



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309279-21

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<b>Development</b>	Demolition of two storey dwelling and construction of three storey, 6 bedroom dwelling.
<b>Location</b>	Glenlion Pines, Thormanby Road, Howth, Co. Dublin, D13 WY16
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F20A/0174
<b>Applicant(s)</b>	Mary Taylor
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	John and Leonora Ward
<b>Observer(s)</b>	Roxanne White
<b>Date of Site Inspection</b>	23 <sup>rd</sup> of April 2021
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The site (0.172 Ha) is located to the south of the Thormanby Road, on the southern side of the Howth Head Peninsula. The site comprises two parcels of lands, each shown in red and subdivided by a private access road serving a number of other dwellings. The northern parcel of the site contains a 2.5 storey 5-bedroom split-level dwelling, with an outhouse building and timber shed located to its eastern side. The ground level of the site is c. 75 metres above O.S. Datum along its northern boundary, dropping in a southerly direction to c. 66 metres above O.S. Datum along the southern boundary of the site. The dwelling is orientated on a north-west / south-east axis. The roof profile of the dwelling is pitched, presenting a gable elevation to the south-east, and its elevations comprise rendered finishing.
  - 1.1.1. Both the northern and southern parcels of the site contain a number of mature deciduous and coniferous trees. The southern parcel is mostly levelled and grassed, with a section under hard-standing. The waste-water treatment system for the existing house is within this part of the site. A narrow public pathway adjoins the eastern boundary of the site, which is defined with a block wall, c. 2m high. This adjoins the Howth Cliff Path to the south. The site provides clear panoramic views of the Dublin metropolitan area in a south-westerly direction.
  - 1.1.2. There are a number of houses in the vicinity. There is a gated access road from Thornbury Road to as shown on the bells by the gate: Glenlion Lodge, Glenlion Pines and Glenlion Cliffs. Glenlion Lodge is to the northeast of the site and is also accessed off this lane. A two-storey dwelling Deepwater is located directly to the north of the house site and has vehicular access off Thornbury Lane. Danes Hollow, a large house on substantial grounds is located to the east. Carnalea, a two storey house with basement is located to the west of the house site and bounds the wwtp site. The western and northern part of the house site contains mature tree planting. To the south, there are existing mature trees which appear to be outside the applicant's site.

## 2.0 Proposed Development

This is to comprise of the following:

- (i) Demolition of existing two-storey, three bed dwelling; and
- (ii) Construction of a replacement three storey, six bedroom dwelling to include;
- (iii) 1no. pool and ancillary shower, 2no. changing rooms and 1no. wc. Open plan kitchen/living/dining area, family room, play room, mud room and back kitchen at ground level;
- (iv) 4no. en-suite bedrooms, 1 no. cinema, play room, laundry room, storage room, bicycle storage, plant room at lower ground level;
- (v) 2 no. en-suite bedrooms at first floor level; and
- (vi) All ancillary landscaping, engineering and development works necessary to facilitate the development. The proposed dwelling will have an internal lift to access all three floors.

2.1. Documentation submitted with the application includes the following:

- Planning Report for the Replacement Dwelling
- Architectural Design Statement
- Survey Report
- Outline Construction Management Plan Report
- Soil Characterisation & Site Suitability Assessment Report
- Pool Operation Statement
- Screening for Appropriate Assessment
- Arboricultural Report
- Architectural and Engineering Drawings

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 17<sup>th</sup> of December 2020, Fingal County Council granted permission for the proposed development subject to 11no. conditions. These conditions include

relevant to design and layout, use as a single dwelling unit, external finishes and fenestration, drainage including regard to the on-site waste-water treatment system and surface water drainage, landscaping and tree protection, provision for a tree bond, demolition and construction management, hours of operation for construction works and development contributions.

Condition no. 2 is of particular note relevant to design and layout and is as follows:

*The proposed dwelling shall be as follows:*

*(a) The dwelling shall be set off the eastern boundary as demonstrated on the site layout plan submitted on the 16<sup>th</sup> of April 2020.*

*(b) The depth of the projection along the eastern elevation at ground floor level shall be 9.818m as indicated on Drawing No. 859(PS)002B submitted on the 26<sup>th</sup> of November 2020.*

*Prior to the commencement of the development the developer shall submit for the written agreement of the Planning Authority revised plans and elevations at scale 1:100 and site layout plan at scale 1:200 to demonstrate the amendments.*

*Reason: In the interests of clarity.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planner had regard to the locational context of the site, planning history and policy, to the interdepartmental reports and to the submissions made. Their Assessment included the following:

- The proposal for a replacement house, is located within the 'RS' Residential Zoning and is considered acceptable in principle.
- It is located within the Howth SAAO and is designated 'Residential Area within the SAAO' as defined by Map A of the SAAO.
- They refer to the boundary dispute issues presented and provide that the planning system is not designed to deal with such issues.
- The design of the proposed replacement dwelling is modern and contemporary and seeks to respond to the sloping nature of the ground.

- While the principle of the proposed dwelling is acceptable concerns have arisen as part of the assessment and as a result a request for F.I is considered necessary.
- In addressing the ambiguity regarding ownership and the issues raised by the Parks and Green Infrastructure, the response may necessitate the relocation and/or reduction in scale of the dwelling.

#### Additional Information request

This includes in summary:

- The applicant to demonstrate that all the lands within the red line of the application site are within their ownership.
- To provide a revised site layout plan demonstrating a revised house location or reduction in dwelling to provide sufficient distance from trees.
- To submit a revised section to include the outline of Deepwater and to show the boundaries between the properties and ridge levels.
- To clarify the findings of the geotechnical survey.
- To address the issues raised by the Water Services Section including relative to drainage.
- To clarify issues regarding the AA Screening Report.

#### Additional Information response

Hughes Planning & Development Consultants have submitted an F.I response which includes the following:

- In response to the issue of landownership, they refer to Appendix A, which contains the Deed Map and Land Registry Compliant Map to demonstrate that the lands within the red line on the application site are under the ownership of the applicant, Mary Taylor.
- Appendix B, of the Planning Report contains an Arboricultural Note as prepared by Charles McCorkell Arboricultural Consultancy. This provides that the separation between the proposed dwelling and the existing trees can be maintained for the long term and is considered acceptable.

- It is submitted that in view of their response, the relocation and/or reduction in scale of the dwelling is not deemed necessary.
- The drawings as prepared by Dublin Design Studio indicate the ridge level of the proposed dwelling at Glenlion Pines relative to the ground level of the rear boundary of Deepwater – Appendix C refers.
- They submit further details relative to excavation and geotechnical issues.
- They provide that the existing WWTP on site can accommodate the proposed dwelling and the swimming pool waste – Appendices D and F refer.
- Appendix E provides a surface water drainage proposal by Traynor Environmental Ltd. The site location map is referred to in Appendix D and the location of the soakaway is indicated.
- They refer to the drainage plan submitted for Deepwater under Reg.Ref. F20A/0297, which indicates the percolation area associated with Deepwater. (Figure 2.0 refers).
- NMEcology have amended the AA Screening Report to indicate any impacts associated with the potential excavation of bedrock underlying the site – Appendix G refers.
- They conclude that the additional information has been addressed. That, the proposal is compliant with planning policies and in accordance with the proper planning and sustainable development of the area.

