



An  
Bord  
Pleanála

## Inspector's Report ABP 309716-21

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<b>Development</b>	Redesign of houses permitted development under F16A/0125 and ABP Ref. PL 06.247355.
<b>Location</b>	Ard Aulin, Carrickhill Road Upper, Portmarnock, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F20A/0514
<b>Applicant(s)</b>	Carrickhill Property Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Pascal & Renata Wynne
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	10 <sup>th</sup> August 2021
<b>Inspector</b>	Brendan Coyne

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## 1.0 Site Location and Description

1.1. This site (0.31 ha) is located on the north-eastern side of Carrickhill Road Upper in Portmarnock, Co. Dublin. The site is irregular in shape with a road frontage width of c.7.1 metres, a total width of c. 73m through the centre of the site and a total length of c. 61m along its north-western boundary. The ground levels of the site rise steeply, rising from 16.5m OD at the vehicular entrance along Carrickhill Road Upper to c. 26m OD along its northern boundary. A vacant detached single storey dwelling known as 'Ard Aulin' is centrally located on a plateau area on the site. Its elevation finishes comprise render, stone and red brick. A shed and store is located to the rear / north of the dwelling. Tall mature trees are planted at the vehicular entrance and along the driveway serving the site. A separate driveway / right of way traverses along the north-western boundary, providing access to houses known as 'Rustic Lodge', 'Larkspur' and a house previously approved under P.A. Ref. F16A/0100, all located to the north of the site. The land to the rear / north of the dwelling Ard Aulin is overgrown with dense vegetation and trees. Similarly the sloped land along the southern boundary is overgrown with mature trees and vegetation. A cottage known as 'Carrickhill Lodge' is located on adjoining lands to the south. Land adjoining the site to the west comprises a road and car parking area serving the residential development known as 'The Quarry'. A detached dwelling known as 'Ard Carrick' is located on adjoining lands to the east. Historic records show that the site previously formed part of a quarry.

## 2.0 Proposed Development

2.1. Application as lodged on the 15/10/2020 – Permission sought modifications to development previously approved under P.A. Ref. F16A/0125 / ABP Ref. PL 06.247355 comprising the following;

- Redesign of House A (Cypress Rock) as a detached two-storey four bedroom house (203 sq.m.) with two first floor balconies on the north-western side elevation, a first floor terrace to the south-western rear elevation and the provision of hardstanding parking for 2 no. cars to the front, accessed directly from the internal access road (right-of way).
- Omission of previously permitted House B to provide an enlarged garden for modified House A.

- Retain existing House C (Ard Aulin) as a single storey bungalow with the existing southwestern entrance removed, a new front porch provided on the north-eastern front elevation, and a vehicular entrance and hardstanding parking area as previously approved on the northeast side of the house.
- Two storey extension on the north-eastern side of House D (Jasper) to increase the permitted house to a four bedroom dormer bungalow (206 sq.m.) with the replacement 2 no. permitted rooflights with 2 no. dormer windows on the southwestern rear elevation and the omission of the previously approved garden shed in the north-eastern corner of the site.
- Modifications to the entrance into House C and House D.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. Fingal County Council GRANTED permission for the proposed development subject to 14 no. Conditions. Noted Conditions include:

C.2 The terms and conditions of the grant of permission under P.A. Ref. F16A/0125 & ABP Ref. PL 06.247355 shall be complied with in full, save for the changes to the plans submitted or this application.

C.3 Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority, revised drawings detailing the following amendments;

(a) Proposed first window on the south-eastern elevation of House D (Jasper) as demonstrated on drawing no. P-05 shall be omitted. This window shall be relocated to the south-western elevation in the form of a dormer structure which would reflect the dimensions of the two other dormer structures on this roof slope including set down from the ridge.

In the event a dormer structure cannot be provided on this roof slope, a rooflight may be provided or alternatively, omission of the bedroom.

(b) Privacy screens, c. 1.8m high shall be provided to each side of the terrace associated with House Type A.

(c) The omission of the 2 no. balconies located on the northwestern elevation of House Type A.

C.5 That each dwelling shall be provided with noise insulation to an appropriate standard, having regard to the location of the site within Zone B associated with Dublin Airport.

C.7 The developer shall ensure that construction works do not impact upon the stability and integrity of the adjoining lands.

