



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309009-20

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<b>Development</b>	Construction of 4 houses.
<b>Location</b>	Wynyard, Foxborough Manor, Balgaddy, Lucan South, Co. Dublin.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD20A/0251
<b>Applicant(s)</b>	William Murphy and Breda Shier
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	William Murphy and Breda Shier
<b>Observer(s)</b>	Martin and Mark Murphy Theresa Dunne Louise Hennessy
<b>Date of Site Inspection</b>	21 <sup>st</sup> May, 2021
<b>Inspector</b>	Stephen Kay

## 1.0 Site Location and Description

- 1.1. This appeal site is located on the north-eastern corner of the junction of Foxborough Manor and Foxborough Green in Lucan, c.11km to the west of the city centre. To the south and south east, the area in the vicinity of the site is characterised by two storey semi-detached dwellings in the Foxborough residential development. To the north, the site adjoins a yard area and there are two existing houses located on the lands to the north which significantly predate the development of the Foxborough estate to the south. This complex of houses is referred to as Wynyard on the available mapping of the site and it is evident that the appeal site once formed part of this overall site. Wynyard is accessed via a vehicular access onto Newlands Road to the north.
- 1.2. To the west, the appeal site bounds a green area or verge that runs along the eastern side of Foxborough Manor. This green area has a slight fall down from the road level in the direction of the site and there are a number of birch trees located along the roadside frontage of this green area. This section of Foxborough Manor between the estate access to the Newlands Road to the north and the roundabout junction of Foxborough Green, Manor and Downs to the south is the main access road to the residential area to the south and is characterised by significant volumes of traffic, including the Dublin Bus No.25 route. There are currently no vehicular access points onto this section of road on the eastern side and just two individual houses (Nos. 1 and 2 Foxborough Downs) that front directly onto the road on the western side.
- 1.3. To the south, the site bounds Foxborough Green and a triangular shaped area of incidental open space that is located on the northern side of Foxborough Green. To the east, the site adjoins lands that are part of the curtilage of the house Wynyard. Further to the east and facing onto Newlands Road is the three storey high Foxborough Hall residential development of duplex units.
- 1.4. The submitted Existing Site Plan indicates that levels on the site are relatively level, however the site sections indicate the significant rise in levels in the direction of Newlands Road which is approximately 2.5 metres higher than the appeal site. There is also a fall of approximately 0.5 metre between Foxborough Manor and the appeal site at the location of the proposed new vehicular access to the site.

- 1.5. There is an existing barn structure located on the appeal site and access to this structure is via the yard area located to the north. Aside from the barn, the site is significantly overgrown and is characterised by a significant number of mature trees.
- 1.6. The stated area of the site is 0.0125 ha.

## 2.0 Proposed Development

- 2.1. Permission is sought for the demolition of an existing agricultural building which is described as a 'derelict barn' with a stated gross floor space of 333m<sup>2</sup> and the construction of a terrace of 4 no. dwellings, consisting of 2 no. 2-storey three bedroom houses and 2 no. 2-storey four bedroom houses. Three separate house types are proposed, Type A (four bed) with a stated floor area of 140 sq. metres, Type B (three bed) with a stated floor area of 102 sq. metres and Type C (four bed) with a stated floor area of 136 sq. metres. The total floor area of the proposed development is therefore c.480 sq. metres.
- 2.2. The houses are proposed to be constructed in a terrace orientated approximately north – south across the site with a shared area to the front and private gardens to the rear. Access to the development is proposed to be via a new access point to the west onto Foxborough manor between the junction with Newlands Road to the north and the roundabout to the south.
- 2.3. The overall height of the proposed houses is indicated as being c.9.12 metres above ground level and the designs incorporate a high roof pitch to accommodate a bedroom at roof level in the proposed 2 no. four bedroom units. These four bedroom units are proposed to have dormers at roof level in the front (west facing) elevation. Unit No.1 at the southern end of the terrace is proposed to have a gable end window at attic level.
- 2.4. Finishes to the proposed houses comprise a mixture of brick and render finish with metal cladding to the dormers and dark roof tile finish.
- 2.5. The following information is submitted with the application:
  - Covering letter and design statement,
  - Building specification,