#### Clarification of F.I request

The Council had regard to the F.I submitted and considered that there were a number of issues outstanding that needed to be addressed including in summary the following:

- They have regard to land ownership issues and note that while boundary issues are not one the planning system will resolve, that inclusion of the folio details for the subject site should provide evidence of any easements registered upon the subject lands.
- The applicant is requested to demonstrate a revised dwelling design or an acceptable relocation on site for the house taking into consideration concerns

to allow a sufficient distance from the existing trees to ensure a sustainable retention that minimises occupier tree conflict. Reference is also had to the need to comply with objectives of the Howth SAAO.

#### Clarification of F.I response

Hughes Planning & Development Consultants have submitted a Planning Response to the Request for Clarification of Additional Information which includes the following:

- A copy of the Deeds of Conveyance have been submitted (Appendix A). They submit that the deeds offer no easement on the matter.
- The dispute of the red line boundary is not a planning matter. They ask the Council to consider their compliance with item 2 and grant permission accordingly.
- They provide that they have liaised with the Parks and Green Infrastructure Department relative to issue of tree conflict. Also, that their architects Dublin Design Studio have prepared revised plans to show the proposed dwelling located further away from the trees. This is to ensure that there is no incursion on the B category pine tree.

#### Planner's response

The Planner concluded that there were some ambiguities in the information submitted in response to the request for F.I and C.F.I, in particular relative to the house design. They provided, that subject to conditions the proposed development accords with the policies and objectives of the Fingal DP 2017-2023. In addition, that the development subject to minor amendment would integrate appropriately within the established group of dwellings without undue impact to the visual or residential amenities of the area and recommended that permission be granted. They recommended that permission be granted subject to conditions.

### **3.3. Other Technical Reports**

#### Water Services Department

They recommended that A.I be requested to include the following relative to the Foul Sewer and Surface Water:

- Further details to include a location map of the upgraded treatment system & percolation area and with clear dimensions from the surrounding features.
- Site suitability assessments for the on-site wwts.
- No foul discharge to surface water.
- To submit a surface water drainage proposal.

In response to the F.I submission they had no objections to proposals for foul and surface water drainage subject to conditions.

#### Environmental and Water Services Department

They recommend that prior to commencement of development that a detailed construction and demolition waste management plan be submitted.

#### Parks and Green Infrastructure

They recommended changes to the design and layout to allow sufficient distance from the existing trees to ensure a sustainable retention that minimises occupier-tree conflict. In addition, that a tree bond be calculated and conditioned.

They have regard to the F.I submitted and maintain that the proposed development will have a direct negative impact on the mature trees and that future tree and occupier conflict will likely arise due to building maintenance and or/safety concerns.

Their response to the C.F.I and the revisions made are noted.

#### Transportation Planning Section

They note there is sufficient space for the provision of 2-3 in-curtilage parking spaces as per the requirements of the DP Standards. They have no objections to the proposed development.

### **3.4. Prescribed Bodies**

#### Irish Water

They have no objections subject to recommended conditions.



### 3.5. Third Party Observations

These have been received from local residents, including the subsequent Third Party and Observer, expressing concerns about the impact of the proposed development. These have been taken into account in the Planners Reports and are considered further in the context of the Grounds of Appeal and Observation made in the Assessment below.

## 4.0 Planning History

### Subject site

#### **Glenlion Pines**

**F19A/0512** – Planning permission granted by the Local Authority in July 2020 for the relocation of previously permitted wastewater treatment tank and sand polishing filter serving Glenlion Pines (permitted under F17A/0434), removal of a concrete septic tank serving Glenlion Lodge and the provision of a new replacement wastewater treatment system and sand polishing filter and the alteration of levels on the site for landscaping.

**ABP-304845/19, (PA Ref. F18A/0768)** – Planning permission refused by the Council and subsequently granted by the Board in October 2019 for alterations to existing dwelling 2 storey dwelling, and an extension of 131m<sup>2</sup> with external terrace at ground floor level and an external staircase.

**F17A/0434** – Planning permission granted by the Local Authority in November 2017 for the removal of existing septic tank and the provision of an Oakstown BAF Wastewater Treatment System and sand polishing filter.

Copies of these permissions are included in the History Appendix of this Report

### Proximate sites

**Deepwater** – This site is to the north of the subject site with separate access off Thornbury Road.

Reg.Ref. F20A/0297 – Permission granted subject to conditions by the Council for Demolition of part of the ground floor at the rear of the dwelling and the construction of a single storey extension. This is currently, subject to an appeal to the Board Ref. PL06F.309820 refers.

### Shared Access Road

The following planning history relates to sites in proximity to the subject site to the north and east, some of which share the access road from Thormanby Road;

**Glenlion House** – This site is located to the south of the proposed development site. The application was for the demolition of the existing, split-level, two storey dwelling of 243sq.m and the construction of a contemporary 2 storey, 5 bedroom dwelling of 607sq.m. An NIS was submitted. It is noted that the site area for that application was given as 0.49ha.

The Board (Ref. ABP-307886-20) decided to grant permission subject to conditions.

**Glenlion Lodge** - This site is located to the north west of the subject site and is in close proximity to Thormanby Road.

PL06F.248103 (PA Ref. F16A/0226) – Planning permission granted in June 2017 for extension and alteration of existing two bedroom cottage at ground floor and first floor level.

**Glenlion Cliffs** – This site is located to the south-east of the subject site and on the opposite side of the headland.

**F20A/ 0008** – Permission granted subject to conditions by the Council for the refurbishment and extension of an existing dwelling, to provide an additional 220m<sup>2</sup> GFA, to provide a disabled access lift and a separate home studio at a lower level than the existing house. The site is located within the Howth Head SAC and a Natura Impact Statement, (NIS), was submitted with the application.

This is currently the subject of an appeal to the Board Ref.ABP-309227-21 refers.

**Glenlion Cottage** – This site is located to the south east of the subject site.

**PL06F.247764, (PA Ref. F16A/0261)** –Planning permission was granted in June 2017 for the demolition of a detached single storey cottage of 47m<sup>2</sup> and the construction of a replacement single storey, two-bedroom dwelling of 107m<sup>2</sup> in a different position on the site.

## 5.0 Policy Context

### 5.1. Fingal County Development Plan 2017-2023

The site is zoned RS – Residential, which has the zoning objective: *To provide for residential development and protect and improve residential amenity.*

#### Specific Objectives

The site is located in an area which is designated as a Highly Sensitive Landscape. The Development Plan contains objectives to preserve views from the pathway adjoining the site to the east, adjacent pathways to the south and south-west and from Thormanby Road to the north of the site to Protect & Preserve Trees, Woodlands and Hedgerows on the site, (Map 10).

#### Additional Objectives

Objective Howth 4 - Protect and manage the Special Amenity Area, having regard to the associated management plan and objectives for the buffer zone.

NH33 - 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.

NH36 - Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly sensitive areas shall not be permitted if it:

- Causes unacceptable visual harm
- Introduces incongruous landscape elements
- Causes the disturbance or loss of (i) landscape elements that contribute to local distinctiveness, (ii) historic elements that contribute significantly to landscape character and quality such as field or road patterns, (iii) vegetation

which is a characteristic of that landscape type and (iv) the visual condition of landscape elements.

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

NH44 - Protect and enhance the character, heritage and amenities of the Howth and the Liffey Valley Special Amenity Areas in accordance with the relevant Orders.

RF51 - 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.

#### Special Amenity Area Order, (SAAO)

The site is covered by the 1999 Howth Special Amenity Area Order (SAAO). Map A shows that the site is located within the 'Residential' area of the SAAO.

Map B of the SAAO identifies groups of mature trees within the site, along the southern and northern boundaries, that are to be protected. It also indicates the presence of heathland and maritime grassland along the western side of the site.

