



An  
Bord  
Pleanála

## Inspector's Report ABP – 308348 – 20

### Development

Alterations to Apartment Block A (granted under permission P.A. Ref. No. F09A/0015 / ABP Ref. No. PL06F.235190; and, P.A. Ref. No. F09A/0015/E1) with such changes including changes to windows, introduction of glass balustrades to third floor level, changes to proportion of materials and finishes used on elevations, and increased height and revised design to northern entrance cores including provision of handrail in lieu of frame structure. Retention permission is also sought for modifications to the surrounding grounds of Block A including incorporation of ramps, associated railing, reconfiguration of parking spaces, addition of a bin store, additional bicycle parking, and all associated works.

\*Additional Information received 19th June 2020 & Clarification of additional

information received on the 17<sup>th</sup> day of August, 2020.\*

<b>Location</b>	'Jameson's Orchard', Seamount House, Seamount Road, Malahide, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	F19A/0629.
<b>Applicant</b>	Maureen Tracey.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Thomas Condron.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> day of December, 2020.
<b>Inspector</b>	Patricia-Marie Young.

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## 1.0 Site Location and Description

- 1.1. The irregular shaped appeal site has a given 0.503ha area and is situated in the under construction residential scheme of 'Jameson's Orchard' which forms part of the former grounds of 'Seamount House', a Protected Structure, which is located on the easternmost end of Seamount Road, c1km to the south east of Malahide village, in north County Dublin. The site itself contains an apartment block that at the time of inspection appeared to be predominantly occupied as is the surrounding houses that form part of the Jameson's Orchard residential scheme that appear to have been recently completed.
- 1.2. The larger Jameson's Orchard site is bound by greenfield lands to the north that form part of the 'The Heights' and 'Robswall' residential areas. To the east the site is bound by Portmarnock AFC and greenfield lands. To the west by 'Knockdara' residential estate and at the entrance of the Jameson's Orchard residential scheme is an attractive period gate lodge that appears to have been recently restored and which formed part of the original curtilage of Seamount House. This is also afforded protection as a Protected Structure and as are other associated significant built forms and spaces situated associated with 'Seamount House'.
- 1.3. The surrounding suburban landscape is characterised by various types of residential development.

## 2.0 Proposed Development

- 2.1. Retention permission is sought for the following:
  - Alterations to Apartment 'Block A' in the submitted documentation. This apartment block was previously granted under permission P.A. Ref. No. F09A/0015/ABP-Ref.PL06F.235190; and, P.A. Ref. No. F09A/0015/E1). The changes consist of changes to window dimensions and their configurations; introduction of glass balustrades to third floor level; changes to proportion of materials and finishes used on Block A's external elevations; and, an increased height and revised design to northern entrance cores including provision of handrail in lieu of frame structure.
  - Modifications to the surrounding grounds of Apartment 'Block A' in the submitted documentation including incorporation of ramps and associated railing,

reconfiguration of parking spaces, the addition of a bin store, additional bicycle parking together with all associated works.

2.2. The initial application was accompanied by:

- A Covering Letter.
- A Planning Statement.
- Plans, drawings, and other documentation pertaining to the development sought.

2.3. On the 19th day of June 2020, the applicant submitted their additional information response to the Planning Authority.

2.4. On the 17<sup>th</sup> day of August, 2020, the applicant submitted their clarification of additional information response. This response consisted of a written submission from the applicants planning consultants alongside a number of drawings, plans and other documents. The applicant's response can be summarised as follows:

- Item No.1
  - Various locations on site were considered for the location of the bin store as it was considered that the provision of one at basement level would be inadequate in terms of location and in terms of overall waste collection operations. The bin store extends to 16m<sup>2</sup> and has been constructed of the same palette of materials used in the apartment block. It is contended to be secure and easily accessible at this location by residents and waste collection operators.
  - Soft landscaping has been planted in around this area to screen the bin store.
  - No odours will be experienced by residents and it will not pose any health or safety risk.
  - Its location is deemed to be the most appropriate location on their landholding.
  - A detailed drawing of the bin, bicycle store and associated surrounding amendments.
- Item No. 2
  - During construction, the dimensions of Block A were slightly amended by c.206mm in order to meet construction detailing requirements.

