



An
Bord
Pleanála

Inspector's Report ABP 307892-20

Development	Revisions to previously granted development Reg. Ref: F18A/0390.
Location	Former Oscar Taylor's Restaurant, Island View Hotel, Coast Road, Malahide, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0228
Applicant	October Management Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellants	October Management Limited
Observers	Dublin Airport Authority Joe and Elaine Caulfield Brendan Cassin Niall Newman The Moorings Residents Association Brendan and Maeve Fox

Date of Site Inspection

26th November 2020.

Inspector

Brendan Coyne

1.0 Site Location and Description

- 1.1. This site (0.2ha) is located on the southern side of the Coast Road (R106) in Malahide, Co. Dublin. The site is broadly rectangular in shape with a road frontage width of c.35m and overall depth of c. 66.5m. The site is currently under construction and being redeveloped on foot of development permitted on appeal under ABP Ref. 303314-18 whereby permission was granted for the demolition of a 2 storey commercial building (formerly known as the Oscar Taylor's Restaurant and Island View Hotel) and the construction of a 4 storey residential development providing 9 no. apartments with ancillary site development works. The site is currently accessed via two vehicular entrances along the Coast Road and the roadside boundary is defined with a low-rise wall. The side and rear boundaries of the site are defined with a wall c. 2m high. A stand of tall mature coniferous trees is located along the rear / southern boundary. The ground level of the site is relatively flat.
- 1.2. A large 2-storey house known as 'Fort Granite' is located on lands adjoining the site to the east and a coach depot known as Malahide Coaches Ltd. is located on lands adjoining the site to the west. The house Fort Granite has a garage to its eastern side. The coach depot site contains a single storey house, sheds and a yard used for the storage of coaches. A row of semi-detached 2-storey dwellings known as 'Island View' is located on lands adjoining the site to the south. A row of detached 2-storey dwellings known as 'The Moorings' are located on adjacent lands to the south-west of the site. An area of open space, a beach car park and the foreshore of Malahide beach is located opposite / to the north of the site. The character of the surrounding area is largely residential. Malahide Village is located c. 0.8km to the west of the site.

2.0 Proposed Development

- 2.1.1. Permission sought for revisions to development previously permitted on appeal under P.A. Ref. F18A/0390 and ABP Ref. 303314-18 and further revisions permitted under P.A. Ref. F19A/0297, comprising the following:
- Provision of an entrance lobby at ground floor level.
 - Alterations and re-configuration of the permitted penthouse and south and north facing balcony extensions at 3rd floor level.

- Extension to the permitted penthouse at 4th floor level and associated alterations at roof level.
- Alterations to fenestration at ground and 3rd floor level.
- The total floor area will increase by c. 99 sq.m.
- Provision of an ESB meter cabinet,
- Alterations / relocation of bicycle storage.
- Provision of 1 no. additional parking space.
- Associated site works and service provision.
- The remainder of the development is as per previous permissions P.A. Ref. F18A/0390 / ABP Ref. 303314-18 and P.A. Ref. F19A/0297.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Fingal County Council REFUSED permission for the proposed development. The 3 no. reasons for refusal were as follows;

1. The proposed development represents an incongruous form of development and when considered cumulatively with the balconies proposed to be extended. By virtue of the overall, scale, height and design with limited transition in height across the development to ameliorate for massing, the proposed development would be unduly dominant within its immediate context in addition to being significantly intrusive on the skyline on approach into this historic tourist village and when viewed from the surrounding areas. The proposed development would be incongruous with the streetscape in which it would be proposed to integrate with and as a result have a detrimental impact on the visual amenities of the area materially contravening Objective PM44 and Objective DM39 of the Fingal Development Plan 2017-2023. The development as proposed would be contrary to the proper planning and sustainable development of the area.

2. Due to limited separation distances off the east and west boundaries, the development would be seriously injurious to the surrounding residential amenities in the vicinity by way of undue overbearance impact and consequent over-looking and loss of privacy which would be contrary to Objective DMS28 of the Fingal Development Plan 2017-2023 and would be at variance with the RS Zoning Objective for the area which seeks to 'Provide for residential development and protect and improve residential amenity'.
3. Having regard to the nature of the proposed glass box atop the building under construction and proximity to the Malahide Estuary Special Area of Conservation (000205) and the Malahide Estuary Special Protected Area (004025), the applicant has not satisfactorily demonstrated that the proposed development would not give rise to issues of Appropriate Assessment and in the absence of a detailed screening for appropriate assessment, prepared by a suitably qualified person would materially contravene Objective NH15 of the Fingal Development Plan 2017-2023 which seeks to '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'.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for the Planning Authority decision. Includes;

- The proposed works are an acceptable form of development within the 'RS' zoning objective of the site.
- The development permitted on appeal under P.A. Ref. F18A/0390 & ABP Ref. 303314-18 was required to have a maximum height of 12.3m.
- The height of the proposed development under the subject application is 16.25m.
- The proposed glass box extension at 4th floor level is not considered a subordinate extension and would represent an intrusive and incongruous feature in the streetscape.