- Bat survey,

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for five reasons that can be summarised as follows:

1. That the proposed development constitutes piecemeal and haphazard development that would poorly integrate with the surrounding area and the proposed access arrangements and lack of a site sensitive response to the varying site topography would contravene the residential zoning objective for the site and would be contrary to the provisions of 11.3.2 of the development plan regarding development of infill / corner sites.
2. That the proposed development would result in the creation of a sub optimal entrance onto a main link road in proximity to a busy roundabout and which requires the crossing of public lands for which consent has not been obtained, would have a negative impact on residential amenity and would be contrary to the residential zoning objective of the area.
3. That the provision of access to the development would require the removal of existing trees in a public open space and would therefore have a negative impact on amenity and be contrary to development plan policy regarding the protection of trees.
4. That no ecological survey has been submitted to enable an assessment of the proposed development on biodiversity or to make a determination as to whether the proposed development would impact on species such as bats protected under the Habitats Directive.
5. That the proposed development would set an undesirable precedent for similar form of development in other locations.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The report of the Planning Officer notes the planning history of the site, the content of internal reports and the objections received. The change in unit sizes are noted and considered to comply with the standards set out in Quality Housing for Sustainable Communities, however issues relating to building height, site levels, access and integration with surrounding development and an integrated approach to the development of the site remain and are considered such that permission should be refused. The third party concerns regarding ownership are noted as is the fact that there is no record of consent to include lands that are in the control of the local authority required to facilitate the site access. Refusal of permission consistent with the Notification of Decision to Refuse Permission which issued is recommended.

### 3.2.2. Other Technical Reports

Housing Unit – No requirement for Part V – s.97 cert submitted.

Parks and Landscape Services – Initial report states that no objection subject to conditions including reinforcement of site boundaries. Second report expresses concerns regarding the impact of the proposed development on existing trees and hedgerows. Proposed removal of trees to facilitate access is contrary to the provisions of the development plan. Revised design that minimises the impact on trees and hedgerows and further information recommended.

Water Services – No objection.

Roads – Refusal of permission recommended on the basis of unnecessary additional access onto the main link road into the estate and that the access should be onto Foxborough Downs. The proposed development would also compromise the future development of lands to the east of the site.

Asset Management – E mail on file stating that a previous letter of consent to the making of an application that included council owned lands was issued in January 2019 but that this was valid for a period of 12 months and has now expired. Stated that no further request from the applicant has been received.

### 3.3. Prescribed Bodies

Irish Water – Report on file that recommends that further information in the form of a pre connection inquiry that would indicate the feasibility of connections (water and foul) are required. Also noted that SuDS systems are not permitted over public watermains (in this case permeable paving) and that there is a discrepancy in the diameter of the foul sewer shown in the drawings.

### 3.4. Third Party Observations

The following issues were raised in the third party observations received by the Planning Authority:

- Negative impact on residential amenity,
- Loss of trees and vegetation,
- Haphazard and piecemeal development of the site,
- Slope of site not accounted for in design,
- Structures larger than previously proposed,
- Increased traffic and negative impact on traffic safety,
- Flooding issues due to slope on site,
- Ownership issues relating to the site and the access,
- Impact on ecology including foxes,
- Lack of consultation with public.

## 4.0 Planning History

South Dublin County Council Ref. SD19A/0213; ABP Ref. ABP-305497-19 – Permission refused by the Planning Authority for 5 no. reasons and decision upheld on appeal for the demolition of existing barn structure and the construction of 4 no. two storey houses and new vehicular access to Foxborough manor on site which is

the same as the current appeal site. Permission was refused by the Board for a single reason which related to the design of the proposed houses which contained an inadequate aggregate area of living space, contrary to the provisions of Quality Housing for Sustainable Communities' and which would therefore constitute a sub-standard form of residential development that would seriously injure the amenities of future occupants.

## 5.0 Policy Context

### 5.1. Development Plan

The appeal site is zoned Objective RES under the provisions of the *South Dublin County Development Plan, 2016 to 2022* with the stated objective "to protect and/or improve residential amenity". Residential development is permissible on lands zoned RES.

