



An
Bord
Pleanála

Inspector's Report

ABP-307888-20

Development	Demolition of existing one storey building and construction of five-storey apartment building consisting of 26 no. apartments.
Location	The Westbury Club, The Westbury, The Green, Malahide, Co Dublin K36 E
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0171
Applicant	Bruno Lupo
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant	Bruno Lupo
Observers	Orna Gorman & John Hasson Vincent Lundy Heidi Bedell Deirdre Lonergan

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Date of Site Inspection

4th November 2020

Inspector

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1.0 Site Location and Description

- 1.1.1. The site is located at the Westbury Club, The Westbury, The Green, Malahide, Co Dublin. The site is occupied by a a single storey building and surfaced parking..
- 1.1.2. The archway and clock tower adjoining provide access to a development known as The Marina apartment complex which is characterised by 3 storey blocks of own door units and which adjoins the northwestern, northern and eastern sides of the site.
- 1.1.3. The Boatyard and the Fisherman's Green apartment complexes are to the west and south. The Gas Yard is also to the west and Malahide Green, a landscaped amenity space, separates the site from the sea shore to the east.
- 1.1.4. Fisherman's Green comprises apartments (provided with balconies) above retail (3 storeys) immediately adjoining the site to the south and facing east towards the Green.
- 1.1.5. The existing flat roofed, single storey structure on the subject site, 427 sq m, accommodates a development variously described as snooker club/casino and ancillary spaces. The main access is from the street known as The Green. The access to parking is from the Marina Village road, which is an extension of The Green running under the clock tower.
- 1.1.6. The site is bounded by the residential development. It bounds the public road at the southern end of the eastern boundary between Fisherman's Green and the clock house tower, where currently the main entrance to The Westbury is located; in the proposed development there is no entrance at this location. The north western boundary is formed by the rear of a duplex block at Marine Village and a narrow green area between the block and the public road.
- 1.1.7. The north eastern boundary is made up of a section which abounds the public road, at the north eastern corner, where the proposed access ramp to the car park is to be located and a narrow strip of land, shown to be within the same landownership, running along the public road from the vehicular access to the clock house tower. Notwithstanding the fact that this area is not within the site it is proposed to provide

the main access to the block, including a landscaped forecourt, double doors, a security post (a small control room) and a large 'community space' ie. lobby, at this location. There is no other access to the building, except through the basement car park. No proposals have been made in relation to this area, outside the red line boundary. In artists impressions it is indicated as blending in with the proposed landscaping at the front of the building.

- 1.1.8. The site survey indicates ground levels of 3.29-3.44m OD and the site area is given as 0.0999ha.

2.0 Proposed Development

- 2.1.1. The proposed development consists of:

I) Demolition of the existing one storey, flat roof commercial building:

(ii) construction of a five-storey over basement apartment building comprising 26 no. apartments (6 no. one-bedroom, 14 no. two- bedroom and 6 no. three-bedroom apartments). Each apartment has private open space in the form of a ground floor terrace or a balcony and has access to a communal ground floor landscaped courtyard. The development is served by a basement level carpark (accessed from Malahide Village) providing a total of 20 no. car parking spaces, 34 no. bicycle parking spaces, 2 no. motorcycle parking spaces for residents, 6 no. visitor bicycle parking spaces are provided at ground floor level: and (iii) landscaping communal area in the south west corner; boundary treatments; SuDs drainage and all ancillary works necessary to facilitate the development.

Flat roof profile, average ridge level of +19.450m, c 16m above ground level (+3.450). An additional central pop up with a height of 1.9m. The building would be c3.5m higher than the ridge level of the adjacent archway.

The north eastern block extends a length of c 17m inclusive of balcony overhang. The western elevation is broken up into two sections with the north western element having a depth of c12m inclusive of balcony overhang.

The western element, addressing the Boatyard apartments would have a depth of c11.9m, A significant amount of the western elevation would be cantilevered above the basement access ramp.

The proposed floor area is given as 3,431.65 sq m.

3.0 Planning Authority Decision

3.1. Decision

Having regard to the overall scale, height and design with limited variation and transition in height across the site, it is considered that the proposed development would be visually dominant within the immediate context in addition to being significantly intrusive on the skyline on approach into this historic tourist village when viewed from the surrounding areas, the landscape character of which being coastal with the objective being to protect skylines, horizons and ridgelines from development. The proposed development would be incongruous with the streetscape in which it would be proposed to integrate with and would contravene Objective PM44 and Objective DM39 of the development plan each of which seek to ensure that underutilised sites are developed sensitively and would therefore materially contravene the TC zoning objective which seeks to 'protect and enhance the special physical and social character of major suburban centres and provide and/or improve urban facilities.

Injure the amenities of future residents and amenity of adjacent properties.

Protect areas with a unique identified residential character...DMS44.