Specific objectives in the SAAO include the following;

Objective 2.1 – To preserve views from public footpaths and roads.

Policy 2.1.1 - The Council will preserve views from the network of footpaths and roads shown on Map B. Applications for planning permission must take into account 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.

Objective 2.2 - To preserve the distinctive profile of the peninsula viewed from the roads on the shorelines of Dublin Bay and the Baldoyle Estuary.

Objective 2.6 – To preserve the wooded character of existing residential areas.

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.

## **5.2. Natural Heritage Designations**

The site is not located within a designated European site. However, it is to the north of the Howth Head Special Area of Conservation (SAC), Site Code: 00202. The site is located to the north of the Rockabill to Dalkey Island SAC (Site Code: 003000)

## **5.3. EIA Screening**

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

## **6.0 The Appeal**

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

Kiaran O'Malley & Co. Ltd has submitted a Third Party Appeal on behalf of John and Leonora Ward. They own the property immediately north of the appeal site 'Deepwater' which is subject to current planning application (Reg.Ref.F20A/0297) for inter alia renovation and extension works. Their grounds of appeal in summary include the following:

### Red Line Boundary

- The red line boundary of the appeal site includes land within their ownership, so the application should have been returned as invalid on the basis of insufficient legal interest. The Planning Authority sought additional information and a clarification of additional information on this matter, and it should not be dismissed as a legal matter.
- This is a consistent issue in the previous planning applications made. Details are given of these boundary issues. Legal Documentation and Folio nos. are included in the Appendix.
- They provide that using the information presented on the applicant's Site Plan/Block Plan they have overlaid that information on an up-to-date topographical survey plan for their property and include a description of this.
- The Board is requested to adjudicate on the validity of the application and the applicant's entitlement to carry out the proposed development, which are planning matters. Also, as per their submissions, the Board is invited to agree that the appeal site includes land within their ownership.
- They have regard to the extent of the wayleave and include an image extracted from the deeds. A comparison between the deed of easement map and the wayleave confirms that the application drawings do not accurately show the wayleave per the deed map.
- The applicant's non-compliance with the deed of easement directly affects the Appellant because the applicants continue to encroach on their Appellant's land and continue to cut back and damage hedgerow within their property.

### Non-Compliance with EPA Guidelines

- The proposed development would be located less than 10m downslope from the percolation area that serves 'Deepwater' and thus would contravene the EPA Guidelines. Details are included from Table 6.1 of the EPA CoP Wastewater Treatment Systems for Single Houses 2009 and it is provided that the proposal does not comply with minimum separation distances.

- Despite the applicant's not showing the location of the proposed dwelling relative to this percolation area, they have demonstrated that the site plan does not comply with the EPA guidelines.
- The Third Party refer to the applicant's recent non-compliance with planning legislation (unauthorised development works per F19A/0512 refers) and provide that the Board is requested to attach additional planning conditions.
- In the event of a decision to grant the Board is requested to amend the site layout plan such that the proposed dwelling shall not be less than 10m from the percolation area to 'Deepwater'.

#### Extensive Rock Excavation and Site Engineering

- The proposal would involve extensive rock excavations and site engineering in close proximity to the Appellant's dwelling, which would be to the detriment of their residential amenities.
- The extent and proximity of the excavation works relative to Deepwater are of serious concern. Excavation of the scale associated with the project will have a serious detrimental effect on stability and on Deepwater and adjoining properties.
- The ancillary effects associated with the construction are significant and the resulting effects may be impossible to mitigate.

#### Excessive Scale of the Proposal

- The scale and massing of the proposed development is excessive in size. It is unjustified and will represent a visual intrusion to 'Deepwater' and impact on their privacy.
- This substantial proposal has the potential to create a significant and negative visual impact on the wider SAAO. The proposal is substantially different to that shown in Reg.Ref. F18A/0768.
- The scale, bulk and mass of this proposal fails to have regard to the wide ranging views of the site as set out in the SAAO design guide.

### Trees and Boundary Hedgerow

- Concern about further and lasting damage to the hedgerow at Deepwater. This forms a mature screen and provides privacy to and between the adjoining properties. In addition, hedgerows in and around the site are important elements which made up the character of the area are in danger of being destroyed.
- The proposed development would have a profound effect on the existing trees of the site and this not been considered. They submit that it would not be possible to construct the extensive basement and ground floors without removing at least 50% of the root system of these trees.
- The proposed development will require a clear zone of 4m from the existing house to these trees which does not exist on the site layout plan as currently shown. The existing trees are less than 3m from the house and will be damaged by the proposed development and will then have to be removed.
- They are concerned about the impact of excavation and construction works on the trees and provide that the conclusions stated in the arboricultural report and subsequent submissions are wholly unreliable.

### Oral Hearing

- The appellants requested an O.H to address the localised complexities that are associated with the appeal site and the proposed development. The fee to request an Oral Hearing is submitted with this appeal.
- They submit that of particular concern is the failure of the Council to address the red line boundary of the site which does not appear capable of being resolved by written correspondence and the position of the percolation area relative to the proposed dwelling.
- The site layout plan clearly breaches the EPA Guidelines and an O.H would provide the Council and the applicant with the appropriate medium to explain why the proposed layout which materially contravenes these guidelines and would be prejudicial to public health was deemed acceptable.
- It would enable consideration of the construction management aspect of the project including the constrained access to the site and the wider negative



visual amenity impact that would arise from the construction of this substantial dwelling.

### Summary and Conclusions

- The appellants have no objection in principle to a well-designed and appropriately scaled development on this site.
- What is being proposed is completely out of scale and would seriously impact on the residential and visual amenities of their property and of the wider Howth SAAO area.
- They advise that permission be refused. However, in the event the Board decides to grant, they request that conditions relative to design and layout be included. This includes that an amended site layout plan be submitted such that the proposed dwelling shall be not less than 10m from the percolation area that serves 'Deepwater'.

## **6.2. Applicant Response**

Hughes Planning & Development Consultants have submitted a response on behalf of the First Party. Their response to the grounds of appeal includes the following:

### Red Line Boundary

- The dispute of the redline boundary is a civil matter between the two parties and is not a matter for the Board, therefore they request the Board consider the proposal on its merits and grant planning permission accordingly.
- They have regard to their revised plans submitted in response to the Council's clarification request and note that the dwelling was reduced by approx. 3m to allow sufficient distance from the trees.

### Non-Compliance with EPA Guidelines

- The location of the appellant's percolation area is within the area of dispute between the properties of Glenlion Pines and Deepwater. The applicant rejects the appellant's right to percolate into this area.
- In response to the issues of concern raised they refer to a letter prepared by Traynor Environmental Ltd. contained in Appendix B.

### Extensive Rock Excavation and Site Engineering

- The predicted extent of bedrock excavation indicates that only a small amount of bedrock will need to be removed for the proposed development and they provide details of this. Figures 11.0 and 12.0 are of note.
- Reference is had to the Outline Construction Management Plan submitted. This notes that where necessary noise and vibration and dust monitoring will be carried out.

### Excessive Scale of the Proposal

- The proposed development is consistent with the pattern of development in the immediate vicinity.
- Due to the high-quality design, the proposal is in line with the policies and objectives of the Fingal CDP.
- It will preserve the distinctive profile of the peninsula when viewed from the roads on the shoreline of Dublin Bay.
- Fig.13.0 shows the west elevation submitted as F.I. Figure 14.0 shows the east elevation submitted as F.I. They submit that the proposed development does not have any negative impact on Deepwater. Fig.15.0 relates.
- They provide details of planning applications in the vicinity of the site which provide for the demolition of an existing dwelling and the construction of a replacement dwelling with a significant increase in floor area. Figure 16.0 provides an aerial view of the site and its surroundings. Figure 17.0 provides a view of the site and surrounding dwellings from the sea.