- When considered cumulatively with the balconies proposed to be extended and the overall height of the main building, the proposed development by virtue of its design, height and excessive massing would appear overly dominant and have a detrimental impact on the visual amenities of the area.
- The separation distance to the southern boundary would be sufficient to ensure no undue over-looking would occur.
- Significant concerns regarding the proximity of the 4th floor extension to the side elevations of neighbouring property, less than 11 metres and the potential for over-looking to occur.
- The 'glass box' would provide direct views into the adjacent sites which would impact on the residential amenity of the occupants to the east.
- The proposal could limit the development potential of the adjoining site to the west.
- The proposed development would materially contravene Objective DMS28 of the Fingal County Development Plan 2017-2023 with regards separation distances and overlooking.

3.2.2. **Other Technical Reports**

3.2.3. ***Water Services:***

No objections

3.2.4. ***Transportation Planning Section***

No objection subject to Condition regarding bicycle parking.

3.3. **Prescribed Bodies**

Dublin Airport Authority:

- The site is located within Noise Zone C.
- Conditions recommended requiring appropriate internal noise levels for habitable rooms be achieved and noise mitigation measures be provided.

4.0 Planning History

4.1.1. Subject Site

P.A. Ref. F20A/0359 Permission GRANTED on the 3rd November 2020 (not final grant date) for revisions to previously permitted development granted under P.A. Ref. F18A/0390 and further revised under P.A. Ref. F19A/0297 to include the following: Internal reconfiguration and enlargement of Unit Nos. 7 and 8 at second floor level and Unit No. 9 at third floor level to include enlarged bedrooms, kitchen/living areas and south facing balconies. The proposed development results in the extension of the south facing rear elevation at second and third floor levels. All associated elevational amendments, roof alterations at fourth floor level and alterations to fenestration and balcony doors at second and third floor levels. The total floor area will increase by c. 112sqm. No additional units are proposed under the subject application. The remainder of the development is as previous permissions Reg. Ref. F18A/0390 and F19A/0297.

P.A. Ref. F19A/0297 Permission GRANTED in 2019 for modifications to an apartment development permitted under P.A. Ref. F18A/0390, to provide additional plant rooms and storage (165 sq.m.) at basement level, and associated works.

P.A. Ref. F18A/0390 and ABP Ref. 303314-18 Permission GRANTED ON APPEAL in 2019 for the demolition of the existing 2 storey commercial building and the construction of a 4 storey residential development providing 9 no. apartments (4 no. 2 beds, 5 no. 3 beds) all with associated balconies/terraces; solar PV panels at roof level; 15 no. surface level car parking spaces, a bin store, a bike store, communal open space areas; alterations to existing access points and all associated site development, service connections, landscape and boundary works.

Noted Condition includes:

Condition No. 2. Opaque glazed screens 1.8 metres in height, shall be erected at the sides of all rear and front balconies at second and third floor levels.

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'. Residential use is 'permitted in principle' under this zoning objective.

Zoning Map Based Specific Objectives - Sheet 9

The site is located with the Development Boundary of Malahide, as detailed on Zoning Map Sheet 9.

Specific Objective - To Preserve Views to the front / north of the site along the Coast Road.

Specific Objective – Indicative cycle / pedestrian route to the front / north of the site along the Coast Road.

Chapter 3 Placemaking - relevant policy objectives include:

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.

Chapter 12 Development Management Standards - relevant policy objectives include:

Objective DMS28 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. In residential developments over 3

storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.

Objective DMS30 Ensure all new residential units comply with the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R.209, 2011) and B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting or other updated relevant documents.

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.

Chapter 9 Natural Heritage - relevant policy objectives include;

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.

Objective NH40 Protect views and prospects that contribute to the character of the landscape, particularly those identified in the Development Plan, from inappropriate development.