A number of units fail to comply with Appendix 1

AA in the absence of screening prepared by a suitably qualified person objective NH15.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Observations – concerns have been raised regarding the applicant's entitlement to use the Marina Complex access road and in relation to who owns the road, rights over land are ultimately matters for resolution in the courts. As a concern has been raised it is recommended that this should be addressed by way of additional information. Also the planning histories indicate that part of the site previously formed part of the wider Marina Complex for the provision of a security hut, bin

stores and bicycle parking. While the applicant has not specifically set out how this has been overcome, assessment of the report associated with Reg. Ref. F05A/0291 comprehensively sets out that planning permission for 3 no. dwellings had been granted on this site (89A/1571) and never implemented, and as a result the site became the unofficial storage area for bins, bicycles and security hut. The assessment concluded that while no planning permission was sought for such use and the time of assessment c2005, it was stated that it had been several years since refuse or bicycle stands were located within this area and that the status quo on site would not be negatively impacted upon as a result of the granting of permission on this site and that refusal no 1 of reg ref F04A/0650 had been adequately overcome.

- 260 dwellings per hectare.
- The site is designated as having a coastal landscape character – having exceptional landscape value, objective protect skylines, horizons and ridgelines.
- The site is highly visible from a number of vantage points including on approach from the east along Coast Road at the Grand Hotel. The adjoining apartment building to the south and the existing archway /clock tower for entry into the Marina Complex dominates the skyline and effectively sets a building height and context.
- Louvred fins cannot be relied upon to overcome issues of over-looking, particularly in a development of this scale. These mechanisms can also impact upon the residential amenities of the occupants.

3.2.2. Other Technical Reports

3.2.3. Water Services Department - surface water, recommended that details of the proposed blue roof including specification, saturation point, calculations and details of how the overflow for the proposed blue roof will connect into the public stormwater sewer be supplied. No surface water to discharge to foul water system. Compliance with Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April 2006. Further information required: Flood risk assessment.

3.2.4. Transportation Planning Section – 50km/hr speed limit. Pay and display parking. Dart. Parking has been provided at a rate of 0.77 per unit. There are 20 spaces

proposed 32 (minimum) - 44 required, per development plan standards. Bicycle parking 65 spaces required deficit of 31 spaces. The basement car park should be designed in accordance with the Design Recommendations for multi-storey and underground car parks published by the IStructE. The current proposal is substandard and non-functional. The access width for perpendicular parking spaces is a minimum of 6m. The access width for spaces 18 and 19 is as low as 3.725m. Access for most of the parallel parking spaces is very restricted with no additional space for the spaces at the end of parking bays. Consequently, spaces 7, 12 and 16 are not viable. The vehicle travel path shown in the drawing does not appear to have been produced by a proper swept path analysis application. There are no wheel travel paths shown and no vehicle information provided, such as the length of wheel base. The movement for access at the base of the ramp does not give a true representation of the turning manoeuvre. A proper design on the same footprint is likely to have significantly less parking provision than that shown. This would further exacerbate the parking concerns. Access for bicycles has not been outlined and the location is questionable with regard to the available head height and quality of the parking spaces. No cross section of the ramp has been provided. No reference to electric charging points. All parking spaces should be designed to facilitate EV charging. Overdevelopment.

3.3. **Prescribed Bodies**

- 3.4. Irish Water - there are some constraints in the area when there is heavy rain and the network is operating at full capacity. The particular location is blocked from entering the network during heavy flows. Therefore, to assess feasibility of connection to the public water/waste water infrastructure, the applicant is required to engage with Irish Water through the pre-connection enquiry (PCE) process; and further information is requested to include response to PCE.

3.5. **Third Party Observations**

- 3.5.1. Third party observations on the file have been read and noted.

4.0 Planning History

F12A/0114 extension and signage permitted.

F14A/0163 retention of lighting and proposed sign refused.

F06A/0874 demolish and replace existing snooker club with underground parking for 25 cars, first floor office for snooker club and 11 apartments on first, second and third floors, granted.

F06A/0874/E1 extension of duration refused.

202370, F05A/0291 appeal of PA's decision to grant permission for: 10 apartments, office, bin stores, security hut, 13 car parking spaces, bicycle park and alterations to front of snooker hall at Westbury Snooker Hall, The Green, Malahide Marina Village, Malahide, Co. Dublin, refused.

Having regard to the restricted nature of the site and the pattern of development in the area, it is considered that the proposed development of ten apartments, an office stores and security hut and surface parking for 13 cars, in addition to the existing snooker hall on site, would constitute over-development of this site and would seriously injure the amenities and depreciate the value of property in the vicinity by reason of overbearing impact, proximity of balconies to site boundaries with consequent overlooking and loss of privacy, and inadequate on-site parking provision which would tend to give rise to on-street parking and traffic congestion.

Furthermore, having regard to the layout of the residential element of the proposed development and, in particular, to the proximity of balconies and windows to each other and to the lack of open aspect available to some of the units, it is considered that the proposed development would result in a substandard level of accommodation for future occupants. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

F04A/0650 apartment development 10 apartments over Westbury Snooker Hall refused for three reasons:

- Part of Malahide Marina development for bin storage, covered bicycle storage and a security hut.
- The proposal involves removal of parking spaces and provision of 11 spaces and would result in on street parking
- Substandard development, by reason of restricted site, inadequate sunlight and natural light to habitable areas, negative impact on residential amenities of existing residential development in close proximity.