### Boundary Hedgerow

- They refer to the Outline Construction Management Plan which acknowledges access restrictions to the site.
- Right of way to other properties using the access road will be maintained during construction and operational phases.
- An auto-track vehicle assessment has been carried out.

- The Landscape Management Plan submitted indicates that the existing mature hedge is to be retained and protected. Tree planting is to be carried out on site to blend the development into the surrounding environment.

#### Proximity to Existing Trees

- They refer to the revised plans submitted in response to the Council's C.F.I request and note that the Parks and Green Infrastructure Department were satisfied with these revisions and recommended permission subject to conditions.
- Figure 18.0 provides an extract from a drawing indicating the relocation of the dwelling to ensure no incursion beneath the canopy of existing mature trees to the north west. They note that the lower ground floor has been redesigned to reduce the level of impact on retained trees.
- They provide a description of the works to be carried out under arboricultural supervision, relative to the protection of the trees and submit that the level of incursion is not considered to be significant or unacceptable.

#### Conclusion

- They consider that the issues raised by the appellant have been comprehensively addressed. The proposed dwelling has been scaled and designed in an appropriate manner, in order, to avoid undue loss of residential amenities of the area and to protect the sensitive landscape.
- The proposal is acceptable and compliant with the policies and objectives of the Fingal CDP 2017-2023.
- The proposal would provide a high level of amenity for its future residents while preserving the adjacent residential amenities.
- They ask the Board to have regard to their submission, to uphold the Council's decision and to grant permission.

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

Their response provides in summary:

- They note that from assessment of the proposed development there is substantial ambiguity regarding land ownership between the subject property, Glenlion Pines and the property to the north known as Deepwater.
- The issue of ownership is not a planning matter and cannot be adjudicated by the Council. They refer to the Development Management Guidelines and to the provisions of Section 34(13) of the Act.
- The application was assessed against the policies and objectives of the Fingal CDP 2017-2023 and existing government policy and guidelines. Regard was had to the zoning objective as well as the impact on adjoining neighbours and the character of the area.
- The development was assessed by Water Services and the Report received stated no objection subject to condition.
- They ask the Board to uphold their decision to grant and to include Conditions no. 7(b) and 11 in their determination.

Their subsequent response provided they had no further response to make relevant to the First Party response to the Grounds of Appeal.

#### 6.4. **Observations**

Local resident, Roxanne White, has made an Observation in support of the Third Party Appeal. She also refers the Board to the submissions made relative to the planning application. This Observation is summarised under the following headings:

##### Building Size/Mass and New Location

- The scale and massing of the proposed building will appear overly large within site and is located too far north and east. Other 3 storey houses have significantly more space between the buildings and boundaries for public access roads or footpaths, especially those with protected views.
- There is a risk to multiple trees and hedgerows caused by this construction. A map is enclosed to show how close the mature trees (canopy and roots) and hedges are to the new building.

- Suggested conditions include to restrict the overall size/spatial footprint/ position to increase the space around the house, specific minor design changes, reduce the mass when viewed from east, south east and south west on protected views public footpaths.

#### Deepwater percolation area and Glenlion Pines

- There is a lack of clarity as to the location of the septic tank and percolation area of Deepwater and the proposed house.
- The failure to meet EPA requirements together with the steepness of the slope and its composition raise significant concerns. Concern about impact on adjoining sites and the surrounding area.
- Conditions should be included to restrict all parts of the new house building from being within 10m of the wastewater sewage septic tank and percolation area.

#### Boundary on East and Protected view from the Footpath

- Significant concerns are expressed regarding the impact of this building on the SAAO 'protected views' on the right-of-way directly to the east of the site. Photomontages of the proposal from the east have not been submitted.
- There is a lack of certainty of the distances between the eastern side of the house to the right-of-way and concrete block wall. Regard is had in particular to the red line boundary and to the location of boundary walls, fences and hedgerows and in relation to impact on the right-of-way.
- Conditions should be included to ensure that there will be no impact on protected views and light on the public path, or on the Howth SAAO, and that fences be lowered along the eastern boundary. Also, that this fence and wall are excluded from any grant of permission.

#### Trees and Landscaping

- There has been a significant change to trees and hedges on the western side of this property. The proposed house is too large and too visible since this screening was removed. Photographs and mapping have been included.

- Conditions relative to replanting of trees and hedgerows along the western boundary should be included in the interest of the preservation of protected views.
- The landscape Plan is incomplete and at odds with the floor plan. Trees are missing from the landscape plan that are not permitted to be removed. If they are removed already, a replacement plan should be submitted. Conditions should be included and relative to the Howth SAAO.

## 6.5. Further Responses

## 6.6. First Party

Kiaran O'Malley & Co. Ltd, have submitted a response on behalf of the Third Party to the First Party response. This in summary includes the following:

### Red Line Boundary

- To dismiss this as a potential civil matter would result in the failure to adhere to the legal obligations of the Planning and Development legislation.
- Documentation submitted is inadequate and the application should be dismissed as invalid, or the Board is precluded from making a decision due to the applicant's insufficient legal interest in the site.

### Non-Compliance with EPA Guidelines

- It is the Appellant's position that the percolation area is on land which is neither within the applicant's control or ownership. The location of the percolation area, has been ignored in the applicant's proposed development.
- The drainage system has been inspected by an engineer who has confirmed that it is in full working order and in his opinion has been in place since 1948.
- The applicant's dwelling would be less than 3m from the percolation area which is unacceptable. The appropriate set back is not achieved and it would materially contravene the EPA Guidelines, and be prejudicial to public health.

- They have regard to the Planning History of the site, to the retention application for the WWTS (Ref.F19A/0512) and to extensive unauthorised works on site.

#### Excessive Scale of the Proposal

- The proposed dwelling is located too close to the steep bank between the appeal site and Deepwater, extensive excavation and construction works will ensue.
- The applicant has maintained, based on a geometric survey from another site, the sites composition. The potential construction impacts on the existing trees and the likely significant damage to their property during construction are unacceptable.

#### Boundary Hedgerow/Protected Trees

- No right of way exists over these lands and the applicant has no rights to pass over Deepwater's Title.
- They are concerned about damage to their boundary hedgerows, that provide privacy and screening to Deepwater.
- They submit that there are a number of inaccuracies in the tree survey carried out. This includes that the categorisation of some of the trees should have been higher as they could be considered of regional importance.
- There is a lack of detail around the construction area, the extent of excavation, the root protection zones. They consider that information in accordance with tree survey standards has not been submitted and provide details of this.
- They are concerned about the extent of overlap of the RPA and the footprint of the proposed dwelling, and that this impact has not been adequately addressed in the application or in the construction plan submitted.
- They submit that the Landscape Masterplan includes planting on lands which the applicant does not own. Also, additional planting of trees on the boundary will block views and light after damaging the existing mature vegetation at Deepwater and within the appeal site.

- They request the Board to refuse this application.

## 6.7. Observer response

Roxanne White's Observation is made in response to the First Party response to the Grounds of Appeal. While she reiterates many of the points made in her original observation, the following are of note:

### Red Line Boundary

- Overall there is ambiguity/complexity regarding ownership and access that has not been fully documented. That is no unusual in older sub-divided properties.
- Deepwater deeds have been submitted and other historical documents relating to a right of way and ownership, showing conflict with Glenlion Pines maps.
- The proposal has not demonstrated ownership/& full access rights nor a methodology to reach agreement and this proposal requires use of land close to an area of dispute.