5.2. Natural Heritage Designations

- 5.2.1. The site is located 0.8km to the south-west of the Malahide Estuary SAC (Site Code 000205) and Malahide Estuary SPA (Site Code 004025)

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and its location within a fully serviced urban environment, it is considered that 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

A first-party appeal was received from Brock McClure Planning and Development Consultants representing the applicant October Management Ltd., against the decision made by the Planning Authority to refuse permission for the proposed development. The following is a summary of the grounds of appeal, addressing the reasons for refusal.

6.1.1. *Response to Refusal Reason No.1*

- The provision of a glass extension is wholly appropriate having regard to the permitted development, currently under construction.
- The extension at 83 sq.m. when viewed comparatively against the overall permitted floor area of 1,523 sq.m. accounts for just 5% of the overall permitted floor area.
- The proposed glass extension provides additional living space, which will be used by the residents of the permitted penthouse.
- The proposed extension does not provide additional bedrooms or apartment units.
- The individual balconies serving the penthouse apartment at third floor level would be connect in the middle to form one balcony on the north and south elevations.
- The balconies do not project further than that permitted towards the western and eastern boundaries.
- The proposed glass extension is modest in scale with a floor area of 83 sq.m. height of c. 3m and setback of c. 7m.
- The third and fourth floors with their setbacks and varying heights will mitigate against a potential monolithic type structure, providing visual relief to the overall development and streetscape when viewed from the Coast Road.
- The design and materials of the glass extension create a lightweight and unobtrusive appearance that assimilate with the surrounding environment.

- The proposed extension endeavours to offset the perceived scale and massing by maximising the reflective qualities of the glass façade and its conveyed lightness.
- The contemporary extension would make a positive contribution to the building stock of the area, complementing its central position.
- The setback of the proposed glass extension will have the same effect as the setback penthouse, reducing the visual bulk and massing of the building.
- The principle of infill development with an increased building height of four storeys has been established by the parent permission.
- The parent permission and subject proposal improves the existing streetscape by providing a contemporary infill development that animates this section of the Coast Road.
- The proposed extension complements the permitted modern residential development currently under construction.

6.1.2. Response to Refusal Reason No.2

- The Planning Authority's assessment of the proposal is exaggerated and inaccurate.
- Objective DMS28 relates to directly opposing rear first floor windows.
- The rear elevation of the glass extension achieves in excess of the 22m standard at 27.9m.
- Details of separation distances from the permitted second, third and proposed fourth floor from adjacent neighbouring property are provided.
- The setback of the extension from the building edge provides visual relief when viewed at ground level.
- The proposal will not create an overbearing impact given its setback from the permitted third floor below.
- Access will be prohibited at roof level, therefore mitigating against any potential loss of privacy or overlooking to the adjoining properties.
- With regards overlooking, the glass extension is setback c. 7.2m from the eastern and western elevations at third floor level.

- The proposed enlarged balconies at third floor level will be fitted with opaque privacy screen to prevent overlooking of neighbouring property.
- The southern elevation of the glass extension will be fitted with obscure glass.
- The appellant invites a suitably worded Condition relating to same on the eastern and western elevations of the proposal should the Board be minded to grant permission for the proposed development.

6.1.3. ***Response to Refusal Reason No.3***

- The appellant contests the Planning Authority's third reason for refusal and consider this should have formed part of a further information request.
- The Planning Authority could have conducted their own screening report as part of their planning assessment.
- The Board is referred to the Screening report submitted for Appropriate Assessment.
- The parent permission was screened out for Appropriate Assessment, as deemed acceptable by the Board.
- The proposal is an amendment to a previously permitted parent application.
- No additional units are proposed.
- No increase in foul effluent volume or water demand is likely to be generated from the proposal.
- The sustainable urban drainage systems on site will remain as permitted with little or no increase anticipated to surface water run-off.
- An Appropriate Assessment is not required in this instance. The proposed development, either individually or in combination with other plans or projects, will not have a significant effect on any European site.

Supporting documentation lodged with the appeal include the following;

- Appropriate Assessment Screening Report, prepared by Brock McClure Planning and Development Consultants.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response is as follows;

- The Planning Authority remains of the opinion that the proposed development would be an incongruous form of development, would contribute to undue mass and scale and would not accord with Objective PM44 and Objective DMS39 of the Fingal County Development Plan 2017 - 2023.
- It is acknowledged that the principle of the development has been accepted on the site but consideration must be given as to how further extensions and proposed increases in building height give rise to developments which appear incongruous to the established setting.
- Overlooking of adjacent properties to the east and west remain a concern.
- In general, a distance of 11m to a boundary is an acceptable standard to ameliorate for overlooking arising from first floor windows.
- An Bord Pleanála is requested to uphold the decision of the Planning Authority and refuse permission for the proposed development.
- In the event that the appeal is successful, a financial contribution should be applied in accordance with the Council's Section 48 Development Contribution Scheme.