111774, F98A/1305 application for 10 two bedroom apartments on 3 floors over ground level with undercroft car parking, relocation of communal bin store, security office and bicycle park, Malahide Marina Village, Malahide, Co. Dublin, refused:

The proposed development, by reason of its scale, height, orientation and proximity to adjacent residential properties, would seriously injure the amenities of property in the vicinity by reason of overshadowing and loss of privacy. The proposed development would, therefore, be contrary to the proper planning and development of the area.

FS97/20/24 application for a cert under Part 5 of the 2000 Act, refused.

In the vicinity

F16A/0583 Gas Yard Lane 22 apartments permitted.

F17A/0202, demolition of garage and erection of five storey building: 3 no two bedroom apartments and 1 no. one bedroom apartment, permitted.

5.0 Policy Context

5.1. Development Plan

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

Zoned TC Town and District Centres - to protect and enhance the special physical and social character of major suburban centres and provide and/or improve urban facilities.

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.

Residential Areas of Character

There are residential areas in the County that have uniqueness through their design, character, density and height. New developments within residential areas considered to be of noted character should respect the overall character of the area.

Objective DMS44

Protect areas with a unique, identified residential character which provides a sense of place to an area through design, character, density and/or height and ensure any new development in such areas respects this distinctive character.

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 NH15

Strictly protect areas designated or proposed to be designated as Natura 2000 sites (i.e. Special Areas of Conservation (SACs) and Special Protection Areas (SPAs); also known as European sites) including any areas that may be proposed for designation or designated during the period of this Plan.

Within the Malahide Urban Framework Plan. The indicative line for the Greater Dublin Area Cycle Network traverses the site.

Objective MALAHIDE 4 - Facilitate and encourage the provision of an appropriate retail mix in Malahide, recognising its role as both a residential town and an important tourist destination.

Objective MALAHIDE 5 - Implement and progress the Public Realm Strategy for Malahide, including measures related to car-parking, in order to facilitate a vibrant retail, commercial and residential core.

5.2. **Development Management Guidelines**

5.13 Issues relating to title to land

Under the Planning Regulations as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated.

The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.

5.3. Sustainable Urban Housing: Design Standards for New Apartments
Guidelines for Planning Authorities, Department of Housing, Planning and Local Government March 2018

Aspects of previous apartment guidance have been amended and new areas addressed. Including:

Communal Amenity Space

(4.10) The provision and proper future maintenance of well-designed communal amenity space will contribute to meeting the amenity needs of residents. In particular, accessible, secure and usable outdoor space is a high priority for families with young children and for less mobile older people. The minimum required areas for public communal amenity space are set out in Appendix 1, (Studio 4 sq m, 1 bed 4 sq m, 2 bed (2 person) 6 sq m, 2 bed (3 person) 7 sq m, 3 bed 9 sq m). While private and communal amenity space may adjoin each other, there should generally be a clear distinction with an appropriate boundary treatment and/or a 'privacy strip' between the two.

Communal amenity space may be provided as a garden within the courtyard of a perimeter block or adjoining a linear apartment block. Designers must ensure that the heights and orientation of adjoining blocks permit adequate levels of sunlight to reach communal amenity space throughout the year.

Bicycle Parking and Storage

(4.15) An important context for these guidelines is a likely significant population increase in our cities and urban areas over the next two decades. These guidelines aim to secure wider Government policy to achieve more sustainable urban development that will enable more households to live closer to their places of work without the need for long commuter journeys and disruption of personal and family time. Enabling citizens to more easily get around our cities and urban areas is a fundamental planning concern and maximising accessibility of apartment residents to public transport and other sustainable transport modes is a central theme of these guidelines.

Cycling provides a flexible, efficient and attractive transport option for urban living and these guidelines require that this transport mode is fully integrated into the design and operation of all new apartment development schemes. In particular,

planning authorities must ensure that new development proposals in central urban and public transport accessible locations and which otherwise feature appropriate reductions in car parking provision are at the same time comprehensively equipped with high quality cycle parking and storage facilities for residents and visitors.

(4.17) The accessibility to, and secure storage of, bicycles is a key concern for apartment residents and apartment proposals must respond accordingly to the requirements below in their design and provision of cycle storage facilities.

Requirements of these guidelines include:

Location – cycle storage facilities should be directly accessible from the public road or from a shared private area that gives direct access to the public road avoiding unnecessarily long access routes with poor passive security or, slopes that can become hazardous in winter weather.

Quantity – a general minimum standard of 1 cycle storage space per bedroom shall be applied. For studio units, at least 1 cycle storage space shall be provided. Visitor cycle parking shall also be provided at a standard of 1 space per 2 residential units. Any deviation from these standards shall be at the discretion of the planning authority and shall be justified with respect to factors such as location, quality of facilities proposed, flexibility for future enhancement/enlargement, etc.