- Revisions to the floor areas of the apartments are detailed in an accompanying Housing Quality Assessment which also demonstrates compliance with the applicable planning standards at the time when the apartment block was originally permitted in 2010.
- The reasons for the revisions were due to the omission of essential service cores and the minor enlargement of lift cores.
- There has been an omission of 7 no. car parking spaces due to unavoidable increase of structural support pillar/columns required during construction. These 7 no. car parking spaces will now be provided at ground level prior to the completion of the development such that a total of 83 no. car parking spaces, which is the overall requirement for this development, is provided.
- There are bicycle spaces provided at basement level and the surface bicycle spaces provided are secondary for residents and visitors to this scheme.
- There is a sufficient quantum of bicycle spaces to serve this development.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1. On the 10<sup>th</sup> day of September, 2020, the Planning Authority decided to **grant** retention permission subject to seven number conditions including:

Condition No. 1: Development to be retained shall be in its entirety in accordance with the plans, particulars and specifications as revised by the additional information response received on the 19<sup>th</sup> day of June, 2020, and the clarification of additional information received on the 17<sup>th</sup> day of August, 2020.

Condition No. 2: Requires compliance with terms and conditions of parent grants of permission.

Condition No. 3: Deals with parking.

Condition No. 6: Requires lodgement of Bond monies.

Condition No. 7: Requires payment of Section 48 contributions.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The **final Planning Officer's report** is the basis of the Planning Authority's decision. It includes the following comments:

- The provision of a more readily accessible bin store is concurred with.
- The bin store in its finished state is not injurious to the visual amenities of the area and the planting in place along the western boundary also aids the visual integration of the modest bin structure at its corner location.
- The amendments to 'Block A' are considered minimal and the rationale for them is accepted.
- It would appear from a review of the Housing Quality Assessment provided that the apartments are largely compliant with the Sustainable Urban Housing Design Standards for New Apartments, Guidelines for Planning Authorities, 2018.
- The parking concerns arising from the loss of seven basement car parking should be subject to a condition.
- Notwithstanding the retrospective nature of the works it is considered that the development integrates appropriately within its context as well as does not unduly impact upon the surrounding residential amenities.
- This report concludes with a recommendation to grant retention permission.

The Planning Officer's report dated the 8<sup>th</sup> day of July, 2020, concluded with a request for **clarification of further information**.

Item No. 1: Essentially relates to the retrospective planning for the bin store and seeks its relocation to a less conspicuous location with the area returned to form part of the landscape area and/or for use as an EV charging point. Revised site layout plans also sought.

Item No. 2: Revised plans are sought in relation to the amendments made to the apartment block externally and internally. Demonstration of compliance with relevant standards for the apartment units.

The Planning Officer's report dated the 17<sup>th</sup> day of February, 2020, concluded with a request for **additional information**.

Item No. 1: It is requested that the items being sought for retention and what items that have yet to be completed be more clearly set out. It is highlighted that only items listed to be retained will be considered as part of the applicant's response and items not yet to be completed but listed as seeking retention permission will be subject to a separate planning application.

Item No. 2: Revised plans and elevations sought to clearly distinguish all works that differ from the approved scheme (ABP Ref. PL06F.235190 / P.A. Ref. No. F09A/0015/E1) is sought.

Item No. 3: Clarification sought for the structure under construction to the north west of the apartment block.

### 3.2.2. Other Technical Reports

**Water:** No objection.

**Parks:** No objection.

**Transportation:** This report included the following comments:

- There is no additional car parking demand associated with the development sought.
- The changes to the pedestrian footpaths are acceptable.
- There are fewer basement parking spaces than approved. It is recommended that this matter be addressed by way of condition.
- No objections to the development sought.

### 3.3. Prescribed Bodies

3.3.1. None.



### 3.4. Third Party Observations

- 3.4.1. During the course of the Planning Authority's determination of this application they received a third-party observation from the appellant. This is attached to file. They also submitted a further submission in relation to the clarification of additional information. This is also attached to file. I consider that the substantive planning issues raised in these submission correlate with those raised in their appeal submission to the Board. No other third-party observations were received.

## 4.0 Planning History

### 4.1. Site:

**P.A. Ref. No. F03A/0076:** Planning permission was **refused** for a mixed residential development of 58 no. duplex apartments; 20 no. terraced townhouses; 4 no. semi-detached bungalows and 1 no. self-contained dormer unit for use as a creche on the grounds of 'Seamount House'.

**ABP Ref. No. PL06F.235190 (P.A. Ref. No. F09A/0015):** On appeal to the Board planning permission was **granted** subject to condition for a development consisting of the construction of 159 no. houses, renovations of derelict gate lodge (a protected structure) and all associated site development works. The Board in its reasons and considerations noted that it had regard to the residential zoning objective for the area and to the pattern of development in the area and considered that, subject to compliance with conditions, that the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

**P.A. Ref. No. F19A/0097:** Planning permission was **granted** for minor changes to 63 of the units previously approved under P.A. Ref. No. F09A/0015.

