



An  
Bord  
Pleanála

## Inspector's Report ABP-309227-21

### Development

Retention permission for the removal of a section of hedgerow and erection of wooden fence; and refurbishment and extension of dwelling. A Natura Impact statement was lodged with application.

### Location

Glenlion Cliffs, Thornmanby Road, Howth, Co Dublin, D13YR99.

### Planning Authority

Fingal County Council.

### Planning Authority Reg. Ref.

F20A/0008.

### Applicant(s)

David Orr.

### Type of Application

Planning Permission.

### Planning Authority Decision

Grant with conditions.

### Type of Appeal

Third Party.

### Appellant

Hillwatch.

### Observer

Roxanne White.

### Date of Site Inspection

6<sup>th</sup> day of May, 2021.

### Inspector

Patricia Young

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	6
3.1. Decision .....	6
3.2. Planning Authority Reports .....	7
3.3. Prescribed Bodies .....	9
3.4. Third Party Observations .....	9
4.0 Planning History.....	9
5.0 Policy & Context .....	11
5.1. Local Planning Provisions .....	11
5.2. Natural Heritage Designations .....	15
6.0 The Appeal .....	15
6.1. Grounds of Appeal .....	15
6.2. Applicant's Response.....	17
6.3. Planning Authority's Response .....	19
6.4. Observations .....	19
6.5. Prescribed Bodies .....	21
6.6. Further Responses.....	23
7.0 Appropriate Assessment.....	26
8.0 Assessment .....	44
9.0 Recommendation.....	61
Reasons and Considerations .....	62
Reasons and Considerations .....	63

## 1.0 Site Location and Description

- 1.1. The irregular shaped appeal site has a given site area of 0.098ha is situated on the south eastern side of Howth's Head Summit in close proximity to Lions Head in mature residential setting. It is accessed via a steeply sloping, meandering in its alignment, private shared driveway that also serves in total five detached dwellings including the subject appeal site which has a given name of 'Glenlion Cliffs' as well as 'Glenlion Pines', 'Glenlion Lodge', 'Glenlion Cottage' and 'Glenlion House'.
- 1.2. This driveway provides access onto the southern side of Thornmanby Road with the northernmost portion of the site setback c145m as the bird would fly from this road and due to the shared driveways meandering as well as undulating nature the entrance serving the site is located c270m by this shared driveway from Thornmanby Road. In addition, the shared entrance that opens onto Thornmanby Road lies c145m to the south east of Carrickbrack Road (Note: R105 - Regional Road) and the site itself is located over 4km from Howth's historic harbour which lies to the north of the site and on the opposite side of Howth Head, in north County Dublin.
- 1.3. The site essentially consists of two distinct parts.
- 1.4. The main site area contains a single storey detached dwelling (Note: Gross Floor Space of 117m<sup>2</sup>), its associated mature landscaped gardens and amenity spaces. It is situated on the southern seaward side of Howth Heads popular Cliff Path and for the most part the northern and eastern portion of the main site area is bound by this attractive public amenity pathway. Whereas the southern, eastern, and north eastern portion are bound by steeply sloping cliffs that are heavily vegetated with a topography that falls steeply towards the Irish Sea.
- 1.5. Running along the southern boundary of the main portion of the site is a tall wooden boundary with access to the main site area provided by an electronically controlled pedestrian wooden gate that opens onto the Cliff Path which at this point is of a restricted width and has a strong sylvan character. From this gate the dwelling is accessed via a weaving and of variable width pathway as well as material pathway that on its later approaches towards the dwelling includes a stairway of granite steps that terminate at a hard surfaced private amenity space that extends from the southern elevation of the dwelling.

- 1.6. Along the southern boundary there are metal railings bounding this portion of the site with the ground levels falling steeply away from the aforementioned terrace area and the dwelling. There is also a boiler house located on the northern elevation of the dwelling. The remainder of this portion of the site consists of a variety of hard and soft landscaped private amenity spaces. With extensive views available from its southern boundaries over adjoining coastline of Howth Heads, the Irish Sea, and a number of man-made as well as natural features including the Baily Lighthouse, a Protected Structure.
- 1.7. The northernmost portion of the site is located opposite the aforementioned pedestrian gate and is situated directly opposite side Cliff Path. It is accessed by a similar electronically controlled wooden pedestrian gate on its southern boundary and its boundaries along the Cliff Path consist mainly of solid timber panels. This portion of the site slopes steeply in a north to south direction with the area for the most part being hard-surfaced and used to accommodate the residents of Glenlion Cliffs parking needs. It also contains a car port, an outbuilding and a seating area with its perimeters bounded by mature manicured landscaping.
- 1.8. The aforementioned Cliff Path is a popular public footpath that runs along higher and lower parts of the attractive seaward slopes of Howth Head. The site also lies in close proximity to Lions Head and to the north west of Baily Lighthouse (Protected Structure) with a small bay located at the base of the cliff in close proximity to the south and south east.

## **2.0 Proposed Development**

- 2.1. By way of this application retention permission is sought for the removal of a section of hedgerow (its reinstatement as appropriate) and the erection of a wooden fence. In addition, planning permission is sought for the following:
- Refurbishment and extension of an existing dwelling house with a states existing floor area of 117m<sup>2</sup> and the construction of an additional 103m<sup>2</sup> given as the additional gross floor area and with this giving rise to cumulative gross floor area of 220m<sup>2</sup>. It is proposed that this extension would be placed on the southern side of the existing dwelling.

- Demolition of an existing shed structure to accommodate the proposed development. The gross floor space of demolition is given as 17m<sup>2</sup>.
- Provision of a disabled lift to be located on the western side of the proposed extension.
- Modifications to the existing terrace area which would include raised ground levels to match the internal finished floor level of the altered and extended dwelling.
- Provision of a detached home studio accessible by an external stair from the terrace area. this studio is sited in the south-westernmost corner of the main area of the site.
- Changes in ground level across the subject site to facilitate the proposed development.
- Hard and soft landscaping.
- Boundary treatments.
- Drainage Works.
- All associated site development works including excavation works below ground.

2.2. The Planning Authority received the applicant's additional information request on the 23<sup>rd</sup> day of November, 2020. It is accompanied by the following documentation:

- A covering letter and response.
- Geotechnical engineering reports.
- Appropriate Assessment Screening & Natura Impact Statement.
- Outline Construction Environmental Management Plan.
- Invasive Species Survey and Management.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 15<sup>th</sup> day of December, 2021, the Planning Authority decided to grant permission and grant retention permission subject to 13 no. conditions. Of note are the following conditions:

Condition No. 2:	Restricts the use to a single dwelling unit.
Condition No. 3:	Requires within 3 months of the grant of permission removal of all timber panel boundary treatments and their replacement with a concrete post and wire fence with brushwood matting.
Condition No. 4:	Requires a tree survey and aboricultural impact assessment, tree constraints plan, tree protection plan and Arboricultural method statement to be submitted prior to the commencement of development for written agreement.
Condition No. 6:	Requires implementation of all mitigation measures included in the revised Appropriate Assessment Screening and Natura Impact Statement.
Condition No. 8:	Requires an Invasive Plant Management Plan and Public Path Protection.
Condition No. 9:	Wastewater Drainage.
Condition No. 10:	Surface water management.
Condition No. 11:	Deposits and damage to public road infrastructure.
Condition No. 12:	Permitted Construction Hours.
Condition No. 13:	Payment of Development Contribution.

The notification includes Advisory Notes including one drawing the applicant's attention to Section 34(13) of the Planning & Development Act, 2000, as amended.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

There are two Planning Officer's Reports on file. The **final Planning Officer's report**, dated the 14<sup>th</sup> day of December, 2020, considers that the boundary treatments are not satisfactory as they do not comply with the SAAO Guidelines, and it is therefore considered appropriate that by way of condition the applicant be required to remove all timber panel boundary treatments and replace them with a concrete post and wire fence with brushwood matting which will provide for privacy for the residents of the dwelling. This is as per the requirements of the Parks & Green Infrastructure Division. It is noted that Item No. 2 was not addressed. The additional information provided on Item No. 3 in respect of the on-site wastewater treatment system and Item No. 4 on the matters of green roof as well as surface water in relation to geotechnical concerns was deemed to be acceptable. In addition, the revised AA Screening Report and NIS was deemed to be acceptable to make a determination on this matter. This report concludes that the proposed development is in keeping with the existing dwelling and that it will not detract from the adjoining visual amenity, subject to safeguards in the form of conditions.

The **initial Planning Officer's report**, dated the 2<sup>nd</sup> day of March, 2020, considered that proposed development is consistent with the 'HA' zoning of the site and that the single storey extension to the dwelling is of an acceptable design despite the views that would be available of it from the Cliff Path Walk. It notes the concerns raised by the Parks and Green Infrastructure Section in relation to the visual amenity impact of the proposed studio. However, these concerns were not shared given that it would occupy a lower ground level than the existing dwelling and the proposal including to cut into the existing rock face to provide this space. It is also not considered that the dwelling and its setting are visible in their setting and in time the additional structures would settle into the cliff face. In relation to the fence, it is considered that this fence does not meet the SAAO guidelines and would block views from the Cliff Path Walk. In relation to the stability of the slope it is noted that there has been evidence of erosion in recent years, and it recommends that the recommendations of AGL Consulting Geotechnical Engineers are adhered too. The Planning Officer considered that there

was a number of gaps in NIS provided. This report concludes with a recommendation of additional information on the following matters:

- Item No. 1: Removal of existing timber fencing and revised boundary sought.
- Item No. 2: Tree survey including a number of specified components is sought.
- Item No. 3: Wastewater treatment clarification sought.
- Item No. 4: Green roof details sought/Management of 1%AEP event excess sought/confirmation from the consulting geotechnical engineers that the proposed water disposal methodology is acceptable in terms of structural and slope stability.
- Item No. 5: NIS clarification sought.

### 3.2.2. Other Technical Reports

**Parks Division:** Final Report can be summarised as follows:

- The replacement hedge of hawthorn and blackthorn is acceptable; however, the re-aligned fence of timber panels does not comply with the Howth SAAO Design Guidelines. It is therefore recommended that the applicant be required to erect a concrete post and wire fence with brushwood matting or as permitted in the Howth SAAO Design Guidelines instead.
- The landscaping works including green roofs shall be completed in the first planting season following substantial completion of construction works subject to safeguards.
- The referred to Tree Survey referred to in the applicant's additional information response appears to have been omitted.

**Brady Shipman Martin review of the AA on behalf of the PA** can be summarised as follows:

- All items raised in relation to AA have been satisfactorily addressed.
- Provided all mitigation measures set out in the revised NIA and accompanying documentation are fully implemented it is considered that the proposed development, either alone or in-combination with other plans or projects, will not have a significant adverse effect on any European site.



- A condition requiring compliance with all of the mitigation measures included in the revised AA Screening and NIS is set out.

**Water Services:** Final Report. No objection, subject to safeguards.

### 3.3. Prescribed Bodies

- 3.3.1. **Irish Water:** No objection, subject to safeguards.

### 3.4. Third Party Observations

- 3.4.1. A number of Third-Party Observations were received by the Planning Authority. I consider that the substantive concerns contained in them correlate with those contained in the submissions received by Board.

## 4.0 Planning History

### 4.1. Site: Recent Planning History.

- 4.1.1. The Planning Authority's Planning Officer have provided a detail of the planning history of the site which I have noted, and which is available on file. The most recent of which is **P.A. Ref. No. F00A/0916** under which a **split decision** was made which granted permission for the redesign of the fence and entrance gates and the retention of railing at Glenlion Cottage, Glenlion Cliffs, Baily and which refused permission for the low-level lighting and landscaping at Glenlion Cliffs, Glenlion Cottage, Baily for reasons given as being contrary to the proper planning and development of the area.
- 4.1.2. In relation to the site area to which this appeal relates the most recent is an application made under **P.A. Ref. No. F99A/0880**. This application sought retention permission for replacement fencing, entrance gates, low level lighting and landscaping as well as permission for their completion. This application was refused for the following stated single reason:

*"The site of the proposed development is located within an area zoned G: to protect and improve high amenity areas according to the current Dublin County Development Plan, 1993. The proposed development by reason of its inappropriate nature and scale by virtue of the fact that it is significantly out of character with the section of the (Sutton-Howth) Cliff walk (which is a public right of way) in which it is located would*

*have an adverse impact on the natural and recreational and visual amenities of the area including the views from the Cliff Walk which are obstructed by the proposed timber fencing. As a result, the proposed development has an adverse impact on the amenities and character of this high amenity area. The proposed development would therefore materially contravene the zoning objective for the area and would be contrary to the proper planning and development of the area”.*

- 4.1.3. There are a number of recent and concurrent appeals by and with the Board. These include:

**ABP-309820-21 (P.A. Ref. No. F20A/0297):** Concurrently with the Board there is a 3<sup>rd</sup> Party Appeal with the Board in respect of a grant of permission for demolition of part of ground floor at the rear of an existing dwelling and the construction of a single storey extension at ‘Deepwater’ which is situated c115m as the bird would fly from the northern boundary of this appeal site. At the time, this report was being prepared no decision had been made by the Board.