6.3. Observations

6.3.1. Third party observations were received from the following parties;

- Dublin Airport Authority
- Joe and Elaine Caulfield of No. 24 The Moorings, Malahide.
- Brendan Cassin of No. 42 The Moorings, Malahide.
- Niall Newman of No. 1 The Moorings, Malahide.
- The Moorings Residents Association, c/o Joe Caulfield, No. 24 The Moorings, Malahide.
- Brendan and Maeve Fox of No. 53 Island View, Malahide.

6.3.2. Issues raised are summarised as follows;

- Overdevelopment of the site.

- Concerns regarding the scale, height, massing and design of the proposed development and its visual impact on the surrounding streetscape.
- Concern regarding the changes to the permitted balconies, reverting to their original design as submitted (but amended by further information) under P.A. Ref. F18A/0390 and ABP Ref. 303314-18.
- Overlooking of and overbearing impact on neighbouring property.
- An overshadowing impact study was not undertaken.
- The proposal would be unsightly, inappropriate and incongruous at night when fully lit inside.
- The proposal is not a minor revision to the existing permission. The proposal seeks to provide an additional (5th) floor to the permitted development.
- The 5-storey height of the proposal would create an undesirable precedent.
- Non-compliance with the Fingal County Development Plan and national planning policy regarding building height.
- The applicant failed to provide an Appropriate Assessment screening report. No consideration is given to risks to protected species from the glazing of the penthouse extension (5th floor).
- The Dublin Airport Authority confirms its recommendation in its original report and recommended Conditions.

7.0 **Assessment**

7.1. I have reviewed the proposed development and the correspondence on the file. I am satisfied that the proposed development is acceptable in principle, in accordance with the zoning objective of the site. The main issues for consideration are the reasons for refusal, as cited by the Planning Authority. These can be addressed under the following headings:

- Visual Impact
- Overlooking and Overbearing Impact
- Appropriate Assessment

These are addressed below.

7.2. Visual Impact

- 7.2.1. The Planning Authority refused permission for the proposed development on the grounds that its scale, height and design would be unduly dominant within its immediate context and would be significantly intrusive on the skyline on approach into the historic tourist village of Malahide and when viewed from surrounding areas. The Planning Authority considers that the proposal would be incongruous within the streetscape and would have a detrimental impact on the visual amenities of the surrounding area. For this reason, the Planning Authority considers the proposed development would materially contravene Objective PM44 and Objective DMS39 of the Fingal County Development Plan 2017-2023. The applicant contests this reason for refusal, as detailed in Section 6.1 above.
- 7.2.2. The principle of the 4-storey apartment block providing 9 no. apartments, currently under construction, was the subject of consideration and permitted on appeal by the Board under ABP Ref. 303314-18 with amendments permitted thereafter under P.A. Ref. F19A/0297. The proposed development under the subject appeal provides an additional 5th floor to the permitted 4-storey apartment block. The proposed 4th floor (5th storey) development provides a sitting / dining room serving the permitted penthouse beneath, with a stated floor area of 83 sq.m. The Planning Authority refers to this as a 'glass box extension'. The height of the permitted 4-storey apartment block is 12.6m, with angled solar panels on its roof. The height of the proposed 4th floor (5th storey) penthouse accommodation is 3.2 metres. Drawings submitted detail that the proposal would increase the overall height of the apartment block to 16.05m.
- 7.2.3. The building line of the permitted apartment block is staggered with setbacks at first, second and penthouse level. The building line of the proposed 4th floor penthouse room provides an additional setback behind both the main building line of the apartment block, as defined at ground floor level and the penthouse beneath. The front elevation of the proposed 4th floor (5th storey) penthouse room would maintain a setback of c. 6.3m from the front / northern elevation of the apartment block, as defined at ground floor level and c. 2.2m from the front / northern elevation of the penthouse beneath. The rear/southern elevation of the proposal provides a setback of c. 5.7m from the rear / southern elevation of the apartment block at ground floor level and c.

1.8m from the rear / southern elevation of the penthouse beneath. The eastern and western side elevations of the proposal provide a setback of c. 7.4m from the side elevations of the apartment building, as defined at ground floor level and c. 5.2m from the eastern and western side elevations of the penthouse, respectively.