C. 13 Bond Requirements

C.14 Development Contributions Requirements.

## 3.2. Planning Authority Reports

### 3.2.1. First Report (08/12/2020)

- The proposed development is an acceptable form of development within the 'RS' zoning objective of the site.
- Drawing No. P-05 details the height of modified House A would be 9.92m. The RL and FFL of the proposal shows a height of 10.27m. This should be clarified.
- The applicant states the revisions are proposed on the basis of the substantial cost involved with implementing the development permitted under P.A. Ref. F16A/0125 & ABP Ref. PL 06.247355.
- The proposed development is conventional in design and would integrate within its surrounding context, having regard to the variety of house styles in the surrounding area.
- Modified House Type A would be subordinate within its setting by reason of its c. 23m setback from the public road, existing mature trees, high stone walls and the difference in ground levels of the site.
- The proposed 1.8m high timber fence along the side boundaries of House Type A would not be durable and would have the potential to be visually obtrusive. This should be replaced with round bar vertical fencing with a height of 1.8m to the rear and 1.2m to the front of the dwelling.

- The proposed first floor terrace to the rear of House Type A would result in overlooking of the private amenity space of House Type C (Ard Aulin), by reason of its 6.4m setback from the side boundary. In the event of a grant of permission a Condition should be imposed requiring a privacy screen to the side of this terrace.
- The dwellings are sufficiently set-back from the adjoining south-western boundary to facilitate the provision of first floor windows and terraces without undue impact.
- The proposed revisions to House Type D (Jasper) includes a new bedroom window open at first floor level to its south-eastern elevation. This window would be 5.4m from the site boundary. In general, the provision of 1<sup>st</sup> floor windows should be 11 metres from any opposing boundary. The applicant should be requested to explore the possibility of relocating this window to the southwestern elevation where the other dormer window openings are proposed.
- Dwg. No. P-07 indicates the substantial difference in ground levels between House Type A and C, with the garden of House Type C being at a much higher level. It is unclear as to what the boundary treatment would be between these dwellings and what the applicant proposes as mitigation to avoid undue overshadowing, having regard to the orientation of the site relative to the path of the sun and the southern / shared boundary appearing as being unduly overbearing on the future occupants of House Type A.
- Being cognisant of the varying levels across the site, the proposed site layout plan details the proposed level in the rear garden associated with House C and House D but does not provide a level of the rear garden associated with House Type A.
- The applicant should indicate the quantity of usable private open space to serve each dwelling, where there are level changes across the site.
- The dwellings would generally accord with Objective DMS24 of the Development Plan.
- The applicant should demonstrate the provision of adequate storage space in accordance with Table 12.1 of the Development Plan.
- Third parties have raised concerns regarding the stability of boundary walls which they state have been extensively backfilled to create present levels on the site.

These concerns were raised previously under P.A. Ref. F16A/0125. The applicant should be requested to submit a report from a suitable qualified professional demonstrating that the proposed development can be safely constructed without impact upon the stability of the site and neighbouring properties, particularly Carrickhill Lodge in respect of the current proposed development.

- Having regard to the nature of the proposed development and its location within an established residential area, Appropriate Assessment issues do not arise.

### 3.2.2. Further information was requested requiring the following:

1. The applicant is requested to address the concerns raised regarding the inaccurate representation of the dwelling known as Carrickhill Lodge in terms of its design and relation with the south western boundary of the subject site. A revised site layout plan at scale 1:250 shall be submitted.
2. The applicant is requested to address the following issues in relation to the levels relative to House Type A and House Type C; i) It is unclear as to what the boundary treatment would read like between these dwellings from the perspective of the rear garden area associated with House Type A, in the absence of an elevation to demonstrate this. ii) The applicant is requested to clarify mitigation measures proposed to avoid undue impact from this boundary such as overshadowing regard being had to the orientation of the site relative to the path of the sun and overbearance on the future occupants of House Type A. iii) The applicant is requested to submit a revised site layout plan at scale 1:250 to demonstrate the level of the rear garden associated with House Type A. The applicant should also clarify the extent of the usable areas of private amenity space associated with the dwellings where there are level changes across the site. iv) Clarify the boundary treatments between House D & C
3. It is recommended that the proposed timber fencing to the side of House Type A be replaced with round bar vertical fencing with a height of 1.8m with planting to the rear and reducing to c. 1.2 metres in height forward of the front wall of the

dwelling. The applicant is requested to demonstrate this on revised plans at scale 1:100.