### 4.2. Setting

- 4.2.1. No recent and/or relevant planning history.

## 5.0 Policy & Context

### 5.1. Development Plan

- 5.1.1. The policies and provisions of the Fingal Development Plan, 2017-2023, apply. The site lies within an area zoned 'RS' which has an aim to: "*provide for residential development and protect and improve residential amenity*".
- 5.1.2. Chapter 3 of the Development Plan deals residential development.
- 5.1.3. Chapter 12 of the Development Plan which deals with the matter of development management guidelines sets out a number of considerations for roof alterations/expansions to the main roof profile.

### 5.2. Natural Heritage Designations

- 5.2.1. The appeal site lies within 0.6km of Special Protection Area: Malahide Estuary SPA (Site Code: 004025) and Special Area of Conservation: Malahide Estuary SAC (Site Code: 000205) at their nearest point, respectively.

### 5.3. EIA Screening

- 5.3.1. Despite the appeal sites close proximity of the site to Malahide Estuary SAC (Site Code: 000205) and Malahide Estuary SPA (Site Code: 004025) as set out in Section 5.2.1 of this report above, having regard to the nature, scale and scope of the development sought with the works for retention being observed to be *in situ* on the day of my site inspection and with these works being modest in their nature, scale, and scope. Consisting of amendments to a previously permitted apartment block together with the provision of a modest in size bin store and some minor amendments to the soft and hard landscaped surroundings associated with this building, together with the mature and built-up residential setting of the site in the Dublin city suburb of Malahide, the nature of the receiving environment, the serviced nature of the site and its setting, the serviced and significantly developed nature of land between the site and the above stated European sites and the more significant lateral separation distances to other European sites within the wider setting, I consider 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 in this case.

#### 5.4. **Built Heritage**

- 5.4.1. This appeal site lies c85.5m to the south west of National Monument DU00507 which is given 'EART' classification. The subject apartment block is visually buffered from this National Monument by way of other associated development to the north of it that forms part of Jameson's Orchard residential scheme.
- 5.4.2. The appeal site forms part of the visual setting and historically formed part of the curtilage of 'Seamount House'. This attractive period building dates to c1890 to 1910 with a number of associated built structures surviving from this period. It is listed in the NIAH Register (Ref. No. 11,344,032) where its categories of interest are given as '*Architectural*' and '*Artistic*'. It is also given a '*Regional*' rating. This building and its associated surviving structures are also afforded protection as '*Protected Structures*' with this extending to its '*Gate Lodge*' structure that is one of the key features of the entrance into Jameson's Orchard residential scheme.

### 6.0 **The Appeal**

#### 6.1. **Grounds of Appeal**

- 6.1.1. The grounds of appeal submission can be summarised as follows:
- The appellant indicate that they objected to the original scheme for a number of reasons including the height of the block in question which they consider is out of keeping with the established character of the area alongside its positioning on the highest part of the site. Due to the height and location, it would give rise in their view to overlooking of their property which is a bungalow.
  - The appellant contends that they appealed the decision of the Planning Authority to grant the initial proposal but that the Board did not support his concerns considering that there was ample separation distance alongside the presence of mature trees to abate any serious residential amenity impact.

- The Boards reasons are not accepted as the canopy of the trees are so high from ground level and at the height the canopies are such that they do not block views from the apartments on the southern side of this apartment block.
- The changes made for which retention are now sought will only make the overlooking situation worse.
- In addition, the provision of clear glass balconies around the edge of the block will result in additional overlooking when compared to the permitted scheme.
- The fact that permission is being sought for changes already made is contended to be another example of the attitude the applicant has to the planning process.
- The overall development has not been constructed as permitted.
- Two previous applications were refused due to the inadequacy of the Seamount Road.
- Under P.A. Ref. No. F09A/0015 it was proposed to construct a carriageway between 'Knockdara' residential estate and the site. Alongside this it was proposed to construct a footpath on the northern side of the road. These works were revised on foot of a Road Safety Audit which had regard to the southern side of the road being in private ownership and therefore preventing the provision of footpaths on both sides of the carriageway.
- Reference is made to Condition No. 3 of the Boards grant of permission which required prior to the commencement of development, that the developer submit and agree in writing with the Planning Authority traffic calming measures, parking control measures and pedestrian crossings along Seamount Road as recommended in the Stage 1 Road Safety Audit. It also required that no dwelling be occupied prior to the construction and commissioning of these works alongside improvement works along the Seamount Road.
- Reference is made to works carried out in 2016 which consisted of the construction of a 1.8m wide footpath on the southern side of the carriageway which is contended to be in the appellants legal ownership in the absence of consent. These works were subject to High Court proceedings and it is indicated that the High Court directed the developers to restore the grass verge area. This decision is currently being appealed by the developers.