### Non-compliance with the EPA Guidelines

- She supports the Third Party Appeal that the EPA Guidelines are not met as the proposed building would be less than 10m away from the percolation area of Deepwater.
- The EPA makes no exceptions for who would own the land or whether the septic tank or percolation area has a legal right to be there or ownership issues. Until the EPA Guidelines are met, she asks that this application be refused.
- This septic tank and percolation area are beside a busy public right of way and close to Natura protected sites (SAC and SPA) and the Unesco protected Biosphere of Dublin Bay.
- If this proposal is granted prior to resolution of the 10m rule, then there is a real and likely impact to public health and protected environments; especially during the construction phase when the ground is excavated.



- The applicant has not provided any reason why the EPA guidelines should not be met, nor any mitigating actions to lessen the impact to public health/Dublin Bay biosphere.

#### Extensive Rock Excavation and Site Engineering

- The excavation and site engineering with lower 'basement floors' and contouring outside terrain slopes has not been addressed in any quantified detail – examples are given.
- The geophysical study is not verified. The examples of other basement houses nearby are not relevant.
- There are no mitigating dust measures in the Construction Plan. No further information or mitigation has been provided by the Applicant.

#### Excessive Scale

- The proposal is excessive and too large for the constraints of the site. The site is subdivided by the access avenue, and the site area for the proposed house is less than half of the total site area.
- Larger houses in proximity are on larger more substantial sites.
- The house should be reduced in size or moved further from the site boundaries with a reduction in overall mass and bulk.

#### Boundary hedgerow/Protected Trees

- Concern regarding impact on protected views and vegetation on the eastern and western boundaries of the site. Appropriate vegetation should be mandated on the western boundary in accordance with SAAO requirements.
- The new fence/wall on the eastern boundary should be excluded from any granting of permission as it does not meet the Howth SAAO requirement for protected views.
- The proposed house is too close to a multitude of protected trees. These trees are at risk from construction works. No further mitigation or mitigation has been provided by the Applicant.

- The access road is narrow and multiple planning permissions with construction vehicles poses a risk to trees all along the avenue, not just those owned by Glenlion Pines.

## 7.0 **Assessment**

### 7.1. **Context and Considerations**

- 7.1.1. Regard is had to the locational context of the site and to the planning history. It is noted that there is an existing house on the site, this proposal is for a replacement house. Therefore, the principle of a residential development has been accepted on this site, provided it would not detract from the residential amenities or character of the area, and would be in compliance, with the land use zoning. While the principle of a replacement house is acceptable on this site, it is important to ascertain that this proposal, which is for a significantly larger replacement house, will not have an adverse impact on the character and amenities of the area including the trees on this constrained and sensitive site, or on neighbouring properties. Also of consideration is that this is a sensitive site and regard must be had to its location within the Howth SAAO.
- 7.1.2. It is noted that the Third Party, the owner of 'Deepwater' to the north of the site, has expressed a number of concerns about ownership issues and the red line boundary, the proposal to construct a substantial dwelling in close proximity to their rear garden on this sloping site, and the inadequate separation from the proposed dwelling to their percolation area being contrary to the EPA Guidelines. In their Grounds of Appeal, they requested that an Oral Hearing be held relative to the various issues raised. However, the Board decided that there was sufficient written evidence on file to enable an assessment of the issues raised, and that therefore an Oral Hearing should not be held. Note is had to the issues raised, to the documentation submitted, to the Third Party Grounds of Appeal, the First Party response and to the concerns raised in the Observation made, in this Assessment below.

## **7.2. Regard to Planning History**

- 7.2.1. Regard is had to the documentation submitted and it is of note that there is significant and ongoing planning history relative to several houses in the area. Of particular note relative to the subject site, is the Council's refusal for an extension to the existing dwelling house on the subject Reg.Ref.F18A/0768 and the Board's subsequent decision to grant subject to conditions, relative to ABP-304845-19.
- 7.2.2. The Site Layout Plan includes a drawing showing the outline of that approved as an extension relative to the footprint of the dwelling proposed in the current application. As shown the former would have less of an impact on the north eastern elevation of the site and be set back further from the eastern site boundary. It is shown set further off the north eastern site boundary. The floor plans did not include the swimming pool or the cinema. It is also shown further set back from the Deepwater percolation area, than the footprint currently proposed.
- 7.2.3. It was noted that that proposal would increase the floor area of the existing dwelling from 171sq.m to 456sq.m, an increase of 166%. The current proposal provides for a replacement dwelling of 625sq.m. This would result in the replacement dwelling being 1.3 times the size of the extended dwelling. It would be 3.65 times the size of the existing house.

## **7.3. Ownership/Boundary issues**

- 7.3.1. The Third Party in the property to the north 'Deepwater' are concerned that there are inaccuracies within the red line site boundary by including land which they provide is not owned or within the applicant's control. Thus, they provide that this application is either invalid or should be refused on the basis of insufficient legal interest. In response to their submission, the Council included a Further Information request to provide clarity on this issue. They requested that information be submitted to demonstrate ownership including folio maps, associated land registry documentation and title deeds. In addition, that in the event lands have been included in the red line which are outside of the control of the applicant and written consent cannot be obtained for their inclusion that the red line be amended accordingly.
- 7.3.2. In the Planning Report Further Information response, reference is had to Appendix A, which contains the Deed Map and Land Registry Compliant Map to show that the

lands within the red line of the application site are under the ownership of the applicant, Mary Taylor. In the applicant's response to the Council's C.F. I request they refer to this and submit that the accompanying deeds offer no easement on the matter. The applicants provide that the dispute of the red line boundary is not a planning matter.

- 7.3.3. The appellants response provides that the 'Declaration and Conveyance does not establish entitlement to the boundaries claimed by the applicant. That as submitted it does not establish entitlement to the boundaries going back until 1948. It is the appellants position that lack of compliance with the deed of easement affects the applicant's ability to carry out the extensive construction to build the proposed development.
- 7.3.4. It appears from the documentation submitted and the submissions made that there is substantial ambiguity regarding a land ownership issue between the subject site, and that of 'Deepwater'. This in particular relates to that area to the north of the site, and the lack of documentation noted, relative to the red line boundary in this area, or of an easement between the properties. Also, in particular relative to the location of the percolation area for Deepwater's septic tank that appears to be within the subject site. While this appears to be historic, it is particularly relevant to the proposed larger footprint of the replacement house and this issue is discussed further relative to distance from the percolation area and drainage in this Assessment below.
- 7.3.5. The issue of encroachment is a civil matter, and the applicant is advised that in the event of encroachment or any dispute regarding easements concerning the adjoining property, the consent of the adjoining property owner is required. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*" In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.