4. The applicant is requested to submit revised plans and elevations at scale 1:100 to demonstrate the relocation of proposed bedroom window at first floor level of House Type D to the south west elevation.
5. The applicant is requested to submit revised floor plans which demonstrate the adequate provision of dedicated storage in accordance with Table 12.1 of the Fingal Development Plan 2017-2023.
6. The applicant should provide a legal document stating that the proposed development will be kept in private ownership and will not now or at any future date seek to be taken in the Council's charge. The document should also indicate all rights of way as the pertain to the four housing units.
7. It is noted that the applicant has previously furnished the Planning Authority with a stability report relating to the development approved under Reg. Ref. F16A/0125. This application relates to a new development and a document associated with a different application should not be relied upon. In this regard, the applicant is requested to submit a report from a suitably qualified professional demonstrating that the proposed development can be safely constructed without impacting upon the stability of the site and that of the neighbouring properties, particularly Carrickhill Lodge.
8. The applicant is requested to submit details of the retaining nature of the 'retaining walls' identified on drawing no. P-02 and clarify whether they are just boundary wall or whether they were constructed as retaining walls. All boundary walls shall be suitably faced and details supplied.

### 3.2.3. **Second Report (19/02/2021)**

- The revised plans submitted detail the correct positioning of Carrickhill Lodge.



- House Type D 'Jasper' would be set back 16m from the boundary shared with Carrickhill Lodge, which is considered acceptable and in accordance with Objective DMS28 of the Development Plan.
- The overall large area of private amenity space serving House Type A would compensate for any undue overshadowing from House Type C onto House Type A during the earlier part of the day.
- The revised site layout plan submitted, which shows the levels within the garden of House Type A, shows that the levels do not vary in an undue manner so as to render the garden unusable.
- While the applicant has not specified the private amenity space associated with the dwellings, it is noted that a layout approved under P.A. Ref. F16A/0125 & ABP Ref. PL 06.247355 appeared to provide useable areas of private open space.
- The applicant submits that the boundary treatment between House Types C and D would consist of a previously approved 1.8m high timber fence. The Planning Officer notes that all boundary treatments were required to be agreed as part of a compliance submission, prior to commencement of development.
- The revised elevation drawing along the laneway details the omission of the previously proposed timber fence and its replacement with a stone face retaining wall and railing along the boundary. The height varies from c. 2.4m towards the southern end of the lane reducing to c. 1.2m along the side elevation of House Type A before increasing in height to c. 1.8m towards the front of the dwelling.
- The Planning Officer has concerns regarding the extension of the fencing to a height of 1.8m forward of the front of the dwelling.
- It is not clear what the front boundary treatments to the remaining dwellings would be and this should be included in a comprehensive boundary treatment plan, to be agreed in writing prior to commencement of development.
- House Type D was previously approved with 2 bedrooms at first floor level and associated dormer windows on the south western elevation. These windows were setback in excess of 11m from the opposing boundary. As part of the proposed development, a 3<sup>rd</sup> bedroom is now proposed at first floor level which requires the

insertion of a window within the side (south eastern) elevation. This window would be less than 11m from the boundary which it faces. It is recommended that this window be either relocated to the south western elevation in the form of a dormer structure that reflects the design of the two other structures in terms of dimensions and set down from the ridge or the provision of a rooflight or where neither options can be provided, the bedroom shall be omitted. It is recommended that this be dealt with by Condition.

- The applicant has submitted revised plans demonstrating the adequate provision of storage space.
- The applicant has submitted a legal document confirming the right of way for the proposed residential units and the preclusion of the development from being taken in charge by the Council.
- The applicant has submitted a report from a Structural Engineer which details that a new retaining wall will be provided between House Type A (Cypress Rock) and House C (Ard Aulin).
- It is submitted in the Structural Engineer report that the implementation of the recommendations by the Arboricultural Impact Report associated with Reg. Ref. F16A/0125 are to be carried out under the supervision of suitably qualified landscape consultant and include for the removal of the Monterey Cypress trees at the western end of the side garden of Carrickhill Lodge which would have a beneficial effect on the stability of the existing boundary wall.
- P.A. Ref. F16A/0125 indicates that trees along the southern boundary are to be retained. Condition No. 3 imposed by An Bord Pleanála under ABP Ref. PL 06.247355 sets out the parameters for the retention of these trees by requiring the submission of a landscaping plan. The recommendation of the Parks and Green Infrastructure Department report should be included as a condition, i.e. that a landscape plan must be agreed together with tree protection measures.
- The report concludes that the proposed modifications would seek to enhance the stability of the site. The Planning Officer welcomes the report however the onus