- This footpath does not have planning permission and conditions of the grant of permission have not been complied with.
- In the interim residents from the scheme are using this footpath between Knockdara and Jameson's Orchard. In addition, some cars due to the restricted width mount this footpath. Therefore, due to the condition of this stretch of road and footpath road safety concerns are raised.
- The road is not wide enough to serve the residents of Seamount Road and the residents of Jameson's Orchard. In addition, a bus service now operates to a creche that operates within Jameson's Orchard.
- The houses and apartment units are being occupied yet the scheme is not as per its grant of permission.

## 6.2. Applicant Response

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

- An overview of the application is given.
- A site location and description are provided.
- An overview of the planning history of the site is provided.
- The alterations made to 'Block A', subject of this application, during the course of construction consisted of minor design changes and improvements to the building. This has resulted in aesthetic as well as residential amenity improvement of this apartment building in terms of its site context and for its occupants.
- Modifications were also made to the surrounding grounds in which 'Block A' sits.
- The parent permission was granted over ten years ago by the Board under ABP Ref. No. PL06F.235190 (P.A. Ref. No. F09A/0015) as it was deemed to be in accordance with the proper planning and sustainable development of the area. This residential scheme is now nearing completion. The Board also received an appeal submission by the appellant in that case and the Board did not consider that the permitted development would negatively impact on the appellants property or on their associated residential amenity. The Board also considered that the tree cover also provided appropriate screening of the development from the appellants

property together with the significant lateral separation distances between the development and their property.

- The minor revisions have not resulted in significant additional overlooking and alongside the significant mature trees within the Jameson's Orchard site, the appellants property also contains significant vegetation cover within its own boundaries.
- This third-party appeal is without substance or foundation as the issues raised by the appellant have already been previously assessed by the Board. The Board is therefore requested to dismiss this appeal under the provisions of Section 138(1) of the Planning and Development Act, 2000 (as amended).
- Only minor architectural amendments have been made to this permitted apartment Block and it is contended that these amendments represent an improvement to the architectural quality of the original design.
- The introduction of glass balustrades at the third-floor level provides transparency to the façade as well as maximises light intake for the apartment units.
- The use of brick has been reduced on the west and east elevation which provides variation to the façade treatment.
- The selected brick is rich in character and will complement the introduction of render.
- The overall amendments result in a more modern and contemporary visual aesthetic.
- The appellant notes a number of legal matters pertaining to Seamount Road which are being addressed separately through the courts.
- The applicant has implemented the grant of permission subject to the amendments required for agreement with the Planning Authority in a compliant manner.
- The applicant was obliged to construct the footpath on the southern side of Seamount Road on foot of the findings of a Road Safety Audit that was required by way of condition.
- This application does not concern the access road and it is not reasonable for the appellant to include unrelated matters.

- It is sought that the Board will uphold the Planning Authority's decision.

### **6.3. Planning Authority Response**

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

- This application was assessed against all relevant planning provisions alongside regard was had on the impact of adjoining neighbours as well as the character of the area.
- The issues raised in relation to access to the overall development did not form part of the subject application.
- It is requested that their decision is upheld and in such an event that Conditions No.s 6 and 7 of their notification to grant retention permission is included by the Board in its determination.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. I consider it appropriate to first of all to make comment upon the applicant's contention that this Third-Party appeal lodged with the Board is without substance and/or foundation with the substantive planning issues raised by the appellant previously assessed by the Board under the parent grant of permission. It is therefore requested by them that the Board dismiss this appeal under the provisions of Section 138(1) of the Planning and Development Act, 2000, as amended.

7.1.2. Having examined the appeal submission, all documents pertaining to this application together with an examination of the planning history relating to the residential scheme of Jameson's Orchard and conducting an inspection of the site as well as its setting, it is my view that in this case that substantial time has passed since this scheme was permitted by the Board under ABP Ref. No. PL06F.235190 and with this the planning context has substantially evolved in the intervening years together with in recent years substantial development works have been undertaken towards the completion of the mixed in typology residential scheme (Note: consisting of 86 apartment units and 73 houses). With 'Block B' being the only major component of this scheme to be completed. With the more recent works appearing to have facilitated the now

completed and occupied houses and crucially apartment units of 'Block A' as well as its associated bin store and outdoor amenity spaces.