Design – cycle storage facilities shall be provide in a dedicated facility of permanent construction, preferably within the building footprint or, where not feasible, within an adjacent or adjoining purpose built structure of permanent construction. Cycle parking areas shall also be designed so that cyclists feel personally safe - secure cage/compound facilities, with electronic access for cyclists and CCTV, afford an increased level of security for residents. Effective security for cycle storage is also maximised by the provision of individual cycle lockers and it is best practice that planning authorities ensure that either secure cycle cage/compound or preferably locker facilities are provided.

Management - an acceptable quality of cycle storage requires a management plan that ensures the effective operation and maintenance of cycle parking, in particular, avoiding arrangements that lead to a significant number of lockers being left locked whilst empty for instance. Cycle parking shall be the subject of a funded maintenance regime that ensures that facilities are kept clean, free of graffiti, well-lit and the parking equipment will be properly maintained. It is essential, therefore, that

as far as possible cycle parking is low maintenance, easy to use and easy and attractive to use by residents.

Car Parking

(4.18) The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.

(4.19) In larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.

These locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.

5.4. Natural Heritage Designations

- 5.4.1. The nearest Natura sites are Malahide Estuary SPA (site code 004025) and Malahide Estuary SAC (site code 000205) located c 120m to north east and north west, straight line distance from the subject site.

5.5. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Hughes Planning & Development Consultants have submitted the appeal on behalf of the first party, the grounds includes:

- Alternative design proposals on drawing numbers: 2019-29-ABP-101, 2019-29-ABP-102, 2019-29-ABP-103, 2019-29-ABP-104, 2019-29-ABP-105, 2019-29-ABP-200, 2019-29-ABP-201, 2019-29-ABP-30.
- Stepping down and setting back the development at the northern, eastern and western boundaries to improve the developments relationship with the adjacent residential development and archway/clock, and also allow for the provision of a landscape buffer adjacent to the entry to improve privacy of adjacent ground floor apartments within the scheme. There is a reduction in apartment numbers from 26 to 21.
- Alterations to the layout of the proposed car and bicycle parking spaces and the bin storage area at basement level and provision of a temporary bin storage area at ground floor, to improve vehicular movement and waste management.
- A Screening for AA report is attached.
- The proposed development is consistent with the zoning objective and does not have an adverse impact on residential amenity by reason of overbearing.
- It is consistent with the national framework plan. It is compliant with the objectives of the Urban Development and Building Heights guidelines.
- Consistent with Rebuilding Ireland, Action Plan for Housing and Homelessness.
- The provision of 26 apartments would represent a more efficient use of residentially zoned and serviced land while preserving the amenities of the surrounding area.
- The proposal responds appropriately to its sensitive abuttals, stepping down and back from adjacent windows and open space areas.
- It sits comfortably within the existing streetscape and skyline.

- Screening for AA report concludes, no significant impacts.

6.1.2. Appendix D Screening Report for Appropriate Assessment,

A Screening Report to identify any likely significant effects on European Sites was prepared for the appeal by Openfield Ecological Services Consultants, August 2020. The report confirms the competency of the author Pádraic Fogarty as an Ecologist.

The Screening report is focused on an examination of the potential for significant effects on the following sites only as it is stated that there is no possibility of significant effects on any other European Sites in the wider Dublin Bay area:

- Malahide Estuary Special Area of Conservation (Site Code 000205)
- Malahide Estuary Special Protection Area (Site Code 004025)

The report details the qualifying interests and conservation objectives for these sites and the current conservation status of those habitats and species.

The likely effects of the project during construction and operation were considered and a finding of no likely significant effects on Malahide Estuary SAC or SPA was concluded in view of the conservation objectives of those sites.

This conclusion was based on the following:

The development would not result in habitat loss or habitat disturbance at either site and no ex-situ effects were likely due to construction being within a well developed urban area. The possibility of construction related pollution was excluded due to lack of direct connections to the Malahide Estuary and any ground water encountered during excavations could be managed by standard construction practices with any excess ground water generated pumped into the existing foul water network. Operational impacts on water quality were also excluded.

6.1.3. Appendix A - Annual Probable Sunlight Hours is given for each of nine windows of the Boat Yard Apartments.

6.2. **Planning Authority Response**

The planning authority has responded to the grounds of appeal including:

- The planning authority would not dispute the sustainable development of the site, however this is not the sole assessment required for the determination of an appropriate building height. Consideration must also be given to the site context and the adjacent established residential setting.
- Incongruous form of development, would contribute to undue mass and scale and would not accord with objective PM44 and DMS39.
- The proposed revisions reduce the unit numbers to 21 and the depth off the western boundary has been reduced together with the removal of the balconies previously proposed to be screened with timbre louvres which would ameliorate for impacts to the adjacent Boatyard Apartments.
- Notwithstanding the reduction in depths of floors, particularly the fourth floor, concerns remain regarding the over-looking from the projecting balconies on the northern elevation together with the increased size of the terrace at third floor level. The set backs off the boundaries are acknowledged however the overall height has not been reduced. The revised layout for car parking is still unacceptable.
- Their conclusions remain that the proposed development would be incongruous with the streetscape, represent overdevelopment, would be an inappropriate level of development, would be visually dominant, have unacceptable levels of overlooking and would materially contravene the zoning objective for the site and surrounding area.
- If minded to grant the Board should consider the omission of either the first or second floor, to reduce overall height and impact on skyline.
- The Screening for AA assessment concludes that in carrying out screening mitigation measures or standard best practice construction, has not been taken into account, where these are to be implemented for the purpose of mitigating any effects on the environment which could have a potential impact on any European Site. A Stage 2 appropriate assessment is not required.
- S 48 contribution required.