**ABP-309279-21 (P.A. Ref. No. F20A/0174):** Concurrently with the Board there is a 3<sup>rd</sup> Party in respect of a grant of permission for the demolition of a 2-storey dwelling and construction of a 3-storey 6-bedroom dwelling at Glenlion Pines, which is located on neighbouring land to the north of the appeal site. At the time this report was prepared no decision had been made by the Board.

**ABP-307886-20 (P.A. Ref. No. F20A/0046):** On the 11<sup>th</sup> day of December, 2020, the Board **granted** permission subject to conditions for a development consisting of the: (i) demolition of existing two-storey dwelling, (ii) construction of two-storey dwelling comprising kitchen, scullery, living room, television room, dining room, w.c. and cloak room at ground floor level, and five number ensuite bedrooms and walk-in robes, family room/study, gym, wine store, utility room, plant room and shed at lower ground floor level and (iii) drainage, landscaping, boundary treatments and all associated works necessary to facilitate the development, all at Glenlion House, whose site area is located to the west and north of this appeal site as well as on the Thornmanby Road side of the Cliff Path on land zoned ‘RS’ under the current Development Plan under which the zoning objective is “*to provide for residential development and protect and improve residential amenity*”.

**ABP-PL06F.247764:** On the 23<sup>rd</sup> day of June, 2017, the Board **granted** permission subject to conditions for a development consisting of the demolition of a house and construction of a replacement house at 'Glenlion' which is the adjoining site to the west of this appeal site. This site was subject to the 'RS' land use objective set out above.

I note to the Board that there is a more extensive Board history in respect of appeals for developments at Glenlion and in the immediate vicinity of this appeal site. Outside of those relating to the site area these all relate to sites on the northern side of the Cliff Walk, i.e., the Thornmanby roadside.

## 5.0 Policy & Context

### 5.1. Local Planning Provisions

#### 5.1.1. Development Plan

The subject appeal site falls within the administrative area of the Fingal County Development Plan, 2017 to 2023, under which the northern portion of the site which lies to the immediate north of the Cliff Path is zoned 'RS – Residential' which has the stated zoning objective to: *"provide for residential development and protect and improve residential amenity"* and the southern portion of the site which lies to the immediate north of the Cliff Path is zoned 'HA – High Amenity' which has the stated zoning objective to: *"protect and enhance high amenity areas"*.

The main components of the development sought under this application relate to the area of the site zoned 'HA'. The vision for such land is in part to: *"protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place"*.

Residential development is indicated as permitted in principle on 'HA' zoned land subject to the safeguard of compliance with the Rural Settlement Strategy.

According to the Development the High Amenity Zoning has been applied to areas of the County of high landscape value and states that: *"these are areas which consist of landscapes of special character in which inappropriate development would contribute to a significant diminution of landscape value in the County."* It sets out a more criteria which these landscapes meet. Including but not limited to:

- Contain scenic landscape of high quality.
- Act as a backdrop to important coastal views.
- Are important elements in defining the coastal character of the County.
- Are elevated or ridge sites on which development would be obtrusive.
- Provide public access to interesting attractive landscapes or semi-natural areas.

The appeal site lies within a Coastal Landscape Character Type and on the prominent headland of Howth, which is also the subject of a Special Amenity Area Order (1999).

The Coastal Landscape Character Type is considered to be highly sensitive to development (Table LC01) and the said Development Plan sets out principles to guide development in such areas and landscape character assessment policy objectives NH33-NH39. These objectives seek to preserve the uniqueness of landscape character type and ensure that development reflects and reinforces their character. Of particular note is Objective NH33 which seeks to ensure the preservation of the uniqueness of a landscape character type by having regard to the character, value and sensitivity of a landscape when determining a planning application.

Objective RF51 is relevant. It states that the Planning Authority shall: *“ensure that the development of any coastal site through the extension or replacement of existing buildings or development of any new buildings is of an appropriate size, scale and architectural quality and that it does not detract from the visual amenity of the area or impact negatively on the natural or built heritage”*.

Views from the Cliff Path, which bisects the site are identified as protected views.

Identified views and prospects are afforded protection under Objective NH40 of the Development Plan. (Note: Map based, Sheet No. 10). This objective seeks to protect views and prospects that contribute to the character of the landscape, particularly those identified in the Development Plan, from inappropriate development.

Objective HOWTH 4 of the Development Plan is relevant. It seeks to protect and manage the Special Amenity Area, having regard to the associated management plan and objectives for the buffer zone.

Special Amenity Areas, including the Howth Special Amenity Area, are afforded protection under policy objectives NH44 in accordance with the relevant Order.

In relation to land zoned 'RS' the vision for such land is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity. Residential developments are permitted in principle.

Objective PM46 of the Development Plan is relevant. It encourages sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

Objective DMS42 of the Development Plan is relevant. It seeks to encourage more innovative design approaches for domestic extensions.

This site is served by a proprietary wastewater treatment system alongside this application seeks to replace and upgrade this infrastructure as part of the development sought.

Chapter 7 of the Development Plan, on the matter of sewage disposal by means of individual septic tanks and proprietary systems sets out that they should meet the required standards set by the EPA.

Objective WT06 of the Development Plan is relevant. It seeks to facilitate development in un-serviced areas only where it is demonstrated to the satisfaction of the Planning Authority that the proposed waste water treatment system is in accordance with the relevant EPA Codes of Practice.

### **Relevant objectives and policies in the Howth SAAO**

The subject site is located within the Howth SAAO and forms part of a parcel of land subject to the land use zoning 'Other Areas' on Map A.

Schedule 1 of the Order sets out a number of objectives for the enhancement of the Special Amenity Area including Objective 1.1 which seeks to conserve its natural and cultural assets.

Schedule 2 of the Order sets out objectives for the preservation of the character or special features of the area, these include, to preserve views from public footpaths and roads (Objective 2.1), to preserve woodland (Objective 2.5) and to preserve the wooded character of existing residential areas (Objective 2.6).

In addition, Policy 2.1.1 indicates that the Council will preserve views from the network of footpaths and roads shown on Map B.

Applications for planning permission must consider the visual impact of the proposals on views from these paths and roads. Applications must state whether there would be an impact and describe and illustrate the impact. Where there would be an impact, an application for planning permission must be accompanied by a cross-sectional drawing at a suitable scale, showing the proposed development and the affected path or road. The Council will not permit development which it considers would have a significant negative effect on a view from a footpath or road.

Policy 2.6.2 The roots of existing trees in fair or good condition shall be protected. Where a development involves excavation, if the excavation is beneath the canopy of an existing tree, it shall be done by manual means without the use of mechanical equipment in order to minimise damage to root systems.

Schedule 3 of the Order sets out objectives in respect of development in residential areas, as defined in Map A. These include to protect residential amenity, to protect and enhance the attractive and distinctive landscape character of the areas and to ensure that development does not reduce the landscape and environmental quality of adjacent natural, semi-natural and open areas.

Policy 3.1.2 sets out the design guidelines that will apply to new development and of relevance in respect of boundaries indicates that boundaries to public roads and paths shall be generally of either masonry construction and faced and capped with limestone or local stone or shall consist of a hedgerow or vegetated earth bank. In relation to height, it indicates that these shall not be higher than existing adjacent walls or 1.2m where there are no existing walls. It further indicates that boundaries including those of wooden construction are generally not acceptable as permanent boundaries if they are visible from a public road or footpath and timber lath fencing and timber panels may be allowed where it is necessary to maintain privacy from a road or path within 10 metres of a dwelling. They may also be acceptable as a temporary screen while a hedgerow is growing.

In relation to buildings, it states that *“an extension to an existing building should generally match the character of the existing structure”* ... *“favourable consideration may be given to buildings of contemporary design, provided that the design is of high quality and that, in visual terms, it subordinates the building to the surrounding natural environment”*.

## **5.2. Natural Heritage Designations**

- 5.2.1. Most of the coastline of Howth peninsula and Ireland's Eye are designated as natural habitats of European importance and are designated as sites of European importance (European Sites/Natura 2000 sites) which are accorded special protection under the Habitats Directive.
- 5.2.2. Part of the southern and easternmost portion of this irregularly shaped site that contains the existing dwelling, the boiler house to the north of it and the main terrace area together with some mature manicured gardens forms part of the Howth Head SAC (Site Code: 000202).
- 5.2.3. In addition, the site lies at its nearest point c25m from the Rockabill to Dalkey Islands SAC (Site Code: 003000); c408 to the west of Howth Head Coast SPA (Site Code: 004113) and c1.16km to the north east of Rockabill to Dalkey Island SAC (Site Code: 003000).
- 5.2.4. The wider area contains a significant number of designated European sites.

## **6.0 The Appeal**

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

- 6.1.1. The grounds of this 3<sup>rd</sup> Party Appeal were submitted by Jackie Feeley on behalf of Hillwatch and was received by the Board on the 18<sup>th</sup> day of January, 2021. It includes the following comments:
  - The subject dwelling is the only residential property apart from Martello Tower in Sutton, situated on the Cliff Path.
  - This area is protected by the Howth Head Special Area of Conservation designation; it is within the designated area of Howth SAAO and a Coastal Landscape Character Area.
  - The planning history of the site includes 3 no. previous applications for retention permission.

- The impact of the lower ground level on the surrounding natural habitat is of particular concern as significant excavation is required and removal of materials from the cliff face of a pristine environment.
- No floor plans for the studio level have been provided and no treatment of cliff edge at the large studio window.
- There are an inadequate number of cross sections provided and the overall detail including that provided on drainage is considered to be minimal.
- The conclusions of the Fingal's Park Department are concurred with.
- Concerns are raised in relation to the planning history of the site, and it is contended that previous grants have not been complied with in relation to the fence.
- The fence in this application would obstruct views.
- Condition No. 3 of the grant is vague and open to interpretation.
- No tree survey was provided as part of the applicant's additional information response, and it is considered that it is unacceptable that the Planning Authority sought to deal with this matter by way of condition.
- Concerns are raised in that the CEMP indicates that in the absence of mitigation measures there is potential for significant impacts on the features of the SAC.
- It is not satisfactory that the contractor would be permitted to effectively self-regulate the mitigation measures.
- The sensitive nature of the site and its setting cannot be overemphasised and should permission be granted by the Board independent monitoring should be required reporting directly to Fingal and the NPWS with any costs in repairing damage to the environment borne by the developer.
- This is one of the most iconic beauty spots on the peninsula and it is highly visited landscape enjoyed by many visitors who also enjoy the views from Baily Lighthouse, Dublin Bay and beyond. Therefore, its importance as an amenity resource cannot be overstated.



## 6.2. Applicant's Response

6.2.1. On the 8<sup>th</sup> day of April, 2021, the applicant confirmed the provision of new public notices in accordance with the Boards requirements.

6.2.2. On the 16<sup>th</sup> day of February, 2021, the Board received the applicant's further information response which includes the following comments:

- The missing surveys and reports responding to Item No. 2 of the Planning Authority's further information request is provided.
- The existing dwelling is described as a modest 2 no. bedroom dwelling located at the crest of a steep cliff at the base of which is a beach within a small coast.
- The proposed design resolution seeks to integrate into the site's natural environment through the use of 'non-reflective glazing' with the glazing designed to be recessed underneath a deep overhang together with the horizontal slots designed to mimic the cliff edge.
- The green roof over will mature over time to minimise any hard lines and gabion cages filled with locally salvaged stones will cover many of the solid elements of the structure further obscuring it within its landscape setting.
- The appeal submission reiterates a significant amount of information that was previously included in their initial observation to the Planning Authority. As such these matters have been given consideration by the Planning Authority in their determination of this application.
- The proposed development has been careful to take into consideration all views in the formulation of the design now proposed under this application.
- It is accepted that the proposed extension will be likely to be visible from certain locations, but it is modest and inconspicuous as well as does not detract from any of the high-quality aspects when viewed from various vantage points along Howth Head Peninsula.
- In order to break up the massing the proposed extension has been divided into two separate components, i.e., the ground level and lower ground floor level. The design and the external palette of materials chosen together with the landscaping will result it being largely unseen from both land and sea.

- An overview of the planning history associated with other residential properties in the vicinity is provided.
- The Natura Impact Statement provided determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of any European site and a full range of mitigation measures are outline in the CEMP provided.
- No investigation has been completed by the applicant to inform them of the slope stability concerns that they raise.
- A slope stability assessment was completed in tandem with the CEMP, NIS, and Invasive Species Management Plan to ensure consistency across each discipline.
- The appellant indicate they would be happy with a condition requiring that the recommendations of the Slope Stability Assessment Report be complied with in full.
- The CEMP provided seeks to minimise impacts on biodiversity including habitats within Howth Head SAC.
- It is contended that the Tree Survey and accompanying document was submitted with the applicant's additional information response, and it is noted that a condition was imposed to deal with the potential tree removal, replacement species, hedge planting and the like.
- There are no live enforcement actions taking place in relation to this site.
- Enforcement matters are for the Planning Authority to deal with as they see fit.
- The applicant has no significant issue with the requirements of Condition No. 3 of the Planning Authority's notification; however, the removal of a high-quality hardwood fence with a lower quality, less secure post and wire potion with brushwood matting is in their view visually inferior.
- The proposed development would not interfere with the landscape character and visual amenity of the Howth SAAO or the applicable Development Plan.
- The proposed development would be in accordance with the proper planning and sustainable development of the area.