Chapter 2 of the Development Plan relates to housing and includes a number of policies that I consider to be of relevance to the assessment of this case including the following:

**Policy H7** relates to Urban design in Residential developments,

**Policy H8** relates to Residential Densities and states that it is policy to promote higher densities at appropriate locations.

**Policy H11** relates to Residential Design and Layout and states that it is policy to promote a high quality of design and layout in new residential development and to promote a high quality living environment for residents.

**Policy H17** relates to residential consolidation and infill and states that it is policy to support consolidation and infill at appropriate locations and to ensure that such developments does not impact negatively on the character or amenities of an area.

**Section 11.3.2** of the plan sets out a series of criteria to be met in proposals for development in corner / side gardens and infill sites.

Copies of the above provisions of the development plan and other relevant sections are enclosed with this report.

## 5.2. Natural Heritage Designations

The site is not located within or close to any European sites. The closest such site to the appeal site is the River Rye Water / Carton SAC site that is located c.6km to the north west.

## 5.3. EIA Screening

Having regard to the nature and scale of development and the separation from environmentally sensitive receptors 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

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the refusal of permission issued by the Planning Authority does not appear to have had regard to the decision of the Board on Ref. ABP-305497-19 which refused permission for a single reason relating to the size of the residential units. This issue has been addressed in the revised application which retains the basic form and layout that was submitted under ref. SD19A/0213; ABP ref. 305497-19. .
- That the notes attached to the Board Direction in respect of Ref. 305497-19 note that the Board considered that the proposed development would integrate with the site context having regard to the zoning objectives for the area, the pattern of development in the area, the nature of the road network and the nature of the scale of the existing structure on the site and the proposed site layout and set back from the site entrance.



- Noted that the Board direction in the previous case also notes that the Board considered that the proposed location of a new access onto the public road network would not result in an unacceptable loss of public open space or trees and that the built form and terrace would be in accordance with the zoning objective.
- In the previous case the Board did not consider that the proposed development would result in on street parking or that it would endanger public safety by reason of a traffic hazard or obstruction of road users.
- That reason for refusal No.1 relating to haphazard and uncoordinated and piecemeal development cited by the Planning Authority has been addressed by the Board in the direction on case Ref. ABP-305497-19 and was not considered to be the basis of a refusal of permission by the Board. The Board had regard to the zoning objective of the site, the pattern of development in the area, the nature of the road network and the scale of the existing structure and site layout in reaching this conclusion. Submitted that the same reasoning should apply in the current application.
- Regarding reason for refusal No.2 and the creation of a sub optimal entrance onto a main link road, noted that the Board determined that this entrance was suitable and made reference to this in the note attached with the Board Direction issued in relation to Ref. ABP-305497-19. This note stated that the proposed development would not result in on street parking nor would result in the creation of a traffic hazard.
- Regarding reason for refusal no.3 and the impact on open space and loss of trees, noted that this issue was also addressed as part of the Board Direction in Ref. ABP-305497-19 which stated that the 'Board considered that the proposed location of a new access onto public road network would not result in an unacceptable loss of public open space or trees and that the built form of the terrace group and its layout would be in accordance with the zoning objectives for the site.
- Regarding reason No.4 relating to an ecological survey, a bat survey was submitted with the application and this confirms that there are no protected species such as bats in the barn or the hedgerow bounding the site. This

survey was also submitted with the previous application and was deemed acceptable by the Board which did not refuse permission for this reason. It is submitted that the situation with regard to biodiversity and bats has not changed since the assessment of the previous application given the that the scale of works proposed have not been altered from the previous development.