6.3. Observations

6.3.1. A total of 14 observations have been received on the grounds of appeal, issues raised include:

- Inaccuracies in description: 5¹/₂ storeys not 5 storeys.
- Overall design unacceptable
- Revised design unacceptable.
- Disturbance during construction.
- Inadequate construction access, 2 small cars can fit through the archway access.
- Flood zone A.
- Traffic survey challenged.
- Potential impact of excavating on adjoining properties and underground services.
- Provision of underground parking on reclaimed land.
- Impact on existing drainage infrastructure, which is at capacity/overloaded.
- Outcome of social housing provisions uncertain.
- Overdevelopment.
- Overlooking, including through skylight windows.
- Overshadowing.
- Overbearing.
- Noise.
- Devaluation of properties.
- Inadequate parking provision already exists in the area / loss of use of the existing car parking on this site.
- The development would increase pressure on the already inadequate parking facilities nearby and generate illegal on street parking.
- Inadequate car park design.
- Inadequate green space.

- Should include mixed use.
- The traffic volumes entering the marina village would cause congestion.
- Impact on business activities.
- Creation of a traffic hazard in the vicinity of the site.
- Pedestrian/vehicular traffic conflict would be increased.
- Visual impact.
- Contrary to development plan.
- Planning history of refusals.
- Provide more bicycle parking and surface parking for 'go-cars'.
- Revised design: step down and set back the development at the northern, eastern and western boundaries. There is a reduction in apartment numbers from 26 to 21. Alterations to the layout of the proposed car and bicycle parking spaces and the bin storage area at basement level and provision of a temporary bin storage area at ground floor. Not considered to reduce the overbearing impact.
- Impact on the potential of future (adjoining) development proposals.

7.0 **Assessment**

7.1. The issues which arise in relation to this appeal are: screening for appropriate assessment, material contravention, site area and land ownership, residential amenity, visual impact, flood risk, drainage services, traffic parking and basement design, and other issues the following assessment is dealt with under those headings.

7.2. **Screening for Appropriate Assessment**

7.2.1. The application was accompanied by a planning report which included a statement in relation to Appropriate Assessment, which reached a conclusion of no likely significant effects. Reason No. 5 of the planning authority's decision is based on the applicant's failure to demonstrate that the proposed development would not give rise

to issues of Appropriate Assessment and in the absence of screening prepared by a suitably qualified person; and materially contravening objective NH15.

A Screening Report to identify any likely significant effects on European Sites was prepared for the appeal by Openfield Ecological Services Consultants, August 2020. The report confirms the competency of the author Pádraic Fogarty as an Ecologist, and has been referred to in paragraph 6.2 earlier in this report.

Screening for Appropriate Assessment

7.2.2. I am satisfied that the only sites with any potential for effect are Malahide Estuary SPA (site code 004025) and Malahide Estuary SAC (site code 000205) located c 120m to north east and north west, straight line distance from the subject site.

7.2.3. Screening summary matrix

European Site	Qualifying Interest features and Conservation Objectives: Maintain Favourable Conservation Status: M Restore Favourable conservation status: R	Connections to site and issues that require examination in stage 1 Screening for AA
Malahide Estuary SAC [000205] c.120 m	<p>Mudflats and sandflats not covered by seawater at low tide [1140] M</p> <p><i>Salicornia</i> and other annuals colonising mud and sand [1310] M</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330] R</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] M</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] R</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] R</p>	<p>The proposed development site is within a built-up urban area located close to the waterfront in Malahide.</p> <p>Boundary of SAC is within 120m but no direct connections to the site.</p> <p>Possibility of indirect effects through surface water during construction.</p> <p>No possibility of impacts on Dune habitats or Salt meadow habitats</p>
Malahide Estuary SPA [004025] c.120 m	<p>Great Crested Grebe M</p> <p>Light-bellied Brent Goose M</p> <p>Shelduck M</p> <p>Pintail M</p> <p>Goldeneye M</p>	<p>The proposed development site is within a built-up urban area located close to the waterfront in Malahide.</p> <p>Boundary of SPA is within 120m but no direct connections to the site.</p>

Red-breasted Merganser M Oystercatcher M Golden Plover M Grey Plover M Knot M Dunlin M Black-tailed Godwit M Bar-tailed Godwit M Redshank M Wetland and Waterbirds M	No possibility of direct effects on bird species or wetland habitat and no ex-situ effects. Possibility of indirect effects through surface water during construction.
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With regard to pollution during construction, it is stated in the screening report that should over pumping of groundwater be required during basement excavation this will pass to the foul sewer; this is not appropriate. It is not normal construction practice to channel surface water into the foul sewer. No consent for such connection has been provided, as would be required, from Irish Water. Measures for collection and containment within the site and proposals for its disposal off site, are required in order to ensure against effects from soil and silt, on the protected sites, which are only c120m distant.

