finished floor levels

0.7m above ground levels of the site susceptible to fluvial flooding, as detailed on the OPW Fluvial Flood Extents Maps (2019). I note that the OPW Fluvial Flood Extents Map (2019) for the Kinsaley / Streamstown area is identified on the OPW Floodinfo.ie website as 'under review following an objection, submission and/or further information received'. During site inspection I saw no evidence of flooding on the subject site and the open stream to the west of the site had a very low water level. I note that residential dwellings have been constructed on adjoining lands to either side of the subject site and immediately to its rear (east). The proposed development would not impede access to or place any loading on the existing culverted watercourse which passes through the site. On the basis of the above, I am satisfied that the proposed development passes the Justification Test in accordance with Box 5.1 of the Flood Risk Management Guidelines and the proposed development is deemed appropriate to be located within Flood Zone B on the basis that the mitigation measures stipulated within the justification test are met. It is my view that the proposed development would not raise significant flooding issues and the risk of flooding to the proposed dwelling is minimal. I consider that residual risks are acceptable subject to proposed flood mitigation measures. I recommend, therefore, that the appeal should succeed in relation to the Planning Authority's first reason for refusal.

### **8.3. Sightlines at the vehicular entrance**

- 8.3.1. The Planning Authority refused permission for the proposed development on the grounds that the access serving the proposed development provides inadequate sightlines. The reason for refusal states that the sightlines required are not achievable due to the location of the existing residential dwelling to the south of the subject site, in addition to the horizontal and vertical alignment of the road. The Planning Authority consider the proposal would represent an intensification of the use of a substandard access/egress and would endanger public safety by reason of a traffic hazard. The applicant contests this reason for refusal, as set out in Section 7.1 above.
- 8.3.2. The existing roadside boundary comprises a c. 1.4m high stone wall and a 3.5m vehicular entrance gate with piers to either side, setback 0.6m from the edge of the road carriageway. A public footpath along Streamstown Lane terminates at the northern end of the subject site. The proposed development provides for the setting

back of the existing roadside wall by 2m at its northern end, increasing to 3.2m at its southern end and the provision / continuation of the public footpath to the front of the site. The proposal also provides for the relocation of the vehicular entrance 4.5m to the north of its current position. The vehicular entrance would be setback c. 4.3m from the edge of the public road. Streamstown Lane is located within a 50km/hr speed limit zone. The Proposed Car Entrance Drawing submitted details the provision of 45m x 2.4m sightlines at the entrance to the site. These sightlines comply with the requirements of Sections 4.4.4, 4.4.5 and Table 4.2 of the Design Manual for Urban Roads and Bridges (DMURS) which requires a setback 'X' distance of 2.4 metres and a 'Y' sightline distance distances of 45 metres at entrances in 50km/h urban zones. The driveway serving the proposed dwelling would provide an adequate turning area for vehicles accessing / egressing the site.

- 8.3.3. In consideration of the above, it is my view that the sightlines provided at the entrance to the site comply with the requirements of the Design Manual for Urban Roads and Bridges. I recommend therefore, that the appeal should also succeed in relation to the Planning Authority's second reason for refusal.

#### 8.4. **Screening for Appropriate Assessment**

Having regard to nature and scale of the proposed development to provide one additional house in a fully serviced and zoned residential area and the nature of the receiving environment and the distance and lack of connections to the nearest European sites: Malahide Estuary SPA (site code: 004025) and SAC (Site Code: 000205), no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 **Recommendation**

- 9.1. I recommend that permission be granted subject to conditions, for the reasons and considerations below.

## 10.0 Reasons and Considerations

10.1. Having regard to the residential land use zoning of the site, the pattern of development in the area, the size of the site and the layout and design of the proposed development, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not adversely impact on the residential amenity of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 14th day of February 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

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

**Reason:** In the interest of public health.

3. The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.

**Reason:** In the interest of public health.

4. (a) The boundary wall located to the front of the dwelling shall not exceed a height of 900mm.  
(b) No objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding a height of 900mm, which would interfere with or obstruct (or could obstruct over time) the required visibility envelopes.  
(c) Any entrance gates shall open inwards towards the site and not outwards onto the public road.  
(d) All underground or overhead services and poles shall be relocated, as may be necessary, to suitable locations at the applicant / developer's expense.  
(e) All the above works shall be carried out prior to occupation of the development and at the developer's expense according to the Specification and Conditions of the Planning Authority.

**Reason:** In the interest of traffic and pedestrian safety.

5. (a) An accurate tree survey of the site, which shall be carried out by an arborist or landscape architect, shall be submitted to the planning authority prior to commencement of development. The survey shall show the location of each tree on the site, together with the species, height, girth, crown spread and condition of each tree, distinguishing between those which it is proposed to be felled and those which it is proposed to be retained.  
(b) Measures for the protection of those trees which it is proposed to be retained shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.

**Reason:** To facilitate the identification and subsequent protection of trees to be retained on the site, in the interest of visual amenity.

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

**Reason:** In the interest of visual amenity.



7. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

**Reason:** To protect the amenities of the area.

8. The proposed dwelling shall be provided with noise insulation to an appropriate standard, having regard to the location of the site within the Dublin Airport Noise Zone B.

**Reason:** In the interests of proper planning and sustainable development and residential amenity.

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

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

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

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

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Brendan Coyne  
Planning Inspector  
03<sup>rd</sup> June 2020