### **6.3. Planning Authority's Response**

6.3.1. On the 22<sup>nd</sup> day of February, 2021, the Planning Authority submitted their response to the grounds of appeal which can be summarised as follows:

- This application was assessed against all relevant planning policy provisions and guidelines as well as the impact on the adjoining neighbours and character of the area.
- In relation to the wastewater treatment, it is considered that this is a comprehensive development which consists of two number extensions to the main dwelling with the entirety being treated by the existing wastewater treatment unit. The Planning Authority's Water Services Section were satisfied by the particulars provided on this matter.
- In many instances on sites that are located within the Howth SAAO, conditions will be placed required the submission of a tree survey prior to the commencement of development.
- Should the Board be minded to grant permission it is recommended that a condition requiring the provision of non-reflective glazing for all exterior openings be imposed.
- The proposed development is of high architectural merit and considering the restrictive nature of the site will not negatively impact upon Natura 2000 sites including the Howth Head SAC.
- The Board is requested to uphold its decision.
- Any grant of permission by the Board is requested to include Condition No. 13 of their notification to grant permission.

### **6.4. Observations**

6.4.1. On the 9<sup>th</sup> day of February, 2021, an observation was received from a Roxanne White by the Board which includes the following comments:

- It is contended that the observer is an owner of a property in Baily near 'Glenlion Cliffs'.

- It is requested that the Board refuse permission for the development sought under this application or seek that it is withdrawn on the basis of its failure to adhere to the Local Authority Planning procedures and failure in facilitating public access to the further information response prior to a decision being made.
- There is ambiguity in terms of the retention of the 2m high non-panel wooden fence.
- There is a lack of clarity on the replacement boundary treatments, the use of non-reflective glazing through to invasive species.
- Permission should be refused as this proposal requires significant subsurface excavation and construction below surface as part of the construction of a studio and being contrary to the provisions of the SAAO.
- The existing and proposed house is now granted as bright white which is a colour not permitted in SAAO 'Other' zone land. In respect of this concern reference is made to the Boards decision to require softening of the impact of the external materials for the house on the next-door site (Note: Glenlion House).
- Concern is raised in relation to the missing further information material and the impact this has on public participation in the planning process.
- Concern is raised that the grant of permission effectively is ambiguous and as a result it means that the 2m high non panel wooden fence can remain as is. In addition, the condition relating to this matter refers to panel fences and the fence is situ was not constructed using panels by the applicant.
- The non-panel fence should be replaced by appropriate hedging.
- The SAAO does not allow new developments to reconfigure the profile of the landform in 'Other' zoned land.
- The site is served by a shared laneway which will create dust to the SAC.
- The studio has the potential to adversely impact on Howth Head SAC.
- The existing dwelling house may have foundations surely it would have required less excavation to place the studio underneath it. This would also give rise to less visual impact.
- The proposed development would adversely impact on important views in this area.

- This development would establish a new precedent of cliff/SAC developments in this area.
- This development would result in the removal of trees, but a decision was made by the Planning Authority without clarity on this matter.
- If trees are removed at the access gate this will result in the existing dwelling and the proposed development being more visible by day and by night.
- There is no appropriate consideration given to light pollution and the studio includes 25m<sup>2</sup> of glazing.
- Appropriate landscaping is essential to integrating this development into its setting and to diminish light pollution arising from it.
- It is requested that all external finishes, colours, and treatments be agreed in writing.

## 6.5. Prescribed Bodies

6.5.1. On the 21<sup>st</sup> day of April, 2021, the Board received a response from the Department of Tourism, Culture, Arts, Gaeltachta, Sport and Media, which may be summarised as follows:

- The Cliff Path bounds the site and that there was a pre-existing hedge along this path which has been removed and replaced by a wooden fence. It is noted that it is now proposed to establish a new hedgerow and fence along the line of the original hedge and that a new wastewater treatment unit is proposed with this to be constructed under the property's car parking area that is located on the other side of the Cliff Path from the house and garden.
- An overview of the extensions and alterations proposed to the existing dwelling is provided.
- The existing house and its gardens are within the Howth Head SAC but consist of built surfaces and cultivated land that are not of any nature conservation significance. However, the cliff immediately below the dwelling plot on its eastern and north side support vegetation consistent with one of the Qualifying Interests for the Howth Head

SAC, i.e., vegetated sea cliffs of the Atlantic and Baltic coast, as well as semi-natural scrub vegetation.

- This development is also adjacent to sea areas included in the Rockabill to Dalkey Island SAC.
- The NIS with this application has identified potential detrimental impacts to the Howth Head SAC which might result from the proposed development. This includes the possibility of direct, physical damage to the cliff areas and the vegetation growing on them within the SAC, cliff subsidence, the dispersal of dust from demolition and construction works on cliff vegetation and surface runoff from the site transporting silt and pollutants such as fuel, lubricant oils, and cement from the site onto the downslope cliffs of the SAC. Also, possibility of direct effects when the dwelling is re-occupied.
- It is also noted that the mobilisation of pollutants from the development site was identified as a potential threat to reefs some 450m away in the Rockabill to Dalkey Island SAC, which is one of the Qualifying Interests for this SAC, though because of dilution effects the possibility of significant detrimental effects is considered minimal.
- A suite of mitigation measures to avoid any detrimental impacts on the Howth Head and Rockabill to Dalkey Island SAC's is set out in the NIS and in the Outline Construction Environmental Management Plan submitted as Further Information which should result in the avoidance of any significant detrimental impacts on the SACs.
- Concern is raised that there is possibility of direct damage to a small area of cliff vegetation below part of the site, as well as scrub within the SAC, due to the construction of the proposed studio extension at the south east end of the site. On this matter it is noted that the placement of the studio into the top of the cliff in the manner proposed, with a window facing out over the sea, would appear to require the removal of some cliff vegetation within the SAC. It is further noted that the supporting Civil and Structural Infrastructure and Construction Report refers to the potential of the concrete foundation slab for this new extension to act as a cantilever and appears to envisage the possibility of cliff subsidence in the vicinity of the extension works.
- This report concludes with a recommendation that the proposed studio extension set into the cliff top in the south east of the development site shall be omitted and that a comprehensive Construction Environmental Management Plan be submitted to the

Planning Authority for prior written agreement both by way of recommended worded conditions.

## **6.6. Further Responses**

**6.6.1. Planning Authority's response to the Applicants Response** submitted to the Board on the 8<sup>th</sup> day of April, 2021, raises no new issues and requests that the Board uphold its decision.

**6.6.2. Appellant's response to the First Party Response submitted** to the Board on the 13<sup>th</sup> day of April, 2021, can be summarised as follows:

- Reference is made to Section 37(1)(b) of the Planning and Development Act, 2000, as amended.
- The First Party have failed to address the issues raised in their appeal submission.
- Visual Amenity concerns are reiterated.
- Concerns in relation to adverse impacts on Howth Head SAC are reiterated and it is emphasised that part of the site forms part of this SAC designation.
- It is a serious omission that no floor plan of the lower studio level has been provided to date by the applicants.
- There are no details provided on the proposed treatment of the cliff edge at the base of the large studio window.
- A tree survey was provided yet this proposal is for removed trees and sections of hedgerow in a highly sensitive location. Concern is raised that this matter is left for condition to resolve, and such resolution is not open to public scrutiny. It is also considered that this approach could establish an undesirable precedent.
- The planning history of this site includes a number of unauthorised works that have then resulted in applications for retention and there are concerns on whether conditions attached to subsequent grants relating to such works were complied with.
- The existing fence has been subject of a number of applications and decisions.
- Concerns are raised in relation to lack of revision of the fence, yet this was deemed to be necessary by both the Planning Officer and the Parks Division, yet this was not provided for in the additional information.

- Condition No. 3 is vague and does not include any height restrictions.
- The format, height and position of the existing fence is contrary to the SAAO guidelines, and the Board is requested to uphold Fingal's decision alongside condition that the height of fence is no higher than 1.3m and that the brushwood is temporary with it being removed within 3 years.
- The Board is asked to uphold the grounds of appeal in this case.

6.6.3. **Observer's response to the First Party response** was received by the Board on the 13<sup>th</sup> day of April, 2021, and may be summarised as follows:

- There is no mention of the use of reflective glazing in the documentation provided by the applicant and concern is raised that the photomontages submitted by the applicant show clear reflection in all of the easterly and southerly windows.
- Glenlion Cliffs is located within the 'Other' area and not within the residential zone of the Howth SAAO. Therefore, the comparisons given by the applicant to other properties that are within the residential zone are inappropriate. There are only a few houses located within the 'Other' zone and these properties are subject to strict constraints.
- The subject property is above the size of an average dwelling in Ireland and the Planning Authority have restricted the size of new builds as well as existing homes within land zone 'Other' in the Howth SAAO. A rebuild of an 'Other' house is restricted by a maximum of 20% increase in size and there is no reason given as to why this proposal should be an exception.
- The Planning Authority is in favour of the Board correcting their error to require non-reflective glazing as a condition.
- The Board should seek new public notices that set out clearly the development that is sought.
- It is a cause for concern that the applicants in their submission did not address the concerns raised by the appellant regarding the removal of a hedgerow without permission and that subsurface excavation on the cliff which is not allowed within the 'Other' zoned area in the Howth SAAO.



- There are ambiguities and errors in this application and in the Planning Authorities decision in this case.
- It is not accepted that the proposed development would not have visual amenity impact in that this existing dwelling is clearly visible from many vantage points. Planting between the Cliff Path and the house would obstruct views of Bray Head, Sugar Loaf, and the Dublin Mountains. This is not allowed as the Cliff Paths views are protected.
- Concern is raised in relation to night-time pollution arising from the proposed development.
- There is incomplete information provided on the lift access.
- Refusal of the studio is supported for ecological through to its failure to comply with the SAAO requirements. It is not accepted that it would not be visible in its landscape setting. If the studio is approved, it is requested that its mass be reduced.
- Wooden fencing is not deemed to be an appropriate material in the Howth SAAO Other Area.
- No measures are proposed to protect the public using the Cliff Path during construction works.
- Concern over the scope of the works, the stability of the cliff, the contrary information provided on file in relation to geotechnical mitigation measures and measures to deal with surface water and the like.
- Concern is raised that whilst the Planning Authority considered that the onus would be on the applicant to ensure compliance with the geotechnical survey, yet this is not reflected in the conditions attached to the grant of permission.
- The Board is asked to consider if there has been an appropriate assessment of the risk of slumping, slope failure either from soft soil, scree, or bedrock and whether the design has included sufficient measures to deal with such impacts.
- The control and design of water during and post construction is critical at this site.
- The plan is ambiguous in clarifying the presence of invasive plants on site and no condition to deal with this matter has been imposed by way of condition, yet it is noted that there are invasive species present.

- There is no species list included for the green roof yet certain green roof species such as sedums are invasive.
- Concerns raised in relation to missing further information documents from the Planning Authority's website.
- The removal of existing hedgerows establishes a damaging principle.
- Concerns are raised in relation to the extent of trees to be removed and that these trees play an important role in softening the appearance of the existing dwelling.
- Concerns are raised in relation to the replacement planting.
- Concerns are raised in relation to the damage that could occur to existing trees as a result of the proposed development.
- Amendments are sought to the conditions attached to the grant of permission as well as a number of new conditions in the event of a grant of permission.

## **7.0 Appropriate Assessment**

### **7.1. Compliance with Article 6(3) of the Habitats Directive**

- 7.1.1. In accordance with the obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a European site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment.
- 7.1.2. This matter is considered fully in this section with regard had to all relevant guidance provided by the EU and the NPWS on the matter of 'Appropriate Assessment'. The competent authority must be satisfied that the proposal sought under this application will not adversely affect the integrity of the European site before consent can be given.
- 7.1.3. The site despite being located in part within the boundaries of Howth Head SAC (Site Code: 000202) is not connected to or necessary to the management of this or any European site due to its modified state containing none of the priority habitat associated with the Howth Head SAC. It is notwithstanding, subject to the provisions of Article 6(3) due to the development sought under this application potential to have

a significant effect, either individually or in combination with other plans or projects on the Howth Head SAC it forms part of and due to the proximity of the site to a number of other European sites in view of their site's conservation objectives.