Due to the inadequacy of the information it is not possible to reach a definitive conclusion of no likely significant effects. The possibility of significant effects cannot be excluded on the basis of objective information. Should the Board be minded to grant permission, either a revised screening report, which includes proposals for the management of surface water/groundwater during construction, including the consent of IW to the discharge to the foul sewer, if appropriate, or a Natura Impact Statement should be provided, before any decision can be reached.

7.3. **Material Contravention**

7.3.1. Reasons 1 and 5 state that the proposed development would materially contravene the development plan.

Reason no 1 states:

Having regard to the overall scale, height and design with limited variation and transition in height across the site, it is considered that the proposed development would be visually dominant within the immediate context in addition to being significantly intrusive on the skyline on approach into this historic tourist village when viewed from the surrounding areas, the landscape character of which being coastal with the objective being to protect skylines, horizons and ridgelines from development. The proposed development would be incongruous within the streetscape in which it would be proposed to integrate with and would contravene Objective PM44 and Objective DM39 of the development plan each of which seek to ensure that underutilised sites are developed sensitively and would therefore materially contravene the TC zoning objective which seeks to 'protect and enhance the special physical and social character of major suburban centres and provide and/or improve urban facilities.

Reason no 5 states:

The applicant has not satisfactorily demonstrated that the proposed development would not give rise to issues of Appropriate Assessment and in the absence of detailed screening, prepared by a suitably qualified person would materially contravene objective NH15.

With regard to the latter, the planning authority has responded to the grounds of appeal acknowledging the submission of an AA screening report from a suitably qualified person.

7.3.2. The relevant development plan objectives are:

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.

Zoning objective 'TC' to protect and enhance the special physical and social character of major suburban centres and provide and/or improve urban facilities.

Objective NH15

Strictly protect areas designated or proposed to be designated as Natura 2000 sites (i.e. Special Areas of Conservation (SACs) and Special Protection Areas (SPAs); also known as European sites) including any areas that may be proposed for designation or designated during the period of this Plan.

- 7.3.3. The grounds of appeal states that the proposed development is consistent with the zoning and sits comfortably within the existing streetscape and skyline. In response to reason no. 5 the grounds refers to the planning report accompanying the planning application and screening report for AA prepared by Ecological Consultants, which accompanies the appeal.
- 7.3.4. I consider that section 37 of the Planning and Development Act 2000, as amended, is not applicable in this instance notwithstanding the planning authority's decision to refuse permission on the grounds that the development materially contravenes the development plan, since the interpretation of the provisions referred to is a matter of judgement and therefore the Board is at liberty to grant permission without reference to the four criteria 37(2)(b).

7.4. **Site Area and Land Ownership**

- 7.4.1. The site is given as 0.0999ha. As stated earlier in this report it excludes a strip of ground within the applicant's ownership, running along the road between the Clock House Tower and the vehicular access. The main access to the building crosses this strip of land. It is uncertain what future use this land is intended for, or the purpose of omitting it from the site, since it is an integral part of the development.
- 7.4.2. It is noted that in the planning history this ground was formerly part of a site for development:
- F04A/0650 apartment development 10 apartments over Westbury Snooker Hall (refused for three reasons), included this land, the site was given as 0.1115ha.
- F12A/0114 extension and signage, (permitted), the site was given as 0.1115ha.

F14A/0163 retention of lighting and proposed sign, (refused), the site was given as 0.1193ha.

The planning history also includes FS97/20/24 an application for a certificate under Part 5 of the 2000 Act, (which was refused), the site was given as 0.099ha and is similar to the subject site.

It appears that the reduction in site area may be related to Section 97 of the Planning Act and the associated requirements, which exclude the application of part V to housing on land of 0.1ha or less.

7.4.3. It is not acceptable to propose a development, functionally dependent on adjoining land, in private ownership, (access, windows etc) without reference to how that relationship will be managed.

7.4.4. The issue of the applicant's right to use The Marina access road was referred to in the planner's report as one which merited inclusion in a request for further information, notwithstanding that the granting of permission would not entitle a person to carry out development (S34(13) of the Planning Act.

7.5. Residential Amenity

7.5.1. The main issue which arises in relation to this appeal, and which gives rise to refusal reasons 2 and 4 in particular, is the issue of residential amenity. It is a concern of observers that the height is excessive and overbearing, will give rise to overlooking, will involve loss of natural light to existing properties and will provide inadequate natural light to proposed residences.

7.5.2. The grounds of appeal responds to the refusal reasons stating that the potential for overlooking of adjacent properties is limited, and refers to generous setbacks and screening measures such that there will be no undue negative impacts.