- 7.1.3. The modulation of the site ground levels to accommodate the associated buildings, their internal access roads through to open space requirements has inevitably resulted in the loss of some of the vegetation that would have been *in situ* during the Board's inspector inspection of the larger site in which subject 'Block A' and the bin store is now located circa a decade ago. As such it is my view that this inevitably resulted in reduction of natural screening and in turn giving rise to the potential for this development to give rise to overlooking through to reduced privacy for the appellant. As such I consider that it is appropriate that the Board has regard to the current situation as opposed to dismissing the appellants residential amenity concerns as is requested by the applicants in their response to the grounds of appeal.
- 7.1.4. In addition, by way of this application retention permission is now sought for amendments to the exterior treatment of 'Block A' alongside some minor deviations to the building's overall dimensions. The exterior amendments have included increased transparency in the treatment of the southern balcony facades of 'Block A' by way of additional levels of glazing in terms of openings as well as main balcony exterior treatment as opposed to brick.
- 7.1.5. In addition, an inspection of the site with the now largely amended and completed landscaping obviously provides a more realistic impression of the visual buffering and screening that can be achieved from the maintained nature trees within this landscape setting when compared to plans submitted as part of any application. Despite the presence of some coniferous tree species, I observed that many of the surviving trees are of deciduous species.
- 7.1.6. Further, as pointed out by the appellant in their appeal submission their canopies are significantly raised above ground level with evidence of pruning observable during my inspection of the site. This was likely to be in the interests of their health and improvement of their visual appearance as part of the overall landscaped scheme provided for this residential development.
- 7.1.7. Moreover, the planning context of the site within its suburban context of north Dublin has as said evolved since the parent permission was granted c10years prior to this application and with this the local through to the national planning context has provided



more robust requirements in terms of residential development with the current Development Plan as part of the zoning objective for this land providing for the protection of residential amenity for existing residents, like the appellant, as part of the 'RS' land use zoning of the site.

- 7.1.8. Against this context I do not consider that the residential and visual amenity concerns raised in the appellants appeal submission to the Board to be unreasonable and without grounds.
- 7.1.9. I therefore do not concur with the applicant's contention that this appeal should be thrown out for the grounds cited by them and I recommend that the Board not invoke provisions of Section 138(1) of the Planning and Development Act, 2000, as amended, as this would be counter to natural justice and parity of esteem.
- 7.1.10. My second concern that I consider is incumbent to raise prior to the commencement of my assessment of the development sought under this application relates to civil matters.
- 7.1.11. I am cognisant that the Board has no statutory power to adjudicate upon such matters, including those relating to concerns with regards to title, ownership of property through to the carrying out of work in the absence of consent as is raised as a cause of concern by the appellants in the grounds of their appeal submission. A number of the concerns raised by the appellant in this regard constitute civil matters that can only be resolved by agreement between the parties or in the civil courts. I note that both the appellant and the applicant indicate that currently there are on-going court proceedings relation to the same.
- 7.1.12. I further note that the Development Management Guidelines under Section 5.13 state that: *"...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 by the courts..."*.
- 7.1.13. My third concern that I consider incumbent to comment upon prior to the commencement of my assessment of the development sought under this application relates to the concerns expressed by the appellant that the works carried out to date by the applicant have been done in a manner that has not conformed with the conditions and limitations placed upon them by way of conditions under the parent grant of permission.

- 7.1.14. While I am cognisant that this application relates to retrospective permission for a number of deviations from the scheme as granted, in particular to 'Block A', its immediate setting and the bin store, the Board has no statutory power to adjudicate on matters that do not form part of the development for which permission is now sought by way of this application.
- 7.1.15. I do note that the appellant does raise particular concerns in their appeal submission compliance matters due to deviations that have occurred from the parent scheme as permitted and potential unauthorised development concerns. These particular concerns are outside of the Boards remit in their adjudication of this appeal and such concerns should be directed to the Planning Authority to deal with as they see fit. As they are the appropriate authority to deal with such matters under planning law.
- 7.1.16. Moreover, I note that the Board does not have an ombudsman role in terms of procedural matters raised also by the appellant, including the appellants concerns in terms of the Planning Authority's handling of any enforcement proceedings through to the manner in which they make their determination of a planning application. Such concerns could be directed to the Planning Authority to comment upon and the Planning Ombudsman should they deem that to be deemed to be an appropriate course of action to take.
- 7.1.17. My fourth and last comment I consider incumbent to make comment upon prior to the commencement of my assessment of the development sought under this application relates to the matter of 'retention'. The components sought for permission under this application all relate to and seek retention for works already carried out in a manner that has deviated from the parent grant of permission.
- 7.1.18. While I concur with the appellant that this is not an ideal approach to take in terms of carrying out any development, I am cognisant that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered "as with any other application". This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place.