## **7.2. Background to the Application**

- 7.2.1. Accompanying the applicant's further information response to the Planning Authority is a revised Screening Report for Appropriate Assessment and a revised Natura Impact Statement. I also note that the applicant's further information is an Outline Construction Environmental Plan and an Invasive Species and Management Plan. These documents were all prepared in line with current best practice guidance.
- 7.2.2. The methodology for screening for Appropriate Assessment as set out in EU Guidance and the Department of Environment, Heritage and Local Government is:
- 1) Description of the plan or project and local site or plan area characteristics.
  - 2) Identification of relevant European sites and compilation of information on their qualifying interests and conservation objectives.
  - 3) Assessment of likely significant effects-direct, indirect, and cumulative, undertaken on the basis of available information.
  - 4) Screening Statement with conclusions.
- 7.2.3. A wide potential zone of influence was examined by Altemar, Marine & Environmental Consultancy, authors of the accompanying 'Appropriate Assessment Screening & Natura Impact Statement – Information for a Stage 1 (AA Screening) and Stage 2 (Natura Impact Statement) AA for a residential development at Glenlion, Howth, County Dublin', which is dated the 19<sup>th</sup> day of November, 2020.
- 7.2.4. Their report extended to a radius of 15km and with this examination based on the 'Source - Pathway – Receptor' conceptual model. By use of this model, they found that the separation distance together with the dilution and mixing in the maritime environment meant that no significant effects would arise to the majority of sites in terms of their integrity, conservation interests through to conservation objectives within this potential zone of influence.
- 7.2.5. Notwithstanding, this they concluded that there was likely potential for impacts to occur from the development during the construction and operational phases from various disturbances that could arise to foraging and also the potential for habitat loss on the

qualifying features of interest of the Howth Head SAC (Site Code: 000202) and Rockabill to Dalkey Island SAC (Site Code: 003000). It was therefore concluded by the authors of this report that the project sought under this application must progress to the next stage, i.e., Stage 2 Appropriate Assessment.

### **7.3. Conclusion**

- 7.3.1. Having reviewed the documents, I am satisfied that the information provided with this application and that publicly available together with my inspection of the site and its setting allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.
- 7.3.2. I note that the project site is located in and within close proximity to the Howth Head SAC (Site Code: 000202) and that it is also located in within close proximity to Rockabill to Dalkey Island SAC (Site Code: 003000).
- 7.3.3. Given that the project consists of significant alterations and additions within the Howth Head SAC boundaries, with the site occupying a coastal cliff top location with the ground levels sloping steeply away from it to the shoreline together with the residential function being dependent upon on-site treatment of waste water and surface water I consider that there is potential for these works, if permitted, to have significant effect to the qualifying interests of both Howth Head SAC and Rockabill to Dalkey Island SAC. This I consider is due to the nature, scale and extent of the development sought and the potential for hydrological pathways to exist between the project area and these particular European sites having regard to the fact that the site in part forms part of the Howth Head SAC, the lack through to limited separation distance of the remainder of the site and the site itself to both Howth Head SAC and Rockabill to Dalkey Island SAC, the ground conditions, the geological and topographical characteristics of the site and its setting in particular.
- 7.3.4. In relation to Howth Head Coast SPA (Site Code: 004113) I am cognisant that this European site is located c408m to the west of the site. Notwithstanding, the site is a much-modified brown field site and having inspected the site I accept that there is no feeding or roosting benefit for the qualifying interest of this SPA which is the Kittiwake (*Rissa tridactyla*) [A188]. I am also aware of this species of gull being a summer visitor to steep coastal cliffs of Ireland where they breed and nest in colonies including for

example Howth Head SPA and that they are unfortunately listed as a globally threatened bird species under the Red List of threatened bird species. As such there is needs to be a light threshold in terms of examining potential for effects on this bird species so that they are maintained at favourable conservation condition of this bird species listed as the Special Conservation Interest for the Howth Head Coast SPA. I therefore concur with the authors of the screening report submitted that based on best scientific knowledge and having inspected the site there is no tangible pathway or connection that exists between the source and the receptor and therefore this European site could be excluded on the basis that no adverse impact would arise from the development on the conservation features and objectives of this site.

- 7.3.5. In conclusion, having reviewed the documents and submissions, I am satisfied that the submitted information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites and I concur with the screening assessment conclusion that significant effects cannot be ruled out on Howth Head SAC and Rockabill to Dalkey Island SAC. Having regard to the foregoing, it is reasonable to conclude that significant effects cannot be ruled out and a Stage 2 Appropriate Assessment is required in this case.

#### **7.4. Need for Stage 1 AA Screening**

- 7.4.1. Though the project forms part of the Howth Head SAC it is not directly connected with or necessary to its management as a European Site. The site is also not directly connected with or necessary to the management of other European sites in its immediate and wider vicinity; notwithstanding, it needs to be determined if the development is likely to have any significant effects on any European site or sites. Accordingly, the proposed development is examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site.

#### **7.5. Brief Description of the Development**

- 7.5.1. The applicant has set out a brief description of the project under Section 4(B) of the Screening Report provided with this application. It sets out that the development consists of retention permission for the removal of a section of hedgerow (to be reinstated as appropriate) and erection of a new wooden fence alongside permission

for the refurbishment and extensions of the existing dwelling which would result in a 220m<sup>2</sup> gross floor area in total. In addition, it notes that development also includes the provision of a disabled access lift, green roof for the purposes of drainage attenuation, visual screening, modifications to the existing terrace, together with all associated works and services. It indicates that the house and development site are within the Howth Head SAC and the proposed development is within an existing mature planted garden with existing planted beds, steps, and terraces. It sets out that of particular relevance to the possible impact of the proposed development on European Sites are the proposed works, the site drainage (surface water and foul), excavation, landscaping and the construction works.

## 7.6. Zone of Influence (Zol)

- 7.6.1. Section 4(C) of the report sets out a summary of European Sites over which the proposed development could give rise to likely significant impacts and it sets out that the potential Zol during the construction phase of the project was deemed to be Howth Head SAC, which forms part of the site, and the adjoining part of the site that lies outside of the Howth Head SAC and Rockabill to Dalkey Island SAC were the nearby sensitive receptors. It also sets out that using the 'precautionary principle' relevant to possible effects on Natura 2000 sites within 15km of the development with all European sites within this geographical radius being investigated as part of this report. With Howth Head SAC (Site Code: 000202) located within and immediately adjoining the site and with Rockabill to Dalkey Island (Site Code: 003000) at its nearest point 25m from the site.
- 7.6.2. Table 1(a) details the aforementioned Natura 2000 sites as being screened out by the authors of the report. This is I have summarised in the table immediately below.

### **European Sites within a Possible Zol Screened In**

European/Natura 2000 Code	Name	Qualifying Objectives & Interests	Potential Impact

IE0000202	Howth Head SAC	<p><b>Conservation Objectives:</b></p> <p><i>To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</i></p> <p><b>Conservation Interests:</b></p> <p><i>Vegetated sea cliffs of the Atlantic and Baltic Coast* (1230)</i></p> <p><i>European Dry Heaths* (4030)</i></p>	<p>As set out part of the site forms part of the land identified as forming part of the Howth Head SAC. As such the proposed development sought under this application seeks permission for works within the SAC boundary.</p> <p>During the construction phase this will include excavation, demolition, and construction. With this giving rise to dust, noise, and the potential also for silt to exit from the site through uncontrolled surface water run-off.</p> <p>Standard construction and environmental controls will be implemented to minimise potential impacts with foul water treated in an on-site treatment plant uphill of the proposed development.</p> <p>It is acknowledged that additional mitigation measures are required to deal with potential additional impacts including slippage and that additional information on the habitats of the site is necessary.</p>
-----------	----------------	--	---

			<p><b>Conclusion</b></p> <p>Having regard to the precautionary approach it is concluded that significant effects on this SAC are likely from the proposed development during the works and as such an NIS statement is required.</p>
IE0003000	Rockabill to Dalkey Island SAC	<p><b>Conservation Objectives:</b></p> <p>To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p> <p><b>Qualifying Interests:</b></p> <p>Reefs* (1170)</p> <p>Harbour porpoise <i>Phocoena phocoena</i>* (1351)</p>	<p>It is noted that the site is within 25m of this SAC and in the absence of any controls silt could enter the marine environment down the cliff face. In such events significant mixing will take place immediately in the marine environment or on incoming tides in the case of intertidal reef. It further notes that prior to the removal of silt by the tide, storm and weather events, short term impacts may be seen on intertidal flora and fauna. In the absence of mitigation measures it is considered that there is</p>



			<p>potential for impact to arise on this SAC.</p> <p>On the matter of foul water, it notes that this will be treated onsite by a proprietary wastewater treatment system that is located uphill of the proposed development and that mitigation measures will also be required to protect the features of interest of this SAC.</p> <p><b>Conclusion:</b></p> <p>Based on the precautionary approach, it is concluded that significant effects on this SAC are likely from the proposed development primarily as a result of proximity between this SAC and the site from emissions such as surface water runoff and dust impacts from the project works. As such an NIS statement is required.</p>
--	--	--	---

7.6.3. Table 1(b) screens out the following Special Areas of Conservation within a 15km radius of the site:

- Baldoyle Bay SAC (Site Code: 0000199).
- Ireland's Eye SAC (Site Code: 0002193).

- North Dublin Bay SAC (Site Code: 0000206).
- Malahide Estuary SAC (Site Code: 0000205).
- South Dublin Bay SAC (Site Code: 0000210).
- Lambay Island SAC (Site Code: 0000204).
- Rogerstown Estuary SAC (Site Code: 0000208).

Based on there being no direct pathway from the site to these SAC's during construction and/or operational phases and it is therefore concluded on the basis of best objective information no significant effects are likely to occur that would adversely impact upon the conservation interests and objectives of these sites.

7.6.4. In addition, Table 1(b) screens out the following Special Protection Areas within a 15km radius of the site:

- Howth Head SPA (Site Code: 0004113).
- Ireland's Eye SPA (Site Code: 0004117).
- North Bull Island SPA (Site Code: 0004006).
- Baldoyle Bay SPA (Site Code: 0004016).
- Malahide Estuary SPA (Site Code: 0004025).
- South Dublin Bay and River Tolka Estuary SPA (Site Code: 0004024).
- Lambay Island SPA (Site Code: 0004069).
- Rogerstown Estuary SPA (Site Code: 0004015).
- Dalkey Islands SPA (Site Code: 0004172).

7.6.5. Whilst the report considered that during the construction phase that there is a potential indirect pathway from the site to these SPA's via surface water to the marine environment in the absence of mitigation measures; however, significant mixing will take place in the marine environment for the finest particles if present in this surface water runoff that so that these will not immediately settle.

7.6.6. In addition, it notes that these finer particles if present will be diluted to negligible levels prior to reaching any of the above indicated SPA's. In the absence of mitigation measures it is considered that no significant impact will occur to any of the above

indicated SPA's and that silt would be dispersed and diluted in the intervening marine environment and will not be at levels that would impact on the features of interest of these SPA's.

- 7.6.7. Having examined the effects of the proposed development in isolation considering the characteristics of the proposed development, the location of the development and the nature, scale as well as extent of works, the report then examines this matter in relation to in-combination effects with other plans and/or projects. With the view of assessing whether there is a risk of significant effect or effects arising on European sites in this context.
- 7.6.8. The report notes that the proposed works are located on the southern slopes of Howth Head where the landscape is dominated by steep cliffs and at a location where no significant developments have been granted permission and/or commenced construction proximate to the site of the proposed project in recent years.
- 7.6.9. This examination includes examining the nature, scale and extent of developments permitted and implemented in the vicinity of the site.
- 7.6.10. It concludes that there are no significant effects likely from in-combination effects.

## **7.7. Screening Statement and Conclusions**

- 7.7.1. The appropriate assessment screening conclusions are set out under Section 4(B) of the report, and it concludes that despite the limited scale and extend of the proposed development alongside the potential zone of influence being restricted to the site and its immediate vicinity that in the absence of mitigation measures there is potential for silt laden material to enter Howth Head SAC and Rockabill to Dalkey Islands SAC. As such drainage is an issue for both of these European sites.
- 7.7.2. In addition, it indicates in the absence of mitigation measures there is also potential for physical damage to the features of interest within Howth Head SAC through direct damage from machinery and slippage during works.
- 7.7.3. Based on these findings it is considered that an NIS is required in respect of the effects of the project on the Howth Head SAC and the Rockabill to Dalkey Islands SAC from a number of factors drainage (Howth Head SAC and Rockabill to Dalkey Islands SAC) and physical damage as well as dust impacts (Howth Head SAC). Therefore, because it cannot be excluded on the basis of best objective scientific information following the

screening that was carried out that in the absence of control or mitigation measures that the plan or project, individually and/or in combination with other plans or projects, will have a potential for effect and/or effects on both European sites in terms of their Qualifying Interests, which in turn has implications for their Conservation Objectives, a Stage 2 Appropriate Assessment (NIS) is required.