7.5.3. Residential amenity of future residents is referred to in the FCC planner's report: deficiencies in configuration of rooms and in relation to balconies or windows, which are too close to circulation areas or address an unattractive wall or feature. The FCC planner's report states dissatisfaction in relation to the screening measures proposed, which impact on the residential amenities of future occupants. It highlights, in particular, the limited separation distance of balconies associated with units 104 and 105 and similar units on floors above, from the rear boundary of no.

226-227 Marina complex, being less than 11m; and that the overlooking would be intensified at higher floors and from the rooftop terrace. The revisions put forward for the Board's consideration would reduce the overlooking concern in relation to units 104, 204 and 304 through the setting back of the gable by 3m approx. (3100) and at the 4th floor by a 4.8m set back. No alteration to units 105 and above are proposed. Concerns regarding overlooking from remain.

- 7.5.4. The FCC planner's report expresses concern that in the absence of any detail to determine otherwise, the proposed development could give rise to undue overshadowing of adjoining and adjacent properties. It is noted that a report titled 'Internal daylight Assessment' accompanied the application, which indicates that an acceptable level of natural light is available to all the proposed apartments. This does not however address the impact on daylight or sunlight available to existing adjoining and adjacent properties.
- 7.5.5. The grounds of appeal states that the proposed development is located to the north and east of existing sensitive boundaries and as a result the proposal will not result in any unreasonable loss of sunlight or daylight to the adjacent properties, with the majority of resultant shadow being cast onto adjacent roads or falling on existing shadows cast by solid boundary walls in the context of the Marina Village dwellings immediately north-east.
- 7.5.6. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, facilitates increases in density in locations such as this, subject to protection of the amenities of adjoining development and of future residents. Among the standards it sets out are those for communal amenity space. These are based on the type of apartment and the number of bedrooms, and in the present case would require 372 sq m of functional amenity space. Drawing no. 2019-29-P-101 shows a landscaped courtyard of 127 sq m, however the functionality of part of this courtyard of limited extent, is questionable. The communal amenity space provision is unacceptable.
- 7.5.7. Overbearing Impact – the location in the centre of a thriving settlement, well and served by facilities and services, including public transport, has led to densification of the area in the past, and the need to maximise the use of town centre lands is not contested.

7.5.8. The proposed revisions submitted for the Board's consideration, include a reduction in the scale of the proposal and in the number of apartments, This has an overall beneficial in terms of overlooking and the perceived overbearing impact, and also in the level of under provision of communal space, however the proposal remains, in my opinion, an overdevelopment of the site and should be refused for this reason.

7.6. **Visual Impact**

7.6.1. The impact on the character of the area is referred to in the FCC planner's report:

The eastern part of the development which addresses the Green and adjoins the archway should integrate appropriately with this design and not compete with it. The building at this location breaches the height of the adjoining building to the south and competes with the archway, whereas F06A/0874 provided for a transitional approach stepping away from the archway and down to the western boundary adjoining the Boatyard apartments.

7.6.2. The revised design proposes a setting back and stepping down as advocated. In my opinion, although the revised design is more acceptable, the scale remains excessive for this seaside village and in particular the proposal would be higher than the prevailing height and higher than the adjoining clock tower, which is a landscape feature in the area.

7.6.3. In my opinion visual impact is a reason to refuse the proposed development.

7.7. **Flood Risk**

7.8. The proposed development has a basement floor level of +0.550m and is in flood zone A. A flood impact assessment is required.

7.9. **Drainage Services**

7.9.1. Surface water – the applicant proposes attenuation at roof level. The report of the Water Services Department recommended that details of the proposed blue roof including specification, saturation point, calculations and details of how the overflow for the proposed blue roof will connect into the public stormwater sewer, be supplied.

A further information request did not issue. This information would be required prior to any decision to grant permission.

- 7.9.2. Foul wastewater – Irish Water’s report states that there are some constraints in the areas when there is heavy rain and the network is operating at full capacity. The particular location is blocked from entering the network during heavy flows, therefore the applicant is required to engage with Irish Water through the pre-connection enquiry process, to assess feasibility of connection to the public water/waste water infrastructure; and they requested further information on that basis. A further information request did not issue. This information would be required prior to any decision to grant permission.

7.10. Traffic, Parking and Basement Design

- 7.10.1. The Transportation Planning Section – advised that the basement car park should be designed in accordance with the Design Recommendations for multi-storey and underground car parks published by the IStructE and is substandard and non-functional as submitted, with regard to access width for perpendicular parking spaces (to be a minimum of 6m.), restricted spaces at the end of parking bays (7, 12 and 16 are not viable), the sweepth path analysis is inaccurate (a proper design on the same footprint is likely to have significantly less parking provision), access for bicycles has not been outlined and the location is questionable with regard to the available head height and quality of the parking spaces. No cross section of the ramp has been provided.
- 7.10.2. The car parking requirement of a minimum of 32 spaces, per development plan, can not be achieved. In this regard the grounds of appeal refers to the Sustainable Urban Housing: Design Standards for New Apartments guidelines as referring to the requirement for parking provision in such areas: to be minimised, substantially reduced or wholly eliminated.
- 7.10.3. In support of the adequacy of the proposed level of provision the proximity to public transport infrastructure is emphasised.
- 7.10.4. In relation to the level of cycle parking, the guidelines require the provision of 65 spaces (not 54 as stated in the grounds of appeal) and it is proposed to provide 40, 34 at basement and 6 at ground floor level. The grounds of appeal states that a

slight variation is required which they consider appropriate given the strong public transport links.