- Submitted that any further ecological studies can be required by way of condition if considered necessary by the Board.
- Regarding reason for refusal No.5 relating to undesirable precedent, it should be noted that the proposed development is located on residentially zoned lands and that the form of development proposed is consistent with this zoning. It should also be noted that the Board Direction in the case ref. ABP-305497-19 stated that the form of development proposed was considered to be consistent with the zoning objective of the site. Submitted that as the only change to the current proposal is an increase in the floor area of the dwellings, that the Boards previous reasoning that the built form, layout, and new access to the street would be in accordance with the zoning objective for the site remains valid.
- That the form of development proposed is acceptable in principle on lands zoned Objective RES.
- That the proposed terrace of 4 no. two storey houses is submitted to be an appropriate design response for the site and one that would not injure the residential amenities of the area or property in the vicinity.
- That the Board have already determined that the form of development proposed would integrate well with the site context and the surrounding area, would not result in on street parking or the creation of a traffic hazard and would not result in an unacceptable loss of public open space or trees and it is submitted that the Planning Authority decision has failed to have due consideration to the Boards decision in Ref. ABP-305497-19.

## 6.2. Planning Authority Response

The response received from the Planning Authority states that the Planning Authority confirms its decision and the issues raised in the appeal have been covered in the planners report.

## 6.3. Observations

Three observations on the appeal have been received and the following summarised the main points raised in these submissions:

### ***Martin and Mark Murphy***

- That the applicant does not have sufficient title in the site as outlined in red on the application drawings.
- That question 10 of the planning application form states that the applicants are the owners of the site.
- That the site comprises part of the lands contained in Folio DN11709.
- That the applicants do not indicate the balance of the lands contained in Folio DN11709 in blue on the application drawings.
- That Folio DN11709 was registered to James and Bridget Murphy in 1963 and this remains the registration to the present with no current application for change of ownership.
- The application submitted does not include the consent of the land owner to the making of the application as required by Article 22(2) of the Planning and Development Regulations, 2001 (as amended).
- A comparison of the application site boundary and the boundary of Folio DN11709 also indicates that there is a small triangle shaped piece of lands at the southern end of the site fronting Foxborough Green that is not included in the folio and in relation to which there is no indication of consent from the owner.

- That the applicant does not comply with the requirements of the Planning and Development Acts, 200-2008 and regulations made thereunder.
- That the applicants propose access across lands that are contained in Folio DN1237. While the applicants submitted a letter from the council consenting to the making of an application and including lands within Folio DN1237, it is evident from the folio (copy submitted) that the council are not the owners of these lands and cannot therefore grant permission.
- That the drawings refer to new access as approved, however there is no permission in place.
- That the proposed development represents piecemeal development of a larger site.
- That the applicants have acknowledged that the application is premature. It will impact on the overall site within Folio DN11709 and will impact negatively on the value of the remaining portion of the site.

***Theresa Dunne***

- That the proposed three storey scale is inappropriate and will lead to overlooking.
- That the existing traffic congestion is excessive, and the proposed development will make this situation worse. The benefits of the development will not outweigh the costs.
- That the construction would lead to significant disruption.
- That the existing views of greenery would be lost.
- That the visual impact would be compounded by the fact that the site is located on a slope that has not been accounted for in the design.
- That the proposed access would result in a traffic safety risk for traffic accessing from Newlands Road.
- That the views of locals have not been canvassed and the statement in the application that the proposal is being well received locally is incorrect.

- The proposal would result in the loss of trees and bushes and have a negative impact on flora and fauna. There are foxes on the site and the development would result in a loss of their habitat.
- The development would result in the loss of play areas for children.
- That there will be significant development in the general area in the future with the Clonburris SDZ and the construction of Griffeen Community College. In this case, it is not considered that the disturbance that would result is worth it for an additional 4 no. houses.

***Louise Hennessy***

- That there is already a traffic and parking problem in the area.
- That the development would result in overlooking and devaluation of property.
- That the construction would be very disruptive in a residential estate where there are children.
- That planning permission has previously been refused for all of the above reasons.