7.1.19. In relation to my assessment below the main issues in my view that arise in this appeal case are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Notwithstanding, the issue of 'Appropriate Assessment' also needs to be addressed. I therefore propose to set out my assessment under the following headings:

- Principle of the Development Sought
- Residential Amenity Impact
- Visual Amenity Impact
- Parking
- Development Contributions
- Appropriate Assessment

7.1.20. For clarity purposes my assessment below is based on the application as revised by the additional information and the clarification of additional information only as these provide needed clarity and insight on the actual development sought under this application over and above that presented in the initial application.

7.1.21. Moreover, I concur with the Planning Authority in that the development does not give rise to any other significant drainage, roads and/or other issue that requires assessment subject to the works having been carried in compliant manner with the conditions and limitations of the parent grant of permission.

7.1.22. Therefore, I concur with the Planning Authority's inclusion of Condition No.s 2 and 3 in their decision notification and should the Board be minded to grant I recommend that similar conditions be attached.

## **7.2. Principle of the Development Sought**

7.2.1. The site is zoned 'RS' which allows for residential development, improvements to residential developments and the like.

7.2.2. I also note that the development sought under this application does not seek any increase in the density of the development as permitted under the parent permission nor does it result in any amendments to the plot ratio.

7.2.3. Further, the amendments to Block A result in improvements in terms of the buildings energy performance and the residential amenity for occupants has been improved by

increased light and ventilation penetration into the interior living spaces with these living spaces, despite being subject to a grant of permission being circa a decade old, being by and large compliant with the required local through to national standards for such developments.

7.2.4. Moreover, the external improvements to the façade treatment of Block A results in a more contemporary and qualitative light weight approach to its exterior treatment than that previously permitted. This when considered against the fact that 'Block A' forms part of the visual setting of 'Seamount House', a Protected Structure, as well as the setting of its surviving structures of built merit together with remnants of its designed landscape setting, the improvements to the design and exterior treatment of the external façade of this building is welcomed and it results in an improved visual contribution in this built heritage sensitive setting. Moreover, the bin store is designed to harmonise with the revised exteriors of 'Block A' and is also provided with a good quality landscape setting that does not detract from the overall visual amenities of this built heritage sensitive area or from the overall design character and aesthetics of the larger residential scheme of Jameson's Orchard.

7.2.5. Based on the above, I consider that the principle of the amendments to 'Block A', the provision of the modest in size bin store together with the other amendments to the surrounding space around both buildings is in general acceptable, subject to safeguards, in particular in terms of residential amenity impact on occupants of the apartment units and properties in the vicinity.

### **7.3. Residential Amenity Impact**

7.3.1. As previously discussed, the amendment sought under this application do not give rise to any significant diminishment of the standard of residential amenity for the occupants of 'Block A' but rather improves the interior amenities of units within this building by way of improved natural light and ventilation penetration alongside improvements to the building's overall energy performance.

7.3.2. Moreover, the provision of seven car parking spaces at surface level would not give rise to any significant diminishment of open space provision through to the bin store has been designed to be located where it is both accessible for occupants and waste service operators.