## **7.8. Screening Determination**

- 7.8.1. The development sought under this application was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out Screening for Appropriate Assessment of the project, it has that the potential for significant effects on two European site as a result of the project alone or in combination with other plans or projects cannot be excluded in view of the Conservation Objectives of that site and as such an Appropriate Assessment is therefore required for the following European sites:

- Howth Head SAC (Site Code: 000202).
- Rockabill to Dalkey Island SAC (Site Code: 003000).

Therefore, a further examination of the Conservation Objectives and Features of Interest of both of these European Sites is necessary to determine if significant effects are likely to impact upon it.

## **7.9. Stage 2 – Appropriate Assessment**

- 7.9.1. The Howth Head SAC and the Rockabill to Dalkey Island SAC are the two relevant European sites for Stage 2 Appropriate Assessment in this case. The aim of this assessment is to consider whether or not the project would adversely affect the integrity of this European site, either individually or in-combination with other plans and projects in view of the conservation objective of this site.
- 7.9.2. Section 5 of the report sets out the potential for adverse effects on the qualifying interests and conservation objectives of these aforementioned sites. This is summarised in Table 4 which can be summarised as follows:

**Potential for Adverse Effects on the QI's and CO's of the Howth Head SAC and the Rockabill to Dalkey Island SAC**

European Site Name & Code	Qualifying Interests	Potential for Adverse Effects in the Absence of Controls or Mitigation Measures
<p>Howth Head SAC</p> <p>(Site Code: 000202)</p>	<p><i>Annex I Habitats (Features of Interest)</i></p> <p><i>Vegetated sea cliffs of the Atlantic and Baltic Coast* (1230)</i></p> <p><i>European Dry Heaths* (4030)</i></p>	<ul style="list-style-type: none"> <li>• The potential impacts of construction on Vegetated Sea Cliffs and Dry Heaths include covering of vegetation with silt laden surfaces, water runoff and dust.</li> <li>• Following on from expert examination of the sites ground conditions it is not anticipated that the construction works will adversely affect the stability of the slope, however, localised destabilisation in the vicinity of the boundary edge may occur resulting in small, localised slippage with materials falling down slope resulting in physical damage to the features of interest during construction works.</li> <li>• In the absence of mitigation measures the proposed project would not be expected to affect the habitat area; the physical structure and function of the site; the functionality and hydrological regime; the vegetation composition through to the vegetation structure.</li> </ul> <p><i>It is concluded that in the absence of any standard control measures or mitigation measures some dust, surface water, soil and pollution may enter the SAC during the strong winds, heavy rain (via surface water) and</i></p>

		<p><i>specific aspects of the development project e.g., demolition and removal of soil and the like from site. In the absence of mitigation measures and controls during the construction phase the impacts that arise would be minor, temporary and the dust levels would not significantly impact the vegetation structure zonation. Despite this caution it is advised that construction measures be put in place to ensure that no adverse impacts arise. It is also advised that an ecologist be present on site to oversee excavation, particularly of perimeter works, ground stabilisation works to prevent spillage and the implementation of a surface water management plan. In relation to the vegetation composition the short-term impacts during the construction phase are concluded to not be at a level to significantly impact the range of sub-communities within the different zones within Howth Head SAC.</i></p>
<p>Rockabill to Dalkey Island</p> <p>Site Code: 003000</p>	<p><i>Reefs* (1170)</i></p> <p><i>Harbour porpoise</i></p> <p><i>Phocoena phocoena*</i></p> <p><i>(1351)</i></p>	<ul style="list-style-type: none"> <li>• The proposed development could lead to silt laden surface water coming off the site in the absence of mitigation measures. As it has been shown that the intertidal and subtidal reef are not in the vicinity of the proposed development they would not be expected to be impacted by the proposed works. Notwithstanding, mitigation measures will be needed to be put in place to contain surface water on site.</li> <li>• The Harbour porpoise would not be expected to be impacted by the proposed works. The levels of silt that would enter the maritime environment or underwater acoustic noise in the absence of any mitigation would</li> </ul>

		not be expected to be at the levels that would impact them.
--	--	---

## 7.10. Evaluation of Effects

7.10.1. Section 5 of the report sets out mitigation measures to avoid likely significant effects arising from the project during the construction and operational phases. These are dealt with under the broad headings of:

- Air & Dust
- Site Management
- Monitoring
- Operations
- Waste Management
- Measures Specific to Demolition
- Measures Specific to Earthworks
- Storage/Use of Materials, Plant and Equipment
- Surface Water Mitigation During Construction (Downstream Impacts)
- Stability Mitigation Measures
- Vegetation

7.10.2. The controls and mitigation measures provided under each of these broad headings include standard through to site specific measures and controls that reflect the unique characteristics of this site's ecological sensitive location alongside its location on what is effectively a coastal cliff edge site. In particular during the construction phase, it includes the stability mitigation measures put forward in the 'Civil and Structural and Construction Report' prepared by Barret Mahony experts in this field of expertise.

7.10.3. It sets out that an ecologist would be present during all clearance, excavation through to ground enabling works as appropriate and that appropriate levels of consultation would be had with the ecologist. In particular cognisance would be had for the need

of the presence of an ecologist for works in the vicinity of the boundary with the SAC alongside appropriate measures will be required to ensure that no material or debris enters the SAC.

- 7.10.4. It also highlights that as there is a direct hydrological connection from the proposed works to Howth Head SAC via surface water a strict set of mitigation measures have been implemented in relation to drainage from the site during construction phase with this commencing at the beginning of site clearance and continuing through to the completion of the project.
- 7.10.5. On this matter it indicates that surface water will not be permitted from the site to enter the Howth Head SAC.
- 7.10.6. The matter of foul water drainage is also included, and it is indicated that the waste water treatment plant would be designed to go to an area onsite but outside of the SAC and that the design would be one that would give rise to no adverse effects by way of contamination or otherwise of the Howth Head SAC and/or Rockabill to Dalkey Islands SAC. The design would also include operational controls to ensure that this would also be the case.
- 7.10.7. The mitigations measures to be employed during the construction and operational phase of the development aim at avoiding and eliminating any potential for adverse effects on the Howth Head SAC and Rockabill to Dalkey Island SAC as a result of the land-based disturbance associated with the development works and the operational use going forward upon completion of these works.
- 7.10.8. Having regard to information provided I consider that the proposed mitigation measures are clearly described in the report provided and that they appropriate, reasonable, practical, enforceable as well as relevant to the site's unique locational and site attributes. I am also satisfied that the measures outlined fully address any potential impacts arising from the proposed development and that it has been demonstrated based on the information in the submitted the Stage 2 Appropriate Assessment (Natura Impact Statement) that with implementation of these mitigation measures including construction management and operational measures that are also proposed development, allows me to conclude that based on best scientific information available that this project, either individually or in combination with other



plans and projects would not adversely affect the Howth Head SAC (Site Code: 000202) and Rockabill to Dalkey Island (Site Code 003000).

#### **7.11. Cumulative and In-combination Effects**

- 7.11.1. I do not consider that there are any specific in-combination effects that arise from other plans or projects including applications for residential developments that have been permitted since this application was made in the vicinity of the site. Further these applications and applications predating them have related to less ecologically sensitive sites than that of this site. This is due to their location outside of the boundaries of an SAC; there being more significant lateral separation distance from them and the European sites within their ZOI; the sites were previously residentially developed as well as were zoned for the intent of residential development through to these site's benefitted from existing water and wastewater infrastructure.
- 7.11.2. In addition, given that the site and its setting forms part of the Howth SAAO there is a low bar on what requires planning permission with this further providing greater assurance that a wide breadth of proposed developments in this area would have been subject to 'AA' screening.
- 7.11.3. Given the negligible contribution of the proposed development to the water quality at this location in particular to nearby coastal waters, I consider that any potential for in-combination effects on water quality on the Howth Head SAC and Rockabill to Dalkey Island SAC can be excluded. Based on best scientific knowledge I do not consider that there are any specific in-combination effects that arise from other plans or projects.

#### **7.12. AA Conclusion**

- 7.12.1. The report having considered the development in light of the assessment requirements of Sections 177U and Sections 177V of the Planning and Development Act, 2000, as amended concluded that the likelihood of significant effect on the following European sites could not be excluded:
- Howth Head SAC (Site Code: 000202).
  - Rockabill to Dalkey Islands (Site Code: 003000).

#### **7.13. Determination Conclusion**

- 7.13.1. I have considered the development sought under this application, the project, similarly in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act, 2000, as amended, and having carried out screening for Appropriate Assessment I am satisfied that significant effects on the Howth Head SAC and Rockabill to Dalkey Islands SAC are likely from the nature, scale and extent of the works sought under this application in the absence of standard controls or mitigation measures. This I consider is primarily as a result of the site including and being proximate to Howth Head SAC, the site's locational landscape attributes, the geological attributes, the ground conditions, the topography of the site relative to the cliff edge and the possible emissions of surface water, dust, and the potential for physical damage to arise during demolition, excavation and the construction phases of the development sought under this application.
- 7.13.2. Based on these factors I consider that it was necessary and appropriate requirement for a Stage 2 Appropriate Assessment (NIS) to have been carried out in order to assess whether the proposed project, either alone or in combination with other plans or projects, in view of the conservation objectives of the Howth Head SAC and Rockabill to Dalkey Island SAC, would adversely affect the integrity of these particular European sites. I am also satisfied that all other European sites within the ZOI were appropriately screened out in the initial screening based on best scientific knowledge as has the findings that no cumulative impact or in-combination effects on any European sites are likely.
- 7.13.3. Of concern, however, is the lack of a more detailed focus on the home studio element and the retaining walls as part of the report's overall assessment.
- 7.13.4. In relation to the home studio element I concur with the Development Application Unit of the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media, in their conclusions submission received by the Board on the 21<sup>st</sup> day of April, 2021, that the concrete foundation slab for the new extension to act as a cantilever in the event that there was any future compromise of the rock formation offering the potential to mitigate such potential destabilising effects would appear to envisage the possibility of cliff subsidence through to slumping in the vicinity of the proposed construction works.
- 7.13.5. Moreover, the documentation lacks clarity in terms of whether or not the existing dwelling, for which the main extension proposed under this application would be

attached to is suitable for this attachment in that there is no evidence that this structure is one that has been built with foundations and/or modified for the main dwelling structure to be attached to stable rock. Or indeed that the quantum of works in the absence of this structure being one that is of sufficient stability to not be adversely impacted upon by the quantum of works and in turn what impacts that this would have on the Howth Head SAC given the proximity to the cliff top edge.

- 7.13.6. On this concern I note that as part of the suite of documentation provided with this application it is recommended that the existing retaining wall along the southern boundary of the site should ideally be replaced given its construction and given its proximity to the proposed areas of works, in particular the proposed extension. It is also recommended the lack of any foundations or indeed anchoring of the existing dwelling to appropriate bedrock also needs to be addressed.
- 7.13.7. It is my view that the Appropriate Assessment Screening and NIS do not factor in that there is likely potential for the scope of works to be more substantive than those which they have assessed in terms of potential impact on European sites, in particular Howth Head SAC.
- 7.13.8. Should these works be required, i.e. a new retaining wall along the southern boundary of the site within the SAC on a cliff slope and face through to stability works to the existing dwelling that may involve substantive piling or otherwise again within the SAC boundary to facilitate the development sought under this application, I consider that these are significant additional works that one could argue are not covered by the public notices or indeed sufficiently clarified within the suite of document accompanying this application in particular the screening report provided.
- 7.13.9. In light of these concerns I concur with the Department that the proposed studio extension which would be set into the cliff top of the south eastern portion of the site should be omitted by condition for reasons relating to ensuring that damage to the vegetated sea cliffs of Atlantic and Baltic Coasts, which are qualifying interest habitat for which the Howth SAC is designated to protect under the Habitats Directive (92/43/EEC) does not arise either during its construction or as a result of any subsequent physical fallings it may give rise to in terms of the stability of this cliff top.
- 7.13.10. In addition, I concur that with the Department that by way of condition that a comprehensive and robust Construction Management Environmental Plan should be

submitted and agreed in writing with the Planning Authority prior to the commencement of any construction works on site.

7.13.11. In tandem with this I consider that it would be appropriate to include an advisory note and/or condition in relation to the scope of works not including the provision of a new retaining wall along the southern boundary of the site or significant foundation works to the existing dwelling and that these should be subject to a separate application for examination given the high sensitivity and vulnerability of the location of the existing retaining wall and the existing dwelling within the boundaries of Howth Head SAC. Arguably the stabilisation of the retaining walls and existing structures should be carried out prior to any extension to the existing dwelling in order to ensure that the Howth Head SAC and its Qualifying Interests are maintained in favourable conservation condition without any adverse effect from this development.

7.13.12. In conclusion I have consider that the development sought under this application, either individually or in combination with other plans or projects would not adversely affect the integrity of the European site No. 000202, or any other European site, in view of their conservation objectives subject to the controls, mitigation measures including the conditions recommended in this assessment above. In particular, by way of the omission of the home studio its associated works.