## 7.4. Rationale, Design and Layout

- 7.4.1. The Planning Report submitted with this application provides that the main aim of this proposal is to improve the standard of accommodation offered on the applicant's site, to make more use of the topography of the site and to enjoy the magnificent views of the sea. This proposal seeks to demolish the existing 20<sup>th</sup> Century dwelling, which they provide is not in good repair, has a low BER rating and is not adequate to meet the applicant's needs. The First Party provides that proposed development makes more efficient use of land on the site, is to be contemporary in design and form, and that it will greatly improve the standard of living accommodation provided. They propose to construct a contemporary replacement dwelling using modern materials and design. The objective is that the dwelling would be sensitively designed to respond to the highly landscaped surroundings and have regard to potential visual impacts.
- 7.4.2. The existing house has a smaller footprint, is more centrally located, is currently occupied and is habitable. While not of any particular architectural merit, it is integrated into the site and does not detract from the character or the visual amenity of the area. The application form provides that the area of the site is 0.172sq.m, the g.f.a of the existing building to be demolished is 171sq.m and of the proposed dwelling is 625sq.m. It must be noted that the site is subdivided into two separate parcels by the access avenue, requiring the larger replacement house to be on one half of the site. If the area directly around the house is calculated it is less than the 0.172 ha. The other parcel of land to the south west is used to accommodate the WWTS and as a recreational area for the dwelling.

### Replacement House

- 7.4.3. As shown on the floor plans submitted, the proposed development includes a lower ground floor level, ground floor level and first floor level. Details are given of the accommodation to be provided on each level. This includes: Lower ground floor level will comprise of 4no. ensuite bedrooms; a cinema room; a bicycle storage area; a storeroom and plant room. The Ground floor level will comprise of an open plan kitchen/living/dining area; 1no. back kitchen; family room; playroom; and a swimming pool with ancillary wc, 2no. changing rooms and 1no. shower, and a mudroom. The First floor level will comprise of 1no. master ensuite bedroom with 1no. dressing

rooms and 1no. double ensuite bedroom with 1no. dressing room. The proposed dwelling is facilitated with a lift to access each of the three floors of the dwelling.

- 7.4.4. An Architectural Design Statement has been submitted. The proposed elevations, in particular the east and west elevations show the terraced nature of the proposed dwelling. It is noted that the southern elevation of the dwelling will appear 3 storey in the distance when viewed from the lower level Cliff Walk to the south. The Planning Report submitted includes Photomontages of various views. They provide that the design of the proposed replacement dwelling is that of a modern and contemporary idiom which seeks to respond to the sloping nature of the ground.
- 7.4.5. As part of the Council's F.I request the applicant was asked to provide a revised site layout plan at scale 1:200, demonstrating a revised house location to allow sufficient distance from the existing trees to ensure a sustainable retention that minimise tree conflict. They advised that revised plans be submitted, to show relocation or reduction of the dwelling. Also, to submit a revised section including the outline of Deepwater in addition to marking the boundary between the two properties and indicating the ridge level of the dwelling relative to the ground level of the rear garden of Deepwater. In response a section has also been prepared to include the outline of Deepwater indicating the boundary between Deepwater and Glenlion Pines. These drawings also show the ridge level at Glenlion Pines relative to the ground level of the rear garden of Deepwater.
- 7.4.6. In response to the concerns of the Parks and Green Infrastructure Division relative to the impact of the proposed dwelling on the trees and the Council's C.F.I revised plans have been submitted, as noted in the Trees and Landscaping Section below. They provide that the north/ north eastern elevation extent of the dwelling will be reduced by approximately 3 metres to allow sufficient distance from the existing trees, along with repositioning the dwelling further away from the affected trees to achieve separation distance. They note that the proposed lower-ground floor has been designed to reduce the level of impact on retained trees. Figure 18.0 of the First Party response shows the relocation of the dwelling so as to ensure no incursion beneath the canopy of the existing mature trees to the north west. Works are to be carried out under arboricultural supervision.

7.4.7. Some ambiguities were noted in these revised plans, relative to the elevations and floor plans. If the Board decides to permit, I would, recommend, the inclusion of Condition no.2 of the Council's permission. However, taking a holistic view of the sectional nature of the subject site (as divided by the access road) and of the variation in ground levels, I would have some concerns, about the overall scale and massing of the proposed dwelling being excessive for the subject site. Also, that even taking the revisions into account, that the proposed footprint will be very close to the trees and the north eastern site boundary.

#### Swimming Pool

7.4.8. The swimming pool is to be located at ground floor level, to be integrated into the footprint of and to be seen as an integral part of the dwelling. There is concern in the submissions made that there is insufficient assessment of the swimming pool, either in advance of its construction or ongoing maintenance/assessment of its impact. That there may be drainage/ environmental issues regarding the disposal of new swimming pool waste. This includes relative to the need for an assessment of its environmental impact, taking into account its location proximate to the SAC and protected pine trees. Also, that it will be located too close to Deepwater percolation area. That there are omissions relative to its capacity, volume of water, use of chemicals, source of water etc. The main issue being to ascertain that it will not cause pollution either to the water course or the proximate Natura 2000 sites.

7.4.9. Regard is had to Appendix F: 'Proposed wastewater treatment for pool operations' prepared by Traynor Environmental Ltd. Details are given, of the discharge and flow rates as part of the maintenance regime. It is provided that the quantity has been included in the design of the approved wwts. The pool is to be fitted with a specific filter and chlorine removal systems to allow the backwash effluent to discharge to the treatment system of Ecoflo Coco polishing filter. It is considered that the proposed swimming pool is an integral part of the proposed development. The documentation submitted provides that it will not impact adversely on the environment.

### **7.5. Trees and Landscaping**

7.5.1. Trees on site in particular the group of pine trees, add to the character of the area. Map B of the Howth SAAO identifies groups of mature trees within the site, along the

southern and northern boundaries of the site, that are to be protected. As noted in the Policy Section above the SAAO contains objectives to protect mature trees that add to the character of the area. Objective PM64 of the Fingal CDP seeks to: *Protect, preserve and ensure the effective management of trees and groups of trees.* There are concerns that the proposed development, including construction and excavation works will impact adversely and damage the trees on the site. It is considered important that it be demonstrated that the proposed development will not impact adversely on trees on site or have a detrimental impact on the character and amenities of the area.

- 7.5.2. An Arboricultural Report has been submitted with the application, which shows that the trees on the site including those that will be affected by the proposal. This makes note of some finer specimens, in particular those in close proximity, as described on the Tree Schedule T687 – Monterey Pine (B2). It is noted that the Third Party queries the findings and considers that it is unlikely that any mitigation would be possible due to the extent of overlap of the RPA and the footprint of the proposed dwelling.
- 7.5.3. The Council's Parks Division is concerned, that the proposal is too close to and that excavations will cause damage to trees and their root systems within the site including those closest, to the footprint of the proposed replacement dwelling. Also, that the proposed drainage system will impact on protected pines and they recommended that a revised site layout be submitted to allow for sufficient distance from the existing trees to ensure a sustainable retention that minimises occupier tree conflict. In addition, that upon submission of a revised site layout, that a tree bond be calculated and conditioned. The Council's F.I request included that the applicant provide a revised site layout plan at scale 1:200; demonstrating a revised house location to allow sufficient distance from the existing trees to ensure a sustainable retention that minimises occupier-tree conflict.
- 7.5.4. The F.I response refers to Appendix B, of their Planning Report which contains an Arboricultural Note as prepared by an Arboricultural Consultancy. This response outlines the main reasons why the separation between the proposed dwelling and the existing trees can be maintained for the long term and is considered acceptable. It is provided that the separation between the proposed dwelling and the existing trees does not significantly differ from that previously granted Reg.Ref. F18A/0768



and Ref. ABP-304845-19, which was deemed acceptable. In addition, that there are many incidences of mature trees in close proximity to dwellings which form an integral part of the local landscape character and provides references of such. They submit that therefore, revised drawings relative to the relocation/reduction in scale of the dwelling are not deemed necessary.