- 7.3.3. It is also of a design that seeks to harmonise with the visual aesthetics of the residential scheme it forms part of and that its design is such that it would not give rise to any undue nuisance for residents of 'Block A' as well as other resident's properties within the immediate vicinity of it within Jameson's Orchard residential scheme.
- 7.3.4. Further I do not consider that the amendments to external envelope of 'Block A', in particular the increased dimensions of window openings through to the provision of transparent glass balconies will give rise to a significant diminishment of residential amenities for occupants of properties within the immediate vicinity of 'Block A' within the Jameson's Orchard scheme by way of overlooking or otherwise when compared to that of the parent grant of permission. Nor do I consider that minor amendment to the built envelope of 'Block A' and the addition of the bin store would give rise to any residential disamenity by way of overshadowing due to their modest nature and lateral separation distance from nearest properties in their vicinity.
- 7.3.5. In terms of the appellants property, I acknowledge that there has been a loss of vegetation between their property and 'Block A'. I also observed that the mature trees that are present as previously discussed have canopies that are significantly raised above ground level and as such provide limited visual screening and buffering to the appellants single storey property. I also note the appellants property is single storey in built form and that the existing natural features within as well as bounding the appellants property are not of a height to screen overlooking that would arise from upper floor levels of 'Block A'.
- 7.3.6. Also Block A is located on a high point and it has finished floor levels that are significantly higher to that of the appellants property. The space in between 'Block A' and the appellants property is largely open accommodating access and soft landscaping mainly in the form of grassed open space.
- 7.3.7. Whilst I acknowledge that there are still works on-going and that the landscaping works that have been carried out are generally of good quality and that there is distance lateral separation distance between the appellants property and 'Block A'. Notwithstanding, I consider that there is an opportunity for more robust planting of an evergreen nature to be provided in the south western boundaries of the wider site to lessen the impact of this development on the appellants property from not only the amendments that have occurred to the southern elevation of Block A but crucially the

fact that the area in between Block A and the red line area of the site which I note is one of the main open spaces serving this development are on elevated grounds with limited landscaping proposed and carried out within it beyond a small number of deciduous trees. The introduction of a number of appropriately placed coniferous species and/or the provision of hedge buffer could significantly lessen the impact of 'Block A' on the appellants in terms of overlooking and perceived overlooking. It would not be unreasonable given the quantum of apartment units that have a southerly address as well as private amenity space in the form of balconies above ground level also with a southerly address. Moreover, the protection and safeguarding of residential amenity is consistent with the 'RS' zoning of the site and its setting.

7.3.8. I therefore recommend that the Board should it be minded to grant retention permission that it includes a condition seeking improvements to planting within the 'West Green Space' which lies within the redline area of the site, with the view of providing additional planting to address vistas from 'Block A' and the 'West Green Space' with the aim of achieving a suitable visual buffer between it and the appellants property.

7.3.9. Based on the above, I consider that the development sought under this application would not result in any seriously injury to residential amenities for properties in its vicinity and/or for occupants of 'Block A'.

#### **7.4. Visual Amenity Impact**

7.4.1. In terms of visual amenity impact I consider that the amendments sought to the built form of 'Block A', which I acknowledge includes a modest increase in height; the amendments to the solid to void ratio of this building alongside changes to the external palette of materials, treatments and finishes together with the provision of a single storey bin store which harmonises with the palette of materials, treatments and finishes through to the associated amendments to the immediate setting of these buildings and their associated open spaces result in a more light weight, contemporary and varied in architectural expression to the built form within the residential scheme of Jameson's Orchard. I consider that the amendments though minor in nature result in general give rise qualitative improvements over and above the parent grant of permission.

- 7.4.2. Whilst I consider that the bin store is located in a somewhat visually incongruous position within this scheme it is nonetheless finished to a high standard and together with the soft landscaping despite being a recent intervention appears to sit comfortably within its visual context.
- 7.4.3. Moreover, as previously discussed the amendments to 'Block A', the provision of a bin store at surface level to the west of 'Block A' together with the amendments made to their immediate setting does not result in any significant diminishment of the setting of Seamount House over and above that of the originally permitted scheme. Arguably the more light weight in appearance, contemporary approach, and more qualitative palette of external materials, finishes as well as treatments gives rise to improvements to a visual sensitive to change setting.
- 7.4.4. Based on the above considerations I consider that in general the impact of this development on its visual setting is positive and I do not consider that this development could be refused on visual amenity grounds.

## 7.5. **Parking**

- 7.5.1. The revisions of 'Block A' have resulted in the loss of seven car parking spaces from the basement level, i.e., a reduction from 45 car parking spaces to 38, with the applicant proposing to now provide these lost spaces at surface level in the vicinity of this building prior to the completion of the development.
- 7.5.2. I note that the Planning Authority and their Transportation department raised no issue with this subject to the inclusion of a condition that ensured that the completed scheme was not served by fewer parking spaces as that permitted under the parent grant of permission.
- 7.5.3. I consider that this is reasonable based on the fact that there is ample space for the provision of the lost seven car parking spaces at surface level without compromising the open space provision to be reduced to a level below that required for this quantum of residential development.
- 7.5.4. I therefore recommend that the Board, should it be minded to grant retention permission for the development sought under this application, to include Condition No. 3 of the Planning Authority's decision notification as part of any grant of retention permission.