shall be on the applicant to ensure no adverse impact to stability and it is recommended that a condition be included to this effect.

- The Structural Engineer report notes that the boundary wall between Ard Aulin and Ard Carrick (west) is a stone wall and having regard to the levels of the lands on the Ard Aulin site and those on the Ard Carrick site which are effectively the same level, there is little, or no ground retention provided by the boundary wall between these two gardens.
- In relation to the boundary wall between Ard Aulin and Carrickhill Lodge, the Structural Engineer report notes that the wall to the west of the two sites is a buttressed blockwork wall. Further along the shared boundary it is submitted by the Engineer that the wall is possibly a stone wall however having regard to the proximity of the extension associated with Carrickhill Lodge to this wall, it is not possible to determine how this wall was constructed. The submission refers to a rock outcrop on the lands associated with Ard Aulin and states that the embankment of land sloping upwards away from this outcrop is stable. A new 1.2 metre high timber fence is proposed along this boundary, replacing the existing 1m high fence which is in poor condition. However, the submission states that this will be undertaken such that there is no transfer of load from the fence to the existing boundary wall.
- The Structural Engineer report concludes that the existing boundary walls between the development site and Ard Carrick and Carrickhill Lodge will be unaffected by the proposed development.
- The applicant has provided a comprehensive breakdown of the boundary wall details. However, the onus shall be on the applicant to ensure construction will have no undue impact to the adjacent properties.
- The proposed development, subject to conditions, accord with the policies and objectives of the Fingal Development Plan 2017-2023 and would integrate appropriately within the surrounding context without undue impact to the visual or residential amenities of the area.

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

#### **3.3.1. Transportation Planning Section (2<sup>nd</sup> Report)**

- The Statutory Declaration submitted regarding the right of way serving the proposed residential units and the declaration that the proposed development will not be taken in charge by the Council is acceptable.
- Recommendation - no objections.

#### **3.3.2. Parks and Green Infrastructure Division**

- No objection subject to conditions.
- Condition recommended requiring prior to commencement of the development the submission of a detailed landscaping plan for agreement showing tree protection measures to BS5837 standards for retained trees along the southern and western boundaries, replacement tree planting on a minimum size 10-12 cm girth on a 'one for one' basis for those removed, boundary treatments for both existing external and proposed internal boundaries.

#### **3.3.3. Water Services Department**

- No objection subject to conditions.

### **3.4. Prescribed Bodies**

#### **3.4.1. Irish Water**

- No objection subject to conditions.

#### **3.4.2. Dublin Airport Authority**

- The site is located within Noise Zone B.
- Further Information / Condition recommended requiring that appropriate internal noise insulation / mitigation measures be provided for the proposed dwellings, in accordance with Objective DA07 of the Development Plan.

## 4.0 Planning History

### Subject Site

**P.A. Ref. F16A/0125 and ABP Ref. PL06F.247355** Permission GRANTED ON APPEAL in 2017 for the following:

- An extension and alteration to the existing bungalow on site (House C) including raising the ridge level to add a first floor.
- The demolition of an existing shed and store to the north of the dwelling and the construction of a new detached garage.
- The construction of 2 no. two storey over part basement form detached dwellings with garages (Houses A and B) with a floor area of 210 sq.m. These would be positioned on the western side of the site.
- Construction of a dormer bungalow (House D) and a shed which together would be positioned on the eastern side of the site.
- Alter the existing vehicular access and driveway.
- The houses would connect to the public foul sewer.
- Surface water disposal would be via soakaways on site.

Noted Conditions imposed by the Board include;

**C. 2** Details of all existing and proposed boundary fencing/walling along the perimeter of the site and along common boundaries, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. These details shall include full provision to ensure the structural integrity of the southern boundary of the subject site, and provision to ensure that any surface water provision does not interfere with, or impact upon, the structural integrity of this common boundary.