7.13.13. This conclusion is based on a compete assessment of all aspects of the proposed project alone (and in combination with other projects) including possible construction related pollution, wastewater treatment and invasive species. Measures designed to prevent adverse effects have been incorporated into a construction management plan provided. Subject to the omission of the studio extension and that the works carried out are carried out to include only the scope of the proposed development applied for there is no reasonable doubt as to the effectiveness of these measures and therefore there is no doubt as to the absence of adverse effects on the conservation objectives of Howth Head SAC.

## **8.0 Assessment**

### **8.1. Preliminary Comment**

8.1.1. Concerns are raised by the appellants and the observers in this appeal case in relation to the Planning Authority's procedural handling of this application in the submissions

received by the Board. The Board does not have an ombudsman's role in investigating such matters and is tasked by way of this 3<sup>rd</sup> Party appeal to assess this appeal on an entirely *de novo* basis and it is from this basis that the Board will make its decision on the appropriateness of this development in terms of the proper planning and sustainable development of the area.

- 8.1.2. Further, concerns are raised in relation to the adequacy of the documentation submitted as part of this application. On this matter I am of the view that there is sufficient information available to the Board by way of the documents submitted with this application initially, then subsequently in response to the Planning Authority's further information and finally as part of the documents submitted to the Board by the appellant, the observer and in the various responses received alongside having regard to relevant planning provisions. With this further aided by my inspection of the site and its setting.
- 8.1.3. In relation to the matter of whether or not previous grants of permission have been complied with I consider that these are enforcement matters that fall under the Planning Authority remit to deal with as they see fit. Accordingly, the third parties, if they deem it necessary to do so, can direct these types of concerns to the Planning Authority to investigate formally and take appropriate enforcement action where deemed necessary and appropriate to do so.
- 8.1.4. In respect of the appeal before the Board it consists of an application which includes two distinct elements, namely, '*permission*' to undertake certain proposed development and '*permission for the retention*' of specified existing development that has already been carried out on site.
- 8.1.5. On the matter of permission for retention the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with such applications 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 which in this case comprises of the retention of the removal of a section of hedgerow along the Cliff Walk and its replacement with wooden boundary has already taken place.

- 8.1.6. In relation to the application before the Board I also note that it was subject to a request for additional information with the applicant responding to this request on the 23<sup>rd</sup> day of October, 2020.
- 8.1.7. Whilst this response did not put forward any significant amendments to the development sought it did provide significant additional information on a number of matters that the Planning Authority deemed were not satisfactory to allow them to make an informed decision.
- 8.1.8. Having reviewed the initial application as submitted to the Planning Authority on the 8<sup>th</sup> day of January, 2020, I share this conclusion. Particularly in terms of the information provided for Appropriate Assessment Screening and NIS. But also, in terms of geotechnical data of the site through to details in relation to the foul drainage infrastructure upgrades also sought under this application.
- 8.1.9. In relation to the applications response to Item No. 2 of the Planning Authority's request for additional information it does appear that there is no record of information relating to the preparation of a Tree Survey and a number of associated plans being received by the Planning Authority. Though this information has been provided by the applicant as part of their response to the grounds of appeal this fact is contested by them and as previously said I consider that this is not a matter for the Board to make a determination on as part of its *de novo* assessment of this appeal case.
- 8.1.10. Notwithstanding, having regard to the additional qualitative clarity that the applicant's further information has provided I propose to base my assessment below on the development sought as revised by this further information.
- 8.1.11. Having examined the application details and all other documentation on file, inspected the site and having regard to relevant provisions, I consider that substantive issues in this case are:
- Principle of Development Sought
  - Visual Impact
  - Residential Impact
  - Drainage
  - Landscaping/Loss of Trees

- Invasive Species

8.1.12. I propose to these issues separately in my report below.

8.1.13. The matter of 'Appropriate Assessment' I have chosen to have dealt with separately under Section 7.0 of this report due to the fact of the site forming part of a European site and having regard to the nature, scale and extent of the development sought the potential for effects to also arise for other European sites that are within the immediate geographical radius of the site. I therefore do not propose to address the impacts of the studio extension as I have already concluded based on its likely detrimental effect on the priority habitat of the Howth Head SAC and for this reason it should be severed from any grant of permission. Moreover, I consider that the Board is precluded from granting permission where this outcome arises.

## 8.2. Principle of the Development Sought under this Application - Boundaries

8.2.1. As previously set out in this report, the development sought under this application consists of two distinct elements. Firstly, the retention of the removal of a section of hedgerow (to be reinstated) and erection of new section of wooden fence.

8.2.2. In relation to the retention of the removal of a section of hedgerow and its replacement with wooden fence I note that firstly the site forms part of a larger parcel of land zoned 'HA' under the Development Plan. The zoning objective for which is to "*protect and enhance high amenity areas*" and the vision for such land is in part to: "*protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place*".

8.2.3. Of further relevance the site is located within the boundaries of the Howth Special Amenity Area Order. With the site forming part of lands zoned 'Other Areas'. In general Objective 1.1 of the Order seeks to conserve this area's natural and cultural assets with Objective 2.1 and Policy 2.1.1 seeking to preserve the views from the public footpaths, which I note includes the Cliff Path which bisects this irregularly shaped appeal site in two.

8.2.4. In addition, the Order sets out design guidelines for boundary treatments within the SAAO recommending that boundaries to public roads and paths shall be generally of either masonry construction, face and capped with limestone or local stone or consist of a hedgerow or vegetated earth bank. In relation to height it indicates that these

shall not be higher than existing adjacent walls or 1.2m where there are no existing walls and it clearly indicates that boundaries including those of wooden construction are generally not acceptable as permanent boundaries if they are visible from the public road or footpath and where they may be considered is where they are necessary to maintain privacy from a road or a path within 10m of a dwelling or a temporary screen while a hedgerow is growing.

- 8.2.5. Moreover, the SAAO under Objective 2.7 sets out an objective to conserve hedgerows and considers these to be attractive elements of the landscape as well as a valuable wildlife habitat. This is carried through under Policy 2.7.1 which indicates that in general the Council will not allow development which involves hedgerow destruction and under Policy 3.1.2 it sets out the preferred boundaries along public footpaths which includes hedgerows.
- 8.2.6. In relation to the provisions set out under the SAAO the principle of the removal of a section of hedgerow is not a type of development that is permissible and in terms of permitted boundary treatments wooden panel fence boundaries and the like are also not listed as a permitted boundary treatment.
- 8.2.7. As Policy 1.3.1 of the SAAO specifically sets out that the Council will not allow developments that have a significant negative visual impact, seek to ensure that planning applications respect the natural beauty through to preserve prospects if the Special Amenity Area. Together with Policy 2.1.1 of the SAAO which specifically sets out that the Council will not permit development which would have a significant negative effect on a footpath the removal of the hedgerow and the provision of non-permissible boundary treatments that are out of character with this highly attractive in terms of visual amenity and highly attractive in terms of natural landscape attributes and features is not consistent with the policies and objectives of this particular SAAO.
- 8.2.8. In terms of the provisions of the Development Plan I consider that Objective HOWTH 4 reinforces the protection and management of the Special Amenity Area in a manner that aligns with its associated management plans and objectives.
- 8.2.9. Further this area forms part of a Coastal Landscape Character area that is considered to be highly sensitive to change and in terms of the area associated with Howth SAAO being undoubtedly a unique coastal landscape for which appropriate regard must be had in considering any proposed development with SAAO.



- 8.2.10. The Development Plan sets out a wide number of objectives which seeks to provide appropriate and necessary protection of these important landscape character type areas including Objective NH33 which seeks to ensure the preservation of the uniqueness of a landscape character type by having regard to the character, value and sensitivity of the landscape when determining a planning application.
- 8.2.11. In addition, Objective NH34 which seeks to ensure that developments reflect and where possible reinforce the distinctiveness and sense of place of the landscape character types including habitats. Objective NH36 which seeks that developments do not impinge in any significant way of the character, integrity, and distinctiveness of highly sensitive areas and do not detract from their scenic value through to do not cause visual harm, introduce incongruous landscape elements through to result in the loss or disturbance of landscape elements that contribute to local distinctiveness. Such as vegetation. And Objective NH40 seeks to protect views and prospects that contribute to the character of the landscape.
- 8.2.12. Having regard the above stated objectives I consider that this further reinforces that the removal of hedgerow, a hedgerow that blended in with other natural boundaries aligning the Cliff Path, the insertion of an incongruous and out of context with this unique landscape setting a timber boundary treatment, a treatment of boundary that is at odds with the Cliff Path and the permitted boundary treatments in this unique and highly sensitive to change setting is contrary to the Development Plan objectives set out above.
- 8.2.13. By virtue of which any grant of permission to retain such incongruous boundary treatments would create an undesirable precedent for other similar developments to occur within the landscape setting as well as the buffer zone of the Howth SAAO. Cumulatively this would result in loss of biodiversity, a reduction of a valuable habitat through to a diminishment of this areas unique and qualitative visual attributes. This would be contrary to the public good given the biodiversity and amenity value of this landscape which the site forms part of.
- 8.2.14. Having regard to the planning history of the site under P.A. Ref. No. F99A/0880, planning permission was refused for replacement fences and under P.A. Ref. No. F98B/0700 planning permission was refused for the retention of timber screen fencing as well as the replacement of pedestrian gates based on reasons relating to the

adverse visual impact on the area, the Cliff Walk and the obstruction of preserved views.

- 8.2.15. In my view the planning history sets out that the removal of hedgerows and their replacement with timber fences is not a type of development that is deemed to be acceptable at this location based on the adverse visual amenity impacts that would arise on the Cliff Path and the potential for such boundary treatments to obstruct preserved views.
- 8.2.16. Accordingly, to permit the proposed development would be contrary to the planning precedent established for the site with the local planning provisions, in particular, having evolved considerably since providing more robust protection within this unique and highly sensitive to change coastal landscape setting.
- 8.2.17. In addition to the local planning policy and planning history concerns I note that a natural screen hedge is proposed to be reinstated along the Cliff Path to compensate for the loss of the removed hedgerow.
- 8.2.18. While I acknowledge the loss of the hedgerow which I have discussed above has resulted in a deterioration of the visual amenities of the area, in particular the Cliff path, and has diminishment of the natural habitat at this location in a manner that is contrary to the proper planning and sustainable development of the area, and it would on this basis be appropriate that the hedgerow be reinstated. What is of a concern is that this component of the development involves retention. The Court of Justice of the European Union under case C-216/06 found that 'retention' was incompatible with the EIA Directive. The result of this case is that Section 34 of the Planning and Development Act, 2000, as amended, forbids applications for retention for developments that would have entailed screening for whether environmental impact assessment (EIA) was necessary and based on this screening whether an Appropriate Assessment (AA) was required.
- 8.2.19. I therefore raise a concern that part of the hedgerow that was removed formed part of the Howth Head SAC boundary with the remainder of these works occurring on immediately adjacent land to this particular European site. The boundary of concern adjoining the Cliff Path have been subject along their entirety to change for which there is no consent in place for.

8.2.20. As such I consider that the Board is precluded from making a determination on the elements for which retention are sought under this application as given the locational factors of this development in relation to this particular SAC alongside its proximity to other European sites that as a precaution this type of development should have been subject to screening for environmental impact assessment on first principles.

8.2.21. There are only 2 ways for this component of the development sought under this application to be dealt with in my view and this is through a process of obtaining substitute consent.

8.2.22. I therefore do not concur with the Planning Authority in that this matter can be dealt with by way of condition given the recognised sensitivity of the site's location at a local through to European level and I consider it appropriate that this component of the development is severed by the Board from any decision to grant permission.

**8.3. Principle of the Development Sought under this Application – Refurbishment & Extension of existing dwelling together with associated works.**

8.3.1. By way of this planning application permission is sought by the applicants for the refurbishment and extension of an existing dwelling house, the provision of a disabled access lift, green roof for the purposes of drainage attenuation and visual screening; modifications to existing terrace area consisting of the raising of the terrace level of match the internal finished floor level of the dwelling, changes in levels, the provision of hard and soft landscaping, boundary treatments, drainage works and all associated site development works above and below ground.

8.3.2. The latter also included the provision of a home studio accessible by external stairs from the terrace area which for reasons relating to the likely detrimental impact that would arise from this component of the proposed development on the Howth Head SAC, in particular the damage and loss of vegetated sea cliffs and Atlantic and Baltic coasts, which are a qualifying interest habitat of this SAC, and which is afforded protection under the Habitats Directive.

8.3.3. As such I have previously recommended that for this reason that it is appropriate for it to be omitted and in tandem with that the need for the external access from the terrace area. As this structure would not be required as it is essentially a separate structure whose function is to facilitate access to the proposed studio which is located detached and separate from the existing dwelling as well as the proposed extension.