- 7.5.5. In response the Parks & Green Infrastructure Division notes that the previous application as approved by the Board (Reg.Ref.18A/0768 – Ref. ABP-304845-19) extended to the outline of the mature trees, while this application includes the removal of tree branches to accommodate the development (i.e will be under the existing canopy). Therefore, the extent of existing and proposed works exceeds any previous proposal and are not acceptable as comparable. They considered that the applicant has not demonstrated that this proposed development which is significantly larger (in relation to Root Protection Areas & includes branch removal) and is in very close proximity to the mature tree trunk has an equal impact to the previous application outside of the canopy and root protection area. They maintained that the proposed development will have a direct negative impact on the mature trees and that future tree and occupier conflict will likely arise due to building maintenance and/or safety concerns.
- 7.5.6. The applicant's response to the Council's C.F.I request refers to the revised drawings and submits that the house has been scaled back and relocated to allow sufficient distance from the existing trees to ensure a sustainable retention that minimises occupier tree conflict. They provide that revised floor plans, elevations and site layout plan have been submitted. The north/north eastern extent of the dwelling has been reduced by approx. 3m to allow sufficient distance from the existing trees, along with the dwelling being located further away from the affected trees to achieve the separation. They submit that the reduction in size of the proposed dwelling ensures that there is no incursion beneath the canopy on the B Category pine tree T687 (as shown on the Tree Protection Plan submitted – Appendix C refers).
- 7.5.7. It is noted that the Council's Parks and Green Infrastructure Division does not object to the revised plans. They recommend conditions that the revised Tree Protection Plan (Revision A - 09/11/20) be implemented in full under the direction supervisions of the arboricultural consultant. That all tree protective measures shall be in situ prior to the commencement of the clearance and demolition works. That the

recommendations of the submitted tree survey be implemented during the course of construction works to ensure trees to be retained shall be adequately protected.

Also, that a condition relative to the inclusion of a tree bond (€10,000) be lodged with the Council to ensure that the trees are protected and maintained in good condition throughout the course of the development. Condition nos. 2 and 7 of the Council's permission refer. If the Board decide to permit it is recommended that similar type conditions be included.

7.5.8. It is noted that a Landscape Masterplan has been prepared for the site which indicates the existing hedge along the access route is to be retained and that tree planting is to be carried out to integrate the proposed development into the site. If the Board decides to permit, I would, recommend that a landscaping condition be included.

7.5.9. However, the issue for consideration, is whether these revisions are deemed adequate in view of the extensive works involved, the proposed excavations and the proximity to the mature and protected trees, in this sensitive location. Also, whether the proposed landscaping scheme will be sufficient, in relation to the footprint, scale and massing of the proposed development relative to the restricted site area, which now contains the significantly smaller house proposed for demolition.

## **7.6. Construction issues**

7.6.1. The challenges posed by construction are of note, in view of the steeply sloping nature of the subject site and the need for excavations into the rock face. There are concerns that an issue with destabilisation/slippage might occur to the detriment of adjacent properties, in particular 'Deepwater' to the north. Also, that access to the appeal site with significant redevelopment proposals is via a small narrow track which goes around Glenlion Cottage and down to the subject site. In addition, that a robust construction management plan should have been sought by the Council prior to its decision on this application.

7.6.2. It is noted that a Geophysics Survey has been submitted, by Scantech Geoscience. The objectives being to estimate the depths to bedrock below ground level. Details are given of Survey-Analysis of various sections of the site and it is provided that ground penetrating radar as a geophysical technique has been used. It is submitted

that the survey achieved its principle objective with an interpretation estimating the depth of bedrock within the survey areas. In addition, that adjacent properties will be surveyed in advance of the works in the form of condition surveys to determine the condition, need for any restrictions and record any defects that may be evident. The F.I response includes details of the ground-penetrating survey and provides that the predicted extent of bedrock excavation indicates that only a small amount of bedrock will need to be removed for the proposed development.

- 7.6.3. The First Party response provides that a small amount of bedrock will be removed for the proposed development. The smaller fragments will be washed off the construction site by surface water runoff, the larger will be re-used in construction works. Figure 11.0 includes an extract of the drawing showing the location of the limited bedrock to be removed. Figure 12.0 indicates the subject site at a lower level in relation to Deepwater. The dashed line indicates the proposed lower ground floor.
- 7.6.4. An Outline Construction Management Plan Report has been submitted. This has regard to construction traffic and notes that the area has some access restrictions that will limit the size of vehicles entering the site. They provide that site access will be marshalled to protect pedestrians and road users and the access road will remain as a right of way to other dwellings. Other issues would include storage of materials, best practice management measures relative to demolition and construction. These include material extraction/excavation, dust, noise monitoring, runoff, fumes from vehicles, to prevent damage to trees from compaction and vehicles etc.
- 7.6.5. While issues relative to excavation and construction are noted, it is recommended that if the Board decide to permit that appropriate conditions including a Construction and Demolition Management Plan be included.

## **7.7. Impact on the Character and Amenities of the Area**

- 7.7.1. Third Party/Observer concerns about the scale, mass, bulk and height of the proposed replacement dwelling, being excessive for the site, in comparison to the existing house are noted. That this is for a much more substantial house on 3 levels than the existing dwelling, or the recently approved extension. That it will appear excessive and out of character on this small-constrained site and will have a detrimental impact on the adjoining property to the north 'Deepwater'. That being

excessive in the landscape it will impact adversely on protected views and landscapes including from the eastern right of way and the south west cliff walk and Dublin Bay. It is important to ensure that any new development will not cause visual harm and or appear incongruous due to mass and scale, and meet the objectives of the Howth SAAO and have regard to protected views in the Fingal DP.

- 7.7.2. The First Party refutes this and submits that the proposed development has been designed to integrate into the slope and into the character of the area. They also submit that it will not impact on the amenity or privacy of Deepwater. In addition, that the proposed development has been designed to integrate into the character of the landscape and will not adversely impact on adjoining properties of views.
- 7.7.3. The site slopes away from Thormanby Road and given the location of the site within the enclave, with access from the steeply winding lane it is largely not visible from the public road, which is on a much higher level. The access to the Howth Cliff Path runs along the east of the site and along the southern portion of the larger residential enclave. It is noted that the replacement house will be visible in the landscape, as one of the larger properties in the area, but will be seen within the context of the enclave of houses along this area of the cliff face.
- 7.7.4. It is an issue of concern is as to whether a replacement house of this scale in this location would be at variance with the objectives of the SAAO and would have a significant negative impact both on the views from the footpath and from Dublin Bay. As noted in the Policy Section above Maps A and B provide the objectives of the SAAO relevant to the surrounding area and the subject site. It is of note that Policy 3.4.2 of the Howth SAAO includes: *New buildings should be as inconspicuous as possible.* This further provides: *Substantial engineering to reconfigure the profile of a landform is not an acceptable form of mitigation.*
- 7.7.5. Taking all the considerations raised into account, I would consider that the scale of the proposed development is excessive having regard to the constraints of the subject site. There are some substantial houses in the area, but they have been constructed on larger site areas. While there is scope for a replacement house, a smaller scale relocated house that would more easily integrate into the site and have less need for excavations would be more appropriate. This is particularly having regard to the issues raised relative to the protection of the trees, distance to the

'Deepwater' percolation area, integrity of the slope and integration of the proposal into the landscape. This would also serve to avoid over development and adverse impact on the character of the area and the visual amenity of the SAAO. I would consider that this would be best done through redesign by way of a new application.