7.2.4. The permitted apartment block has a total front elevation width of 26m. The proposed 4th floor penthouse room has a width of c. 11.1m and is centrally located on the roof of the building. The roof profile of the permitted apartment block is flat with the penthouse apartment providing a mansard roof. The roof profile of the proposed 4th floor penthouse room is flat. The elevation finishes of the permitted penthouse comprise metal cladding. The elevation finishes of the proposed 4th floor penthouse accommodation are stated as comprising glazing, with the south facing elevation to be glazed with obscured and reflective glass with a solid wall behind. In essence, the proposal presents as a glass box on the roof of the permitted apartment block, as described by the Planning Authority. Other proposed works to the permitted penthouse floor include amendments to the previously approved south and north facing balconies. These amendments comprise the amalgamation of the previously approved 2 no. separate balconies to both the north and south elevations of the penthouse.

7.2.5. The character of the immediate surrounding area to the sides and rear of the site is largely residential with the exception of the adjoining site to the west which comprises a coach depot with a single storey detached house located thereon. This neighbouring house a height of c. 5.7m with sheds and a yard to its rear to accommodate the parking of coaches. The adjoining site to the east contains a large two storey dwelling known as 'Fort Granite' with a height of c. 9.5m. A single storey garage is located between this house and the subject appeal site. A row of semi-detached 2-storey dwellings known as Island View is located on lands adjoining the site to the south. An area of public open space, a public car park and the foreshore of Malahide beach is located to the north of the site.

7.2.6. The site is zoned objective 'RS' which seeks 'to provide for residential development and protect and improve residential amenity'. The site is subject to a Development Plan map based Specific Objective 'to preserve views' to the front / north of the site along the Coast Road. Objective NH40 of the Development Plan seeks to 'protect views and prospects that contribute to the character of the landscape, particularly

those identified in the Development Plan, from inappropriate development'. Objective DMS39 of the Development Plan requires that 'new infill development shall respect the height and massing of existing residential units. Objective PM44 seek to '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'. Design criteria for apartment development, as set out in Chapters 3 and 12 of the Development Plan, requires that apartment developments be of high-quality design and site layout having due regard to the character and amenities of the area.

- 7.2.7. The height of the permitted 4 storey apartment block was considered acceptable by the Board under ABP Ref. 303314-18. Given the height and staggered building line of the permitted development, the considerable setbacks of the proposed 4th floor (5th storey) accommodation, and its height and elevation finishes as detailed above, it is my view that the design, scale and extent of the proposal would not be overtly dominant or intrusive in the streetscape and would not detract from the character or visual amenity of the surrounding streetscape. The form and design of the proposal is simple and its reflective glazed elevation finishes would minimise its visual impact. Such development would not be contrary to Objective DMS39 and Objective PM44 of the Fingal Development Plan 2017-2023, as put forward by the Planning Authority in its reason for refusal. The proposed development would not adversely impact on views to the front / north of the site along the Coast Road.
- 7.2.8. In consideration of the above, I recommend that the appeal should succeed in relation to the Planning Authority's first reason for refusal.

7.3. Overlooking and Overbearing Impact

- 7.3.1. The Planning Authority refused permission for the proposed development on the grounds that its separation distances from the eastern and western side boundaries would seriously injure the residential amenity of neighbouring property by way of overlooking and overbearing impact. The Planning Authority consider that such development would be contrary to Objective DMS28 of the Development Plan and would be at variance with the 'RS' zoning objective of the site.