## **7.0 Assessment**

7.1. The following are considered to be the main issues relevant to the assessment of this appeal:

- Principle of Development and Legal Issues,
- Design and Impact on Amenity
- Access and Traffic Issues,
- Site Servicing,
- Other Issues,
- Appropriate Assessment

## 7.2. Principle of Development and Legal Issues

- 7.2.1. The appeal site is located on lands that are **zoned Objective RES** under the provisions of the *South Dublin County Development Plan, 2016 to 2022* with the stated objective “*to protect and/or improve residential amenity*”. Residential development is permissible on lands zoned RES and therefore the principle of an infill residential development on the appeal site is in my opinion acceptable in principle.
- 7.2.2. Regarding ***national and regional policy***, one of the key elements of the National Planning Framework is compact growth and this includes making better use of under utilised land and buildings including infill and brownfield sites. National Policy Objective 35 seeks to “*increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights*”. Similarly, one of the identified guiding principles of the growth of the Dublin Metropolitan area as set out in the *Regional Spatial and Economic Strategy for the Eastern and Midlands Area* is compact and sustainable growth including brownfield and infill development (section 5.3). The site is located in an existing developed and serviced area which is conveniently located with regard to public transport (Dublin Bus route 25 goes along Foxborough manor), schools (Lucan NS located a short distance to the south east) and retail, and the form of infill development proposed is in my opinion consistent with the principles set out in these high level policy documents.
- 7.2.3. There are a number of policies contained in the local development plan that are supportive of the principle of residential consolidation and infilling. Specifically, Policy H17 relates to residential consolidation and infill and states that it is policy to support consolidation and infill at appropriate locations and to ensure that such developments does not impact negatively on the character or amenities of an area. The impact of the proposed development on the character and amenity of the area is assessed below, however, the principle of the proposed development which comprises the development of existing zoned residential land for residential use replacing a disused barn structure is in my opinion consistent with this policy.

7.2.4. The issues raised with regard to the ***legal interest in the site*** and whether the first party has sufficient legal interest to undertake the development are noted. With regard to the ownership of the appeal site and the immediately adjacent lands to the north and east which make up Folio DN11709 (copy of which is submitted by the observers and is on file), I note that the names of the owners given on the submitted folio documentation are James and Bridget Murphy, and that the first party and observers names are William Murphy and Mark and Martin Murphy respectively. It is therefore evident that the site forms part of a larger landholding comprising Folio DN11709 which is in the ownership of the Murphy family. On the basis of the information available it would appear that there is a dispute between members of the family as to whether the first party has the right to make the application and can undertake any development. While the first party states in the application form that they are the owners of the site this is not supported by documentary evidence. Against this, there is no clear submission objecting to the proposed development from a party who can demonstrate ownership. Given these factors, I do not consider it appropriate that permission would be refused solely on the basis of legal interest / ownership of the site. I would also note the provisions of Section 34(13) of the Planning and Development Act, 2000, as amended which states that “*a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development*”.

7.2.5. With regard to the issue of legal interest in the strip of lands to the west of the site encompassing the verge, footpath, and road (Foxborough Manor), I note the submission by observers to the appeal of Folio DN1237 which indicates that the council are not the owners of these lands. From the copy of the folio submitted it appears to me that the only recorded owner (Part 2 – Ownership) is the council and while there are a number of rights of way granted to development companies across the area to facilitate access to developments to the south, it is not evident to me that the council is not the owner of the lands which are required to facilitate the proposed access to the site. I would also note that the Council provided a letter of consent to the making of the application which would indicate that the council believed it is the owner of the lands to the immediate west of the appeal site indicated in yellow on the illustration contained in the observation received on behalf of Martin and Mark Murphy incorporating the grass verge, footpath and road.