## 7.8. Drainage issues

### Current Proposal

- 7.8.1. As noted in the Planning Report, the proposed development is served by a wastewater treatment system which has been installed under a previous planning application (Reg.Ref. F19A/0512). Also, that the treatment system for the dwelling at Glenlion Pines is an O'Reilly Oakstown Treatment system. It is provided that the system is equipped with an EcoFlow CoCo Filter which filters the domestic wastewater collected by the septic tank. This site is unusual in that the WWTS is located on a separate parcel of land (also included within the red line boundary) on the opposite side of the access road.
- 7.8.2. An assessment report by Traynor Environmental Ltd is included with the planning application and further details submitted in the Additional Information and associated Appendices submitted. Their response to drainage issues notes that the proposed development has the same number of bedrooms as the previously approved extension. This concludes that the existing approved and upgraded wwts is capable of dealing with the disposal of effluent from the proposed replacement house and the swimming pool. Appendix D refers to the wwts and Appendix F to the proposed wwt for the pool operation. They also submit that the swimming pool will be accommodated by the existing wwts approved under Reg.Ref. F19A/0512.
- 7.8.3. It is noted that subsequent to the F.I submission relative to foul and surface water drainage issues the Council's Water Services Department has no objection to the proposed development.

### Deepwater Drainage issue

- 7.8.4. Another issue as presented by the Third Party and the Observer, concerns the location of the septic tank and percolation area for the house to the north on the higher level of the slope 'Deepwater'. There is a lack of clarity the distance the septic tank and percolation area of Deepwater is to the proposed replacement dwelling and

whether the construction and excavation works would lead to pollution. Regard is had to direct and indirect impacts including relative to excavation works and water quality. Also, to the need to have regard to in combination effects as the houses in this area are not connected to mains drainage which all have their own individual treatment systems.

- 7.8.5. As submitted, it appears that the percolation area for Deepwater is located in an area of land shown within the area shown yellow and proximate to the northern boundary and to the footprint of the proposed replacement dwelling. That this arrangement is historic and reference is made by the Council, to the need for the owners of Deepwater to register an easement over this land. Regard is also had to the Site Layout Plan (Reg.Ref.F20A/0297 – ABP-309820-21 relative to Deepwater). The Site Layout Plan for this concurrent application shows the Septic Tank for that property located proximate to the south eastern boundary of Deepwater with their percolation area within the north eastern part of Glenlion Pines to the south. Figure 3.0 of the F.I response to the current application relates.
- 7.8.6. It is noted that having regard to the documentation submitted there is some lack of clarity on the status of this area between the properties. There is some concern that the proximate location of the percolation area of Deepwater may have an impact on the proposed development. It will be closer than the existing house and closer than the 10m separation distance advised in Table 6.1 of the EPA CoP 2009. The replacement house would be less than 5m downslope of the existing percolation area. It is noted that the septic tank and percolation area for Deepwater is not shown on the Site Plan submitted. That the proposal would not comply with the EPA guidelines and would be prejudicial to the health of future residents and potentially impact on the percolation area of Deepwater. That granting permission for the proposed development prior to resolution of this 10m separation distance could present an adverse impact to protected environments and to public health, especially during construction stage when the ground is excavated.
- 7.8.7. The First Party response to the appeal rejects the appellant's rights to percolate into this area. They note that the location of the appellant's percolation area is within the area of dispute between the properties Glenlion Pines and Deepwater. In their response they refer to a letter prepared by Traynor Environmental Ltd. contained in Appendix B. This includes that to confirm the actual dimensions of the existing

soakpit/percolation area and distance to the proposed new replacement house, intrusive site investigation works and a detailed report should have been provided. In addition, they provide that it is their professional opinion that the soakpit/percolation area should be upgraded in accordance with the EPA Code of Practice.

- 7.8.8. While regard is had to the First Party response, and this area of dispute is a civil matter, I am concerned that the footprint of the proposed development will be closer than the existing dwelling to this percolation area. Also, that excavation and construction works will be less than 5m from the percolation area of Deepwater and that this will not comply with the separation distances as given in Table 6.1 of the CoP EPA Guidelines 2009. Therefore, I am not convinced that sufficient information has been submitted to ensure that the proposed development will not be prejudicial to public health.

## 7.9. Screening for Appropriate Assessment

- 7.9.1. The subject site is located on a coastal location close to several sensitive Natura 2000 sites. An Appropriate Assessment Screening Report has been prepared by NMEcology. In summary this report found that the proposed development does not pose a threat to Natura 2000 sites in the vicinity of the site.
- 7.9.2. Natura 2000 sites which lie in the vicinity of the appeal site are shown in the attachments and include:
- Howth Head SAC (site code 000202), is located approx.150m south of the site.
  - Howth Head Coast SPA (site code 004113), lies c. 400m to the east of the appeal site.
  - Rockabill to Dalkey Island SAC (site code 003000), c.180m to the south of the appeal site.
- 7.9.3. The AA Screening Report provides that the proposed development is neither directly connected to nor necessary to the management of the Natura 2000 sites. A description is given of the changes to the site relevant to the subject application. It is noted that Howth Head SAC is closest to the southern part of the subject site.

- 7.9.4. The Council's F.I request was concerned that no reference was had to the likely impacts associated with the potential excavation of bedrock underlying the site. Also, as to how the disposal of water associated with the swimming pool could affect the protected sites. NMEcology have amended the AA Screening Report to indicate any impacts associated with the potential excavation of bedrock underlying the site. Appendix G of the AA Screening Report refers. They conclude that the possible excavation of bedrock is not considered to pose any additional risk of impacts on Natura 2000 sites. The excavation of bedrock is included in the overall scope of construction work that was considered in Section 4.2 of the AA Screening Report.
- 7.9.5. With regards to the disposal of water from the swimming pool, it is submitted that details of water disposal were provided by Traynor Environmental Ltd (August 2020) Appendix F - that accompanies the F.I response. Regard is had to the NMEcology response, reference is had to the WWTS approved under Reg.Ref. F19A/0512 (decision is included in the History Appendix).
- 7.9.6. The potential for direct, indirect or secondary impacts upon any the Natura 2000 sites within a 15km radius is assessed. In summary, the Report found that the proposed development will not have adverse effects on the Natura 2000 sites in the vicinity of the proposed development. It is concluded that the proposed development would not lead to an impact on protected sites. It is provided that as a result a Stage 2 AA was deemed unnecessary.
- 7.9.7. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the scale and nature of the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site Nos. Howth Head SAC (site code 000202), Howth Head Coast SPA (site code 004113), Rockabill to Dalkey Island SAC (site code 003000), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

## 8.0 Recommendation

- 8.1. I recommend that permission be refused for the reasons and considerations below.



## 9.0 Reasons and Considerations

1. The subject site is located within the Howth Special Amenity Area Order where more restrictive policies apply to provide for sympathetic development to protect the special amenity of the area. The design of the replacement house would be contrary to Policy 3.4.2 (new buildings) of the Order in that the scale and massing would result in excavation into the landform, would appear excessive and visually dominant, would detract from the protected pine trees and would not enhance the character of this restricted site, in this sensitive landscape, and would negatively impact on views from the Cliff Walk and from the coastal area. The proposed development would, therefore, be contrary to Objectives PM64 and RF51 of the Fingal Development Plan 2017-2023 and to the proper planning and sustainable development of the area.
2. It is considered that insufficient information has been submitted relative to the impact of the excavation and construction works and proximity of the new build to the percolation area of 'Deepwater' the property to the north, to ensure that the proposal would be in accordance with current standards for such works and would not be prejudicial to public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Angela Brereton  
Planning Inspector

14<sup>th</sup> of May 2021