- 7.10.5. There are also strong cycling links with routes indicated in the development plan for 'indicative cycle/pedestrian route' and 'Greater Dublin Area (GDA) Cycle Network' in the vicinity of/running through the site. (In the case of the route running through the site this appears to be an indicative route which does not take account of physical barriers etc). It appears to me that there is no justification of a reduction in cycle parking having regard to the provisions of the guidelines, the location, the policies for the area which support cycling, and the shortfall in car parking proposed relative to the development plan standards.
- 7.10.6. Revised proposals submitted with the grounds of appeal indicates the access for bicycles, and shows the available head height. Other layout concerns regarding the car park aisle widths, parking space dimensions, etc, have not been addressed. A longitudinal section from the road through the access ramp to the basement floor, and a cross section of the public footpath crossing would also be required.

7.11. **Other issues**

7.12. Elevation to The Green

- 7.12.1. The proposed development presents an elevation to The Green which includes apartment windows, but the elevation is not animated by an access or an active use.
- 7.12.2. Currently there is a business access, to the Westbury Club, at this location. In my opinion the TC zoning: to protect and enhance the special physical and social character of major suburban centres and provide and/or improve urban facilities, is not served by this aspect of the proposal and a suitable town centre business use, with direct access to the street, is required at this location.

7.13. Site Conditions

- 7.13.1. It is of concern to adjoining property owners that the site conditions, which is stated to be made up or landfilled ground, is likely to make the provision of a basement problematic and that this is a matter which should be addressed by the applicant.

- 7.13.2. Protection of adjoining properties is a matter which is amenable to engineering design. However, it seems reasonable, having regard to the constraints of the site, that this information would be provided during the application process.
- 7.14. Loss of off-street parking
- 7.15. At the present time part of the site is open and available for use for parking. This appears to be an informal arrangement and, as in many other cases where off-street parking takes place on sites awaiting development, there is no reason why the loss of the off-street parking should constrain the development of the site.
- 7.15.1. Construction traffic
- 7.15.2. The ability of construction traffic to pass under the clock tower, and the congestion which construction traffic would cause, has been raised as a concern by observers.
- 7.15.3. The subject site has frontage either side of the clock tower should access under the tower prove problematic. Construction traffic is a temporary inconvenience and should not be a reason to refuse permission.
- 7.16. Conclusion
- 7.16.1. The revised design proposes a setting back and stepping down as advocated in the planners report and goes some way to addressing the detailed concerns raised in that report. However, although the revised design is more acceptable, the scale remains excessive and the proposal still represents overdevelopment of the site.
- 7.16.2. In addition having regard to the many deficiencies in the documentation, including the site map, appropriate assessment, foul and surface water drainage proposals, flood risk, inadequate cycle parking, inadequate communal space, basement design and shadow impact, it is considered that the proposed development should be refused.

8.0 Recommendation

- 8.1.1. Having regard to the foregoing assessment it is considered that the proposed development should be refused for the following reasons and considerations

9.0 Reasons and Considerations

1 Having regard to the overall scale, height and bulk of the proposed development and proximity to adjoining and adjacent properties, it is considered that the proposed development would be visually dominant and intrusive on the skyline on approach into this historic tourist village and when viewed from the surrounding areas, would be incongruous within the streetscape in contravention of Objective PM44 and Objective DM39 of and the TC zoning objective which seeks to 'protect and enhance the special physical and social character of major suburban centres and provide and/or improve urban facilities; would constitute overdevelopment of this town centre site; and would thereby be contrary to the proper planning and sustainable development of the area

2 Having regard to the shortfall of critical information and inadequate proposals in relation to:

The management of the strip of ground between the site and Marina Road;

Proposals for adequate provision for communal amenity space;

Flood protection measures and the absence of a Flood Risk Assessment;

Consent for connection to the public foul sewer;

Proposals for the provision of adequate on-site bicycle storage;

Design of the basement access and the parking layout, in compliance with standards; and

Proposals for addressing the site conditions in the design and construction of the basement;

Proposals for the management and disposal of surface water/groundwater during construction.

The Board cannot be satisfied that the proposed development would accord with appropriate standards, would not impact on the environment, or that the amenities of future occupants would be protected, the proposed development would therefore be contrary to the proper planning and sustainable development of the area

Planning Inspector

20 November 2020

Appendices

Appendix 1: Photographs

Appendix 2: Fingal County Development Plan 2017-2023, extract