- 7.2.6. The observers note that the letter of consent from the council to the making of the application has expired and it is correct that the letter submitted was dated January 2019 and was for a period of one year. Regarding ongoing consent, I would however agree with the first party submission that it would appear unreasonable that permission would be withheld on the basis that this letter of consent has expired or that the council would now act to withdraw their consent to the making of the application.
- 7.2.7. Reason for Refusal No.1 cited by the Planning Authority makes reference to the proposal constituting ***haphazard and piecemeal development*** that would poorly integrate with its site context and the surrounding area. The report of the planning inspector in the case of ref. ABP-305497-19 expressed concerns with regard to the compatibility of the proposal with the requirements set out at section 11.3.2 of the plan and particularly the degree to which the proposed building line, the proposed materials and the terraced form of development would be consistent with the plan policy. The previous assessment also expressed concerns regarding the presentation of the development to this corner site adjoining the roundabout.
- 7.2.8. On these issues I do not consider that there is currently a strong or coherent building line in this location such that the proposed layout could clearly be seen to be at variance with the established layout. The existing relationship of houses in the vicinity of the roundabout is that houses are at right angles to the junction and the proposed layout would not be any different from this current situation. The terraced form of development is different to the existing semi-detached form prevalent in the Foxborough development; however, I do not consider it to be such that it is incongruous or out of keeping with the prevailing form of development in the vicinity. It is correct to state that the appeal site forms only part of the overall site comprising Wynyard, and it could be argued that with additional lands a more comprehensive infill development may become feasible in the future. This is not however the current situation, and regard also in my opinion need to be had to the rising contours on the northern part of the site as well as the presence of the existing residential properties on this part of the overall site and the need to maintain a curtilage around these properties. Issues of concern raised in the previous assessment with regard to materials, building scale and site levels are addressed in more detail in the following sections of this assessment, however for the reasons set out above, I do not



consider that the proposed development would represent a haphazard and piecemeal form of development that would be contrary to the residential zoning objective of the site and seriously injurious to the visual and residential amenities of the area. I do not therefore consider it appropriate that permission would be refused on these grounds and, as highlighted in the first party appeal, note the fact that the Board Direction in the case of Ref. ABP-305497-19 did not consider that permission should be refused for reasons relating to piecemeal or haphazard development citing issues including the pattern of existing development in the area, the scale of the existing structure on the site, the proposed site layout and set back from the existing road.

### **7.3. Design and Impact on Amenity**

- 7.3.1. Observers to the appeal raise concerns with regard to the scale and design of the proposed development and the degree to which it would integrate with existing development in the vicinity. The height of the proposed units is indicated as being c.9.12 metres above ground level and this is higher than the prevailing two storey development in the vicinity. The scale and form of development is not however in my opinion excessive or out of character with the existing development in the vicinity. Specifically, the proposed dwellings have a ridge height that is c.1 metre higher than the existing houses to the south on Foxborough Green which is not considered to be such as to be out of keeping with the existing character and scale of development.
- 7.3.2. In terms of materials, the proposed development proposes the use of a mixture of render and brick with metal cladding to the dormer windows to the front elevation and dark roof slates. The finishes proposed are not matching with those in the existing development to the south, however I do not consider that they are inconsistent with their location or surrounding development. In the event of a grant of permission it is considered appropriate that the external finishes would be the subject of agreement with the Planning Authority.
- 7.3.3. With regard to levels and the potential for the development to impact negatively on its surroundings, I note the reference in reason for Refusal No.1 attached to the Notification of Decision to Refuse Permission to the lack of a site sensitive response to the varying topography of the sites setting and the impact on surrounding

residential development. Levels do fall from north to south in the vicinity of the site and from west to east with the level of Newlands Road approximately 2.5 metres higher than the appeal site, and that on Foxborough Manor to the west c.0.5 metres higher in the vicinity of the proposed access. The level of the appeal site is however relatively constant and the yard area immediately to the north and houses further to the north are not at a significantly higher level. It is not therefore clear to me in what respect the proposed layout does not represent a site sensitive response to the topography of the area or what alternative layout would be preferable in this regard.

- 7.3.4. In terms of the impact on residential amenity, the proposed development would be located at a significant remove from existing surrounding residential properties and such that no significant issues of overlooking, overshadowing, or overbearing visual impact would in my opinion arise. Specifically, the closest houses to the east on Foxborough Green (No.15) would be in excess of 35 metres from the rear elevation of the proposed houses. To the south, while Unit No.1 (House Type C) is proposed to have an attic window in the gable facing Foxborough Green, the separation to the closest houses would be c.27 metres. To the north, the separation to the house directly north would be 15 metres and gable to gable with no windows to habitable rooms above ground floor level in the north facing gable of unit No.4.
- 7.3.5. The basis of the refusal issued by the Board in Ref. ABP-305497-19 was that the combined living areas did not meet the requirements set out at Table 5.1 of Quality Housing for Sustainable Communities. The revised layout submitted in the current application has increased these floor areas and the areas for the three proposed house types are set out in a Schedule of Areas document submitted with the application. The internal floor areas proposed are consistent with the requirements of the Quality Housing for Sustainable Communities document and are considered to be acceptable.
- 7.3.6. Private open space areas are proposed to the rear of each house and these vary between 60 and 115 sq. metres. The size and layout of these open space areas are considered to be acceptable and are consistent with the requirements set out in the development plan.