- 7.3.2. The height of the proposed development and its setback from the staggered building lines of the permitted apartment block are detailed above. The proposed 4th floor (5th storey) accommodation would maintain a setback of 11m from the eastern side boundary and 18.6m from the western side of the neighbouring two storey house 'Fort Granit', located on the adjoining site to the east. The proposal would maintain a setback of 10m from the western side boundary and 14.8m from the eastern side elevation of the single storey house, located on the adjoining site to the west. The proposal would maintain a setback of 26.8m from the rear / southern boundary. The proposed amalgamated rear balconies serving the penthouse would maintain a setback of 25.7m from the rear/ southern boundary. A stand of tall mature coniferous trees is located along the rear southern boundary. The proposal does not provide external access to the roof of the apartment block.
- 7.3.3. There are 3 no. narrow window opes on the eastern side elevation of 'Fort Granite' at first floor level and a window ope serving a habitable room on the same side elevation at ground level. There is 1 no. window ope on the eastern side elevation of the dwelling located on the adjoining site to the west (within the coach depot). The observations received express concern with regards overlooking and overbearing impact on the neighbouring dwellings to the side and rear and adjacent dwellings to the south-west.
- 7.3.4. Having regard to the development permitted on appeal under ABP Ref. 303314-18, I note that the Board imposed a Condition (No.2) requiring that opaque glazed screens 1.8 metres in height, be erected at the sides of all rear and front balconies at second and third floor levels, in the interest of residential amenity. The elevation drawings submitted detail that the rear / southern elevation of the proposed fourth floor accommodation would be glazed with obscure glass with a solid wall behind to prevent overlooking. I note that in the grounds of appeal, the applicant invites the Board to impose a Condition requiring the same, i.e. the provision of opaque glazing to the eastern and western side elevations of the proposed development. It is my view that the provision of such opaque glazing to the side and rear elevations of the proposed 4th floor accommodation would prevent overlooking and a perceived sense of overlooking of neighbouring property to the side and rear. Likewise, a similar Condition to that imposed under ABP Ref. 303314-18 requiring the provision of opaque glazed screens 1.8 metres in height, be erected to the sides of the proposed amalgamated balconies on the front and rear elevations should be imposed.

7.3.5. Having regard to a) the height and staggered building line of the apartment block as permitted on appeal under ABP Ref. 303314-18 and b) the relative height of the proposed development and its setbacks from the building line of the permitted development, site boundaries and neighbouring dwellings, it is my view that the proposal would not adversely impact the amenity of neighbouring dwellings by way of overbearing impact or loss of outlook. On this basis, I recommend that the appeal should succeed in relation to this issue in the Planning Authority's second reason for refusal.

7.4. Appropriate Assessment

7.5. The Planning Authority refused permission for the proposed development on the grounds that the applicant has not satisfactorily demonstrated that the proposed development would not give rise to issues of Appropriate Assessment, given the proximity of the proposal to the Malahide Estuary Special Area of Conservation (Site Code 000205) and the Malahide Estuary Special Protected Area (Site Code 004025). In the absence of a detailed screening for appropriate assessment, prepared by a suitably qualified person the Planning Authority considers the proposed development would materially contravene Objective NH15 of the Fingal Development Plan 2017-2023 which seeks to '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'. The applicant contests this reason for refusal, as detailed in Section 6.1 above.

7.6. Supporting documentation submitted with the applicant's grounds of appeal includes an Appropriate Assessment Screening Report, prepared by Brock McClure Planning and Development Consultants. The report provides a description of the proposed development and characteristics of the application site, a review of nearby Natura 2000 sites (taken from the Natura Impact Report prepared as part of the Fingal County Development Plan 2017 - 2023), and an assessment of potential impacts of the proposed development. The report concludes that having regard to the scale, location and nature of the proposed development, there will be no potential or likely adverse

impact on any Natura 2000 site and no deterioration will occur to the integrity of the protected sites as a result of the proposed development.

- 7.6.1. Notwithstanding the proximity of the site to the Malahide Estuary SAC and SPA, having regard to the modest nature and scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the absence of a clear direct pathway to any European site, 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. On this basis, I recommend that the appeal should succeed in relation to this issue in the Planning Authority's third reason for refusal.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1. Having regard to the zoning and planning history of the site, to the nature and scale of the proposed development, and to the existing pattern of development in the vicinity, it is considered that subject to compliance with the conditions below, the proposed development would not seriously injure the visual and residential amenity of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

<p>1.</p>	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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.</p> <p>Reason: In the interest of clarity.</p>
<p>2.</p>	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted under appeal reference number 303314-18, and permission for amendments under planning register reference numbers F19A/0297, and any agreements entered into thereunder.</p> <p>Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permissions.</p>
<p>3.</p>	<p>Opaque glazed screens 1.8 metres in height, shall be erected at the sides of the amalgamated rear and front balconies at third floor level. Revised drawings, showing compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of residential amenity.</p>

4.	<p>Obscured glazing shall be provided to the side and rear elevations of the proposed development at fourth floor level. Revised drawings, showing compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of residential amenity.</p>
5.	<p>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.</p> <p>Reason: In the interest of public health.</p>
6.	<p>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.</p> <p>Reason: To protect the amenities of the area.</p>
7.	<p>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.</p>

	<p>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.</p>
--	---

Brendan Coyne
Planning Inspector

02nd December 2020