- 8.3.4. In tandem this also would result in a significant reduction in below ground level excavation and by virtue further and significantly reduces the potential for adverse effects to arise on the conservation objectives of Howth Head SAC in particular or indeed any other European site within the zone of influence.
- 8.3.5. In relation to the principle of the refurbishment and extension to the existing dwelling alongside associated works which would include the provision of raised ground levels for the existing terrace so that they match the finished floor level of modified dwelling when completed these particular works relate to the southern portion of the site which is located on land zoned '*HA – High Amenity*'.
- 8.3.6. Developments within high amenity zoned land are restricted as part of protecting and enhancing these High Amenity areas that are highly sensitive to change in the form of inappropriate development.
- 8.3.7. Notwithstanding, residential developments are generally permitted in principle on such zoned land subject to compliance with the Rural Settlement Strategy.
- 8.3.8. The development sought under this application also relates an existing residential dwelling and the Development Plan sets out safeguards for extensions to existing dwellings. In addition, the SAAO does not set out that this type of development is not permissible and indicate that these should generally match the character of the existing structure. It also sets out that favourable considerations may be given to buildings of a contemporary design, provided that the design is of a high quality in visual terms together with subservience to the building and its surrounding natural environment. In this instance case the proposed refurbishment and extension of the existing dwelling seeks to provide a contemporary architectural design response to the proposed extension and with the use of a palette of appropriate materials, finishes and treatments ensure that these blend the single storey extension proposed into its coastal cliff side location. As such the principal of this approach is not inconsistent with guidance on buildings and built extensions within the SAAO.
- 8.3.9. In relation to the other works proposed, the documentation provided indicates that an upgrade of the wastewater treatment and additional surface water drainage works are proposed. The current location of the existing wastewater treatment system is the location for the proposed upgraded system with this relating to the portion of the site

that is subject to 'RS' land use zoning under the Development Plan. Overall, such works subject to safeguards would be deemed acceptable at this location.

- 8.3.10. Based on the above I consider that the principal of the refurbishment, extension and the associated works including the change in ground level of the terrace serving the dwelling house, the additional hard and soft landscaping works are generally acceptable.

#### **8.4. Visual Amenity Impact**

- 8.4.1. The extension to the proposed dwelling is a high-quality light weight contemporary design that would attach to the southern portion of the existing dwelling.
- 8.4.2. I note that concerns are raised by the appellant and observers in terms of the visual impact the extension to built structures at this location would have on what is an identified and protected high amenity landscape that is a popular recreational and amenity resource in north County Dublin.
- 8.4.3. Of particular concern is the use of non-reflective glass, which is a material that is not objected too by the applicants, would lessen the potential for adverse glare to arise from this dwelling and that materials like the gabion baskets filled with indigenous stone through to the use of green roof over would result in this extension not being highly visually obtrusive in its highly sensitive to change and of high scenic quality landscape setting.
- 8.4.4. In my view there was no tangible design attempts include to achieve a greater sense of harmony between the existing and proposed extension. Other than these structures being both single storey in their built form. This I consider is a missed opportunity given that the existing dwelling despite its single storey built form is long and linear in its appearance. It is brightly painted and is situated on a cliff top edge with little meaningful screening or measures to reduce its visual overtness when viewed in its wider highly sensitive landscape setting.
- 8.4.5. Outside of this concern the proposed extension in my view is a type of development permitted on 'HA' zoned land and in this case when taken together with the existing dwelling does not give rise to a particularly large residential structure relative to those adjoining and neighbouring it. But unlike those that adjoin and neighbour it does not form part of residentially zoned land so the capacity of this site to take any further

significant extensions is questionable given the plethora of visual, ecological through to environmental constraints that face the southern portion of the site.

8.4.6. I therefore consider that subject to appropriate conditions such as those requiring all external treatments to be agreed including appropriate non-reflective glazing to be included to ensure that the extension in its totality remains as a subordinate feature to its host dwelling. But importantly also such a condition is appropriate and necessary in my view given that the location of the dwelling and its extension on a prominent coastal cliff edge that is visible from many land and marine vantage points. Visual glare in this context would result in diminishment of this high amenity area through to have a real potential to result in harmful visual glare nuisance. In tandem, any external lighting should be restricted and be subject to agreement with the Planning Authority in terms of safeguarding the visual and biodiversity value of this high amenity area due to the visual prominence of the site as appreciated in its wider land and maritime setting.

8.4.7. Based on the above, I consider that the visual amenity impact of the extension and refurbishment subject to appropriate conditions would give rise to any substantive visual amenity grounds upon which a refusal of permission could be determined.

#### **8.5. Residential Amenity Impact**

8.5.1. There are substantive visual buffers between the proposed extension and the nearest dwelling together with ample separation distance and significant changes in ground level with the existing dwelling occupying significantly lower ground than neighbouring properties within its vicinity.

8.5.2. Outside of the nuisances that may arise during the demolition and construction phase. Particularly, the additional use that would arise to the substandard shared access cul-de-sac lane that serves the appeal site and four other dwellings to the public domain of Thornmanby Road. With this arising from demolition and construction access for those engaged in the various components of the development, deliveries through to the removal of waste. In addition, there is potential for noise, dust, and other typical nuisances one would expect from demolition and construction works. I consider that these impacts would be temporary in nature.

8.5.3. There is also no increase in residential density sought and the increased gross floor area and as such the proposed development if permitted would not result in any

permanent significant increase on the cul-de-sac laneway that provides access onto Thornmanby Road.

- 8.5.4. The extension and refurbishments sought to the existing dwelling would provide improved habitable accommodation for the occupants of this existing dwelling and its future occupants. The quantitative and qualitative standards are consistent with required standards. In addition, the matching of the terrace ground level to the finished floor level of the modified and extended dwelling would result in more practical and functional connectivity in terms of mobility between these spaces by occupants of the dwelling. Moreover, the dwelling house would be served by three car parking spaces which is over and above that required under the Development Plan for this size of residential property.
- 8.5.5. In my view there is no substantive residential amenity impact that would arise from the proposed development that would support a refusal of permission.

#### **8.6. Foul Drainage**

- 8.6.1. The existing dwelling is served by an existing connection to a proprietary wastewater treatment system and a connection to the public mains water supply.
- 8.6.2. Under this application a new wastewater treatment system is proposed which has been designed with sufficient emergency storage to cater for situations such as a malfunction of the foul pump system and/or power failure.
- 8.6.3. The documentation on file indicates that the pump system will also comprise of a duty and duty assist pump system that will alternate use in the normal course of events to reduce wear on either individual pump and provide a second pump as an effective 'stand by' or assistance pump if necessary.
- 8.6.4. In addition, the document indicates that the pump would be provided with an internal alarm inside the house with this connected to mobile SIM technology as well as the system would be regularly maintained and serviced annually at a minimum with the emergency foul storage capacity designed on the basis of a population equivalent of 6 persons (Note:  $6 \times 180\text{l} \times 2\text{days} = 2,160\text{l}$ ).
- 8.6.5. The documentation considers that these measures provide adequate contingency to provide continued performance and offers sufficient storage capacity in the event of malfunction or foul pump failure.

- 8.6.6. In relation to the surface water the measures proposed are not limited to the provision of 122m<sup>2</sup> green roof with a minimum 25mm plus retention which is noted to be significantly above that of the standard 5mm normal target requirements.
- 8.6.7. It also includes the provision of SuDS strategy including the use of permeable paving, additional surface water retention measures through to an infiltration trench with the overall design hydraulically modelled in MicroDrainage for the 1 in 100-year flood scenario (1%AEP) with the added 20% Climate Change. These results indicate the risk of pluvial flooding within the boundaries of the site is eliminated and in the event of a system blockage or flood event any overland flow would be directed in a south eastern direction towards the cliff edge of the site which would not pose any danger to the proposed floor levels or existing building levels on site.
- 8.6.8. Having assessed the details of the site characterisation tests against the required EPA Code of Practice, Wastewater Treatment Systems for Single Houses, and that the system proposed will be adequate to meet what is a highly sensitive environmentally and ecologically cliff top site. I also consider it would provide an up to date, more effective and efficient waste water treatment for a site that is located in an environmentally and ecologically sensitive setting.
- 8.6.9. I further note that the Planning Authority had no objection to the wastewater treatment system proposed subject to safeguards.
- 8.6.10. Should the Board be minded to grant permission I recommend that it include similar safeguards as did the Planning Authority by way of condition in the interest of public health and ensuring no pollution or contamination arises.

## **8.7. Ground Conditions/Geology**

- 8.7.1. Concerns have been raised in relation to the structural stability of the location subject to the development sought under this application with particular concern raised in relation to the construction of the extension and the lower studio extension. This application is accompanied by a report titled 'Preliminary Report – Stability of the Slopes at the Cliff Tope Residence in Howth'.
- 8.7.2. Of concern this document was prepared in October, 2017 and is labelled as 'Draft'.
- 8.7.3. Notwithstanding, it was prepared by an appropriately qualified and skilled expert in the field working specifically in company who specialise in geotechnical engineering and



in my view it would be prudent prior to any design process commencing for such an examination to have been commissioned by the applicants on a site where the existing dwelling for which extension of habitable space is being considered at a coastal cliff top location for this design process to be informed by the physical, structural and overall geological conditions of the site. A site where the existing dwelling at its nearest point I observed is c1m from the clifftop fall, its landside elevation is integrated into a retaining wall through to the dwelling and its principal terrace area sits immediately behind a section of clifftop that consists of a retaining wall at the southern and south eastern perimeters of the site.

- 8.7.4. Accordingly I consider the preparation of such a report by suitably skilled and experienced experts in the field of geotechnical engineering to be an appropriate starting point for considering whether or not such any proposal for extension to an existing dwelling is feasible, if it is feasible whether there are specific geotechnical mitigation measures that need to be included in the design through to ensuring the overall stability of the ground conditions of the site for existing and future buildings as well as associated outdoor spaces.
- 8.7.5. I note that the aforementioned report describes the location of the subject dwelling as being *“located at the crest of a steep cliff at the base of which is a beach within a small cove. The cliff slopes steeply to the beach at an angle of roughly 2.5V:1H to subvertical (based on site observation) some 20-30m below and shallows towards the north of the cliff in front of the property”*. It goes on to note that rock outcrops are evident on the lower 2/3rds and with the upper 1/3 covered by vegetation. It also notes that there are clear lines of shallow failures in the surface vegetation in the upper 1/3 of the slope, there are fractures within the rock mass at the base of the slope and that the rock slopes towards the south-south east possibly along a bedding plane.
- 8.7.6. The report notes that there is no evidence of overhanging rocks on the slope face or undercutting of the rock at the base of the cliff in front of the subject dwelling and that there is very little information on the overburden at the top of the slope but that it would be expected that this would erode back over time.
- 8.7.7. This report recommends that the proposed foundations of the extension be founded on rock in the area of the extension. In addition to trial pits carried out to determine whether those of the existing house are founded on overburden or rock.

- 8.7.8. It sets out a number of recommended measures in relation to the same alongside concluding that there would be a low risk of mass instability of the rock at the location of the house, notwithstanding a more detailed and complete ground investigation would be required to determine a more complete assessment.
- 8.7.9. This report also noted that the retaining wall behind the deck area is in a deteriorated state of condition and as such considered that its design life is uncertain and therefore consideration should be had to its replacement with a more permanent structure during the construction works. It is also recommended that improvements be made to retaining wall behind the subject dwelling as it cannot be confirmed that this structure is compliant with Eurocode-7 through to that there should be no seepage allowed into the slope or onto the slope face.
- 8.7.10. I also note to the Board as part of the applicant's response to the grounds of appeal that document titled 'Appendix C – Ground Protection' sets out a number of ground protection measures that would be incorporated into the construction phase to provide further layer of protection. With this including measures for pedestrian, pedestrian operated plant through to wheeled and/or tracked construction traffic exceeding 2 tonnes in weight.
- 8.7.11. In addition, as part of the applicant's further information response they included a document titled 'Infrastructure and Construction Report' included in the suite of documentation provided to the planning authority as part of the further information response.
- 8.7.12. This report indicates that trial excavations have found that there is a layer of shaley soil/overburden over the bedrock and that the line of bedrock at the location of the extensions is reasonably deep to the back end of the site. As such it indicates that the bulk of material to be excavated will be excavatable weathered rock and will not involve significant rock breaking or removal.
- 8.7.13. It also indicates that as part of the investigation's additional sonar and ground penetrating radar testing has been carried out to determine the weathered shaley rock and the denser rock strata at this location. These investigations validate that the weathered rock extends to the underside of the proposed ground slab of the main extension.