#### 7.4. Access and Traffic Issues,

- 7.4.1. Reason for refusal No.2 cited by the Planning Authority in the Notification of Decision to Refuse Permission relates to the proposed access arrangement with reference being made to the proposed access being 'sub optimal', that it involves the crossing of a public verge / lands that are in council ownership and that the access would seriously injure the amenity of properties in the vicinity and be contrary to the residential zoning objective of the area. The issue of traffic and traffic congestion in the vicinity is raised in the third party observations received and it is contended by the third parties that the proposed new access would lead to increased traffic congestion in the vicinity of the site and at the access to the Foxborough estate and specifically that there would be a traffic safety issue from traffic accessing Foxborough from the Newlands Road to the north.
- 7.4.2. Firstly, I note that while the report of the Roads Department recommend refusal of permission for the proposed development, this recommendation is on the basis of the additional / new access being '*unnecessary*' and the fact that the access would pass through a green open space which is stated to be '*sub optimal*'. The Roads report states that a better access would be to the south onto Foxborough Green. The report does not state that the proposal would constitute a traffic hazard.
- 7.4.3. While the southern site boundary is closer to Foxborough Green than the western site boundary is to Foxborough Manor, I do not clearly see how there is a viable alternative access available to Foxborough Green as suggested in the Road Report. Any such alternative access to the south would have to be located in very close proximity to the Foxborough Manor roundabout and such that it would in my opinion create significantly greater traffic hazard than the access as currently proposed.
- 7.4.4. The proposed access is located at a point where there is adequate visibility and sight lines in both directions. The entrance would be located c.45 metres from the junction with Newlands Road to the north and therefore such that no issues of traffic safety would be likely to arise.
- 7.4.5. The proposed access does require that the existing strip of open space on the eastern side of Foxborough manor would be crossed and part of this area would therefore be lost. This area is however a space that in my opinion performs as a visual rather than functional open space being located adjoining a busy road at the

entrance to the Foxborough estate and on a slope. The proposed development would not therefore in my opinion have a significant negative impact on this space.

7.4.6. For the reasons set out above I consider that the proposed accesses arrangements to the development are acceptable and I do not see how the proposed access arrangements to the development could be contrary to the zoning objective of the site as stated by the Planning Authority in Reason for Refusal No.2 attached to the Notification of Decision to Refuse Permission issued.

7.4.7. On site parking for two cars per unit is proposed and is considered to be acceptable. I note and agree with the reference of the Board in the note attached with the Board Direction on Ref. ABP-305497-19 that it is not considered that the proposed development would result in on street parking.

#### **7.5. Site Servicing,**

7.5.1. The development proposes to connect to the existing public water supply and public sewer and surface water is proposed to be discharged via a hydro brake to the surface water drain on Foxborough Manor. Sustainable drainage measures in the form of permeable paving is proposed. The site is not located within a flood risk zone and is remote from land identified for flooding risk and the proposals for site drainage are considered to be acceptable in principle.

7.5.2. The submission on file from Irish Water recommends that further information in the form of a pre connection inquiry that would indicate the feasibility of connections (water and foul) are required. In the event of a grant of permission, it is recommended that a condition requiring that a connection agreement would be in place would be attached. The reports on file from Irish Water and the Water Services Section of the council note that SuDS systems are not permitted over public watermains or surface water drains and in this case the proposed layout indicates permeable paving in the vicinity of the entrance from the public road that would be above the watermain and surface water drain on Foxborough Manor. This issue that can be addressed by way of condition in the event that a decision is taken to grant permission.