7.5.5. Whilst I concur with the appellant in this case that the access point facilitating Jameson's Orchard onto Seamount Road is problematic due to its restricted width, poor surfacing, poor provision of associated infrastructure in particular qualitative lighting and pedestrian footpaths. Notwithstanding, I am of the view that the development sought under this application would not give rise to any additional volumes of traffic and pedestrian usage of Seamount Road including that in the vicinity of the appellants property as it does not result in any additional apartment units or bedspaces. As such it would not give rise to an increased road safety and traffic hazard issue over and above the existing situation.

#### 7.6. **Other Matters: Development Contribution**

7.6.1. I note to the Board that the Planning Authority seek that any grant of permission by the Board for the development sought under this application include Conditions No.s 6 and 7 of their decision notification. I do not consider this to be unreasonable given that the residential units associated with houses and apartments in Block A appear to be all occupied but yet the required contributions and bonds remain outstanding.

#### 7.7. **Appropriate Assessment**

7.7.1. Having regard to the modest nature, scale and extent of development sought and to the nature of the receiving environment, namely an urban and fully serviced location, I consider in this instance no appropriate assessment issues arise and 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.

### 8.0 **Recommendation**

8.1. I recommend that retention permission be **granted**.

### 9.0 **Reasons and Considerations**

9.1. Having regard to the 'RS' zoning of the site, which allows for residential development, to the provisions of the Fingal Development Plan, 2017-2023, and to all relevant national planning provisions, it is considered that, subject to the conditions set out below, the proposed development would provide an adequate standard of amenity for its occupants, would not injure the character of the area or the amenities of property



in the vicinity, and would be acceptable in terms of traffic safety and convenience. It would therefore be in keeping with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 19<sup>th</sup> day of June, 2020, and by the further plans and particulars submitted to the Planning Authority on the 17<sup>th</sup> day of August, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The terms and conditions of the grant of permission made by the Board under ABP. Ref. No. PL06F.235190 (P.A. Ref. No. F09A/0015) shall be complied with in full in the course of the development herein permitted, save for the changes to the plans submitted for this application.

**Reason:** In the interest of clarity and in the interest of proper planning and sustainable development of the area.

3. A tree planting scheme indicating the introduction of semi-mature individual and/or groups of conifer trees in the 'West Green Space', in particular towards its southern end of this open space amenity. In addition, consideration should be given as part of the revised landscaping to the introduction of a coniferous hedge buffer along part of the southern boundary of the site. A revised landscaping scheme shall be submitted to and agreed 'in writing' with, the Planning Authority within 3-months of the grant of permission. The agreed planting scheme shall be completed within the first planting season thereafter this agreement is concluded and any trees which die, are removed, or become seriously damaged or diseased, within a period of five years from the completion of this planting shall be replaced within the next

planting season with others of similar size and species unless otherwise agreed 'in writing' with the Planning Authority.

**Reason:** In order to screen the development, in the interests of residential and visual amenity of the landscaped grounds of Jameson's Orchard which forms part of the visual context of Protected Structure Seamount House.

4. The developer shall comply in full with the following:
  - (a) All necessary measures shall be taken by the applicant/developer to prevent the spillage or deposit of any materials including clay rubble or other debris on adjoining roads during the course of development. In the event of any such spillage or deposit, immediate steps shall be taken to remove the material from the road surface at the applicant/developers own expense.
  - (b) The applicant/developer shall be responsible for the full cost of repair in respect of any damage caused to the adjoining public road arising from the construction work and shall either make good any damage to the satisfaction of Fingal County Council or pay the Council the cost of making good any such damage upon issue of such a requirement by the Council.

**Reason:** In the interest of orderly development and to protect the amenities of the area.

5. The following requirements shall be complied with in full:
  - (a) Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

6. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of roads, sewers, watermains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory

completion of any part of the development. The security to be lodged shall be as follows:

- (a) An approved insurance company bond in the sum of €548,000, or
- (b) A cash sum of €342,500 to be applied by the planning authority at its absolute discretion if such services are not provided to its satisfaction, or
- (c) Such other security as may be accepted in writing by the planning authority.

**Reason:** To ensure the satisfactory completion of the development.

7. The developer shall pay to the planning authority a financial contribution of €2,059,382 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. The application of any indexation required by this condition 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.

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

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Patricia-Marie Young  
Planning Inspector

19<sup>th</sup> day of January, 2020.