- 8.7.14. This report indicated that the new structure would be built using reinforced concrete box that will bear by direct contact with the ground on the base on three vertical faces where it will be used to retain the excavated earth bank with the efface of the box open to one side forming its front feature that will include glazing on this elevation. It is also indicated that to safeguard stability that the new build will be anchored by a series of micro piles/soil nails that will serve to transfer vertical loads without affecting the overburden material. In addition, it is proposed to treat the slab in a manner that allows it to perform as a cantilever in the event of any future compromise of the rock formation as a safeguard and an opportunity to mitigate against such destabilising effects. The extent and depth of piling has been determined at approximately 4m with the precise details to be determined at the initial bore stage.
- 8.7.15. In relation to the retaining walls, it indicates that these will be designed to resist soil and potential water pressures and that the roof of the new structure has been designed to capture and remove surface water.
- 8.7.16. In addition to this the applicant has also provided a CEMP with the suite of documentation included with this application.
- 8.7.17. There is however merit in my view of the 3<sup>rd</sup> Parties concerns in relation to carrying out any significant ground works at a location like this. Notwithstanding, there concerns are not based on any expert examination of the stability of the slope or the ground to the north of it where the main components of the proposed development are proposed.
- 8.7.18. Overall, the placement of the extension is significantly more setback from the more dramatic cliff slope bounding the southern perimeters of the site than the existing dwelling. In the absence of foundation clarity on the existing dwelling a single storey extension is preferable to the provision of a 2-storey extension on what is a highly irregular shaped and divided into two distinct parcels of land divided by a Cliff Walk. In addition, there have been significant advances in building and geo-engineering technical solutions for sites that present a more challenging environment to build. I also consider that the recommendations put forward by the geotechnical experts in relation to mitigation measures prior to construction through to the construction itself to be scientifically based and accord with best practice in this type of situation with a precautionary approach that is evidenced throughout.

- 8.7.19. It is their conclusion that the site is suitable for the development proposed subject to the safeguards it puts forward and I also consider that the omission of the home studio and accessible external stairs element from the design would result in a lesser impact on this site, in particular, it would require less significant below ground excavation works.
- 8.7.20. Should the Board be minded to grant permission for the development I recommend that it include a condition that could be integrated with Construction and Environmental Management Plan or be a separate condition that requires the prior to construction more detailed geotechnical investigations of the grounds of the site where below construction works are proposed and in the vicinity thereof to be carried out including confirmation of whether the existing dwelling which the proposed extension is to be attached to and refurbished as part of the development sought requires foundation improvements or otherwise alongside a schedule of works for the retaining wall it is dependent upon and also the existing retaining wall along the clifftop edge. Such requirements should be subject to the written approval of the Planning Authority prior to commencement of any development on site.

#### **8.8. Landscaping/Loss of Trees**

- 8.8.1. The loss of natural boundaries along either side of the Cliff Walk has inevitably and the introduction of boundary treatments visually at odds and incongruous to this high amenity and ecologically sensitive area is not acceptable. I therefore concur with the Planning Authority in that this component of the development needs to be appropriately reversed and the safeguards for doing this as advised by their Parks and Green Infrastructure Department would in time achieve. Notwithstanding, I have already raised concerns in relation to the removal of the boundary treatments and the procedural planning reasons for this component of the development sought under this application to be severed from any grant of permission.
- 8.8.2. In relation to the remainder of the site I note that the applicants appeal submission is accompanied by a report titled 'Arboricultural Report', a drawing indicating a replacement planting scheme, a Tree Schedule, a Trees Work Schedule through to ground protection measures.
- 8.8.3. These details were not provided with the applicant's original suite of documentation or their further information response and as such some of the recommendations set out

in the Arboricultural report in my view overlap with the requirements of Condition No. 4 of Planning Authority's decision notification.

- 8.8.4. The landscaping works associated with this proposal relates to what is essentially a mature and brownfield site that despite being traversed by the aforementioned Cliff Walk and is located in a highly sensitive to change ecological, environmental through to visual change setting.
- 8.8.5. The existing landscaping currently present other than providing some level of visual buffering and privacy does not include any flora and/or fauna listed as qualifying interests for nearby European sites within the possible zone of influence through to there is no evidence to suggest that it is important for feeding or roosting of any Annex II species.
- 8.8.6. The documentation submitted indicate a significant change to the landscaping context of this site and this would given the sensitivity of the site give rise to concerns. Given that the site is located within the Howth SAAO I consider it appropriate that the landscaping scheme put forward be subject to the scrutiny of the Planning Authority's Parks & Green Infrastructure Division. Accordingly, I recommend that any grant of permission should be subject to a condition seeking a robust landscaping scheme that is appropriate to its ecologically sensitive setting. With this requiring the written approval prior to the commencement of any development.

## 8.9. Invasive Species

- 8.9.1. On the matter of invasive species this matter has been addressed by the applicant in the documentation provided by them and whilst I observed the presence of invasive species in the immediate vicinity of the site, i.e., Wild Garlic, I did not observe any invasive species within the site area. Notwithstanding, as a precaution I consider it is appropriate that this matter is dealt with by condition which I note that the Planning Authority sought to do under Condition No. 8 of their notification to grant planning permission.

## 9.0 Recommendation

- 9.1. I recommend a **split decision** whereby retention permission for the removal of a section of hedgerow and erection of a wooden fence together with the proposed lower studio extension set in to the cliff top and its above ground access located in the south

eastern portion of the site is refused for the reasons and considerations set out under Schedule No. 1; and where the refurbishment and the extension linking and adjacent to the southern side of the existing dwelling house is granted for the reasons and considerations set out under Schedule 2 below alongside the conditions set out there under.

## **Schedule No. 1**

### **Reasons and Considerations**

1. On the basis of the information provided with the application and having regard to the site forming part of Howth Head Special Area of Conservation (Site Code: 000202) and being in close proximity to other European sites, the Board cannot be satisfied that the development for which retention permission is sought, is one that is a type of development that would not have required screening for EIA or an AA prior to the boundary works being carried out. The Board is therefore precluded from giving further consideration to a grant of permission for retention having regard to Section 34(12) of the Planning and Development Act, 2000, as amended, and the separate mechanism provided under Section 177 of the said Act for the determination of this type of retention application. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
  
2. Having regard to the sensitivity of the site and its setting it is considered that firstly the provision of the lower ground studio extension and its associated works which would be set into the cliff top on the south eastern portion of the site has the likely potential to damage and result in loss of vegetation associated with the vegetated sea cliffs and Baltic coasts, a Qualifying Interest habitat, for which Howth Head Special Area of Conservation is designated to protect under the Habitats Directive 92/43/EEC. On the basis of the information provided with the application, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant

effect on the designated Special Conservation Area: Howth Head (IE 000202) or any other European site, in view of their Conservation Objectives. In these circumstances the Board is precluded from giving further consideration to a grant of planning permission.

In relation to the retention permission for the removal of a section of hedgerow and erection of a wooden fence replacement boundary treatment alongside having regard to the site's location within the boundaries of the Howth SAAO this type of boundary treatment is not permitted and, in this situation, would seriously injure the visual amenities of the SAAO, in particular the adjoining Cliff Path walk, and would result in a deterioration of the biodiversity of this sensitive to change area.

For these reasons it is considered that these components of the proposed development would be contrary to the proper planning and sustainable development of the area and therefore should be omitted.

## **Schedule No 2**

### **Reasons and Considerations**

Subject to the omission of the hedgerow and erection of a wooden fence together with the proposed lower home studio extension set in to the cliff top and its above ground access located in the south eastern portion of the site together with all associated structures and infrastructure associated with the home studio and having regard to the nature, scale, extent and design of the proposed development for the refurbishment and extension to the existing dwelling house, within the Howth Head Special Amenity Area on zoned 'Other', it is considered that subject to the conditions set out below that these components of the proposed development would not detract from the highly scenic and vulnerable to change landscape character of this high amenity area and it would be consistent with the policies and objectives of the Fingal County Development Plan, 2017 to 2023, as well as the Howth Special Amenity Area Order 1999. Therefore, the proposed development would be in accordance with the proper planning and sustainable development of the area.

**Appropriate Assessment:**

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Howth Head SAC (Site Code 000202) and the Rockabill to Dalkey Island SAC (Site Code 003000) are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment.

The Board completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the Howth Head SAC (Site Code 000202) and the Rockabill to Dalkey Island SAC (Site Code 003000), in view of the sites' conservation objectives.

The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- i) The likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii) The mitigation measures which are included as part of the current proposal, and
- iii) The conservation objectives for the European Site.

In completing the appropriate assessment, the Board accepted and adopted the screening and the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, subject to the omission of the hedgerow and erection of a wooden fence together with the proposed lower home studio extension together with its associated works alongside clarification that the scope of works permitted do not extend beyond the other components of the development set out in the public notices, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' conservation objectives.



## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and as amended by the further plans and particulars submitted on the 23<sup>rd</sup> day of November, 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 entire premises shall be used as a single dwelling unit apart from such use as may be exempted development for the purposes of the Planning and Development Regulations, 2001, as amended.

**Reason:** In the interest of clarity and to ensure proper planning and sustainable development.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house or shall be erected on the site, without a prior grant of planning permission.

**Reason:** In the interest of the amenities of the area.

5. (a) A schedule of all materials and appropriate samples of all materials to be used in the external treatment of the development shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. The

submission shall also include 3D colour images of the proposed finishes within the context of the site and as viewed from vantages along the Cliff Path.

(b) All external window and door opening glazing shall be permanently fitted with solar and reflective control glass. The type of glazing shall be agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure an appropriate standard of development/conservation

6. A comprehensive boundary treatment and on-site 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 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.
- (d) Measures for the protection of those trees which it is proposed to be retained shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.
- (e) An accurate tree survey of the site together with a topographical survey of the site and any modulation of grounds levels associated with landscaping including the provision of pathways, terraces and other surface amenity spaces which shall be carried out by an arborist or landscape architect, shall be submitted to the planning authority prior to commencement of development. The survey shall show the location of each tree on the site, together with the species, height, girth, crown spread and condition of each tree, distinguishing between those which it is proposed to be felled and those which it is proposed to be retained.
- (f) An invasive plant management plan and public path protection.

- (g) Prior to the commencement of development, and in consideration of the environmental sensitivities of the site, a Consultant Arborist and a Consultant Ecologist shall be appointed to oversee and monitor the construction works and to ensure that all tree protection measures and eradication of invasive plants from the site are implemented in full.

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

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

7. (a) All mitigation measures contained in the revised Appropriate Assessment Screening and Natura Impact Statement, and related documents, shall be implemented in full to protect the receiving environment.

(b) A comprehensive Construction Environmental Management Plan shall be submitted to the Planning Authority for its written agreement before the commencement of any construction work on the development site. This plan shall include measures to avoid and mitigate any detrimental effects the proposed development might have on the Howth Head SAC and Rockabill to Dalkey Island SAC which are protected under the Habitats Directive (92/43/EEC). It shall also include detailed geotechnical examination of the areas where ground works are proposed, in particular the area associated with the extension, the existing dwelling and retaining walls. This survey should also clarify bedrock levels and the ground conditions above the bedrock at these locations. It should also set out based on the findings of this detailed examination of the site mitigation measures and schedule of works in relation to the timing of these mitigation measures having regard to the nature, scale and extent of the development sought alongside the construction phase. They should also include in relation to the retaining walls details for their lifespan through to clarity on their maintenance going forward so that there is sufficient and appropriate clarity going forward for the landowner. As well as mitigation measures to avoid any detrimental effect of these works on Howth Head SAC (Site Code: 000202).

**Reason:** In the interest of the protection of the receiving environment and proper planning and sustainable development of the area.

8. All landscaping works including green roofs shall be completed in the first planting season following substantial completion of construction works. Any failures shall be replaced until such time that the green roof planting is established.

**Reason:** In the interest of the protection of the receiving environment and proper planning and sustainable development of the area.

9. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

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

10. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 8<sup>th</sup> day of January, 2020, and as revised by the further plans and particulars submitted on the 23<sup>rd</sup> day of November, 2020, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwelling house after the completion of the refurbishment and extension works and thereafter shall be kept in place at all times. Signed and dated copies of

the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

- (d) No foul drainage is to discharge into the surface water system or outside of the confines of the site under any circumstances.

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

11. Site development and building works shall be carried out only between the hours of 7 a.m. to 6 p.m. Monday to Friday, 8 a.m. to 2 p.m. Saturday and not at all on Sundays or 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.

12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

This plan shall provide details of intended construction practice for the development, including:

- Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse.
- Location of areas for construction site offices and staff facilities.
- Measures to prevent the spillage or deposit of clay, rubble, or other debris on the public road network.
- Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels.
- Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater.

- Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil.
- Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- Means to ensure that all surface water is managed within the confines of the site and that no run-off onto the Howth Head SAC (Site Code: 000202) occurs.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

**Reason:** In the interest of amenities, public health, and safety.

13. The developer shall comply in full with the following:

- (a) All necessary measures shall be taken by the 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 developer's expense.
- (b) The 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 the Planning Authority or pay the Planning Authority the cost of making good any such damage upon issue of such a requirement by them.

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

#### **Notes to Applicant:**

- You are advised that Section 34(13) of the Planning and Development Act, 2000 as amended, indicates that "*a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development*".

- You are advised that a grant of permission does not entitle a person to construct a development that would oversail, overhang or otherwise physically impinge upon an adjoining property without the permission of the adjoining property owner.

---

Patricia-Marie Young  
Planning Inspector

25<sup>th</sup> day of August, 2021.