## 7.6. Other Issues

- 7.6.1. The proposal relates to 4 no. houses on a site with a stated area of 0.1025 ha. and such that the provisions of Part V of the Planning and Development Act, 2000 (as amended) do not apply. The report of the Housing Section of the council on file notes that a s.97 social housing exemption certificate has been granted.
- 7.6.2. The proposed access would result in the loss of 2 no. existing trees to facilitate the access. I do not consider that it is desirable that a replacement tree be planted to the north of the proposed entrance as this would potentially impact on sightlines at the new junction.
- 7.6.3. With regard to the loss of existing vegetation on the site, I note the fact that there are two reports on the planning file from the Parks and Landscape Section, with an initial report states that no objection subject to conditions including reinforcement of site boundaries and a second report expressing concerns regarding the impact of the proposed development on existing trees and hedgerows. The proposed boundary treatment with the retention and strengthening of the existing hedgerow boundary to the south and west and the construction of a new boundary wall to the east and north is in my opinion acceptable. On site, the proposed development will result in the loss of some existing mature trees however, with the retention of the boundary planting to the south and west I do not consider that this loss of existing vegetation would have a significant negative impact on visual amenity.
- 7.6.4. Reason No.4 attached to the Notification of Decision to Refuse Permission issued by the Planning Authority relates to the lack of an ecological assessment and the fact that a comprehensive assessment of the impact of the proposed development on biodiversity cannot be undertaken. It is also stated that insufficient information regarding the potential impact on protected species such as bats is presented. The application was accompanied by a Bat Survey and Assessment of Associated Buildings undertaken by Gerard Tobin ecological consultant and dated April, 2019. The site including the barn structure was examined for any evidence of use by bats and none was recorded. It is considered that the structure is not likely to be used by bats given its materials and the absence of any cavities in the roof space. The barn

structure was also surveyed for evidence of bird use and no evidence was recorded at the time of the assessment.

7.6.5. The site is a typical overgrown urban infill site which is surrounded on all sides by urban development and does not therefore form part of an ecological corridor or linear habitat. At the time of inspection there is no evidence of any features that are of particular significance in terms of habitat and no species of significant conservation importance are considered likely to use the site. I note the specific reference in the submission from the third party observers to the use of the site by fox. While the site in its current form is a potential habitat that would be used by foxes, the loss of the habitat through redevelopment of the site is not considered likely to have a significant impact on the fox population at the local level.

7.6.6. On the basis of the information presented with the application, including the bat survey and assessment and my inspection of the site, I do not consider that there is any clear evidence that the appeal site is significant in terms of flora or fauna, including bat species, biodiversity or that the development of the site would impact on species which are protected under the Habitats Directive and associated regulations.

## **7.7. Appropriate Assessment**

7.7.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

8.1. Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions:

## 9.0 Reasons and Considerations

Having regard to the residential zoning objective for the area and the pattern of development in the area, it is considered that, subject to compliance with conditions below, 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. The proposed development would, therefore, be in accordance 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, 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. Details of the materials, colours, and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details of the layout of the permeable paving across the site and access areas and the provision of a minimum 3

metre setback between such areas and public watermain, foul and surface water drains.

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

4. Prior to commencement of development, the developer shall enter into water and waste water connection agreements with Irish Water.

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

5. 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. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility.

7. All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.



8. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-

(a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for parking and shared surfaces within the development.

(b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings.

(c) details of proposed boundary treatments at the perimeter of the site, including heights, materials, and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

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

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interest of sustainable waste management

10. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure the satisfactory completion and maintenance of this development.

11. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials [and for the ongoing operation of these facilities] shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened bin stores, which shall accommodate not less than three standard-sized wheeled bins within the curtilage of each house plot.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

12. Prior to the commencement of development, the developer shall submit details of the proposed access to the site for the written agreement of the Planning Authority. Such details shall include kerb radii, surface materials, and tie in with the existing public footpath. The cost of all works related to site access outside of the application site boundary shall be borne by the developer.

**Reason:** In the interests of traffic and pedestrian safety and clarity.

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

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

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Stephen Kay  
Planning Inspector

26<sup>th</sup> May, 2021