**C. 3** A detailed landscaping plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This landscaping plan shall provide for the retention of trees along the southern and western boundaries of the site, where this can be achieved without compromising public safety and the longer-term stability of these trees. The

landscaping plan shall also provide for replanting where such trees cannot be retained. Approved replanting shall be carried out in the first planting season following the substantial completion of the three dwellings hereby permitted, or, if the dwellings are constructed at different times, after the substantial completion of the nearest dwelling(s) to the relevant trees.

**C. 9** The flat roof area at first floor level in House C shall not be used as a balcony or terrace.

**C. 10** All bathroom/en-suite windows of Houses A, B, C and D and also the landing at second floor level of House Type B shall be fitted and permanently maintained with obscure glass.

**P.A. Ref. F09A/0100** Permission GRANTED in 2009 for revisions to a previously approved 3 storey extended dwelling permitted under Ref: F06A/0903, including removing a 2-storey side extension, moving the entrance and all living areas from first to ground floor, elevational alterations, overall reduction in area to 332 sq.m. (from 395sq.m.) and ancillary works. Grant permission.

**P.A. Ref. F06A/0903 & ABP Ref. PL06F.222660** Permission GRANTED ON APPEAL in 2007 for the partial demolition of existing single storey house (Ard Aulin), and new extension comprising of: single storey to front, 2 storey to side, and 2 storey over existing ground floor footprint. Total new house area (395 sq.m.). New single storey garden shed (26 sq.m.) to side. New first floor extension (area 29 sq.m.) to existing house (Rustic Lodge) at rear of site. Construction of new storey and a half house (area 253 sq.m.) to rear of site. Construction of 3 storey apartment building over semi-basement; comprising of 3 apartments and balconies/terraces, one apartment per floor and 3 double garages at semi-basement level. (total area 637 sq.m.). Landscaping, fencing, drainage and site ancillary works. Access through existing entrance from Carrickhill Road Upper.

**P.A. Ref. F06A/0903/E1** Extension of Duration of Permission GRANTED in 2012 for a period of 5 years, expiring on the 5th November 2017.

**P.A. Ref. F04A/0329** Outline Planning Permission GRANTED to demolish a shed and construct a dormer extension to the existing house at first floor level and to construct one new dormer bungalow and one new two storey house over garage in the grounds of Ard Aulin.

Adjoining site to the north

**P.A. Ref. F09A/0100** Permission GRANTED in 2016 for the construction of a two storey detached dwelling of 239.5 sq.m. on site adjacent to existing detached dormer dwelling bungalow including the remodelling of the existing vehicular entrance and driveway, new vehicular entrance and driveway, with all associated drainage, landscaping and ancillary works.

## 5.0 Policy and Context

### 5.1. Development Plan

Fingal County Development Plan 2017-2023 is the statutory plan for the area. The following provisions are considered relevant:

**Zoning:** The site is zoned objective 'RS' which seeks 'to provide for residential development and protect and improve residential amenity'. Residential use is 'permitted in principle' under this zoning objective.

**Objective PM44** Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.

**Objective PM45** Promote the use of contemporary and innovative design solutions subject to the design respecting the character and architectural heritage of the area.

**Objective DMS28** A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. In residential developments over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.

**Objective DMS29** Ensure a separation distance of at least 2.3 metres is provided between the side walls of detached, semi-detached and end of terrace units.

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

**Objective DMS39** New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

**Objective DMS44** Protect areas with a unique, identified residential character which provides a sense of place to an area through design, character, density and/or height and ensure any new development in such areas respects this distinctive character.

**Objective DMS85** Ensure private open spaces for all residential unit types are not unduly overshadowed.

**Objective DMS86** Ensure boundary treatment associated with private open spaces for all residential unit types is designed to protect residential amenity and visual amenity.

**Objective DMS87** Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows:

- 3 bedroom houses or less to have a minimum of 60 sq m of private open space located behind the front building line of the house.
- Houses with 4 or more bedrooms to have a minimum of 75 sq m of private open space located behind the front building line of the house.

Narrow strips of open space to the side of houses shall not be included in the private open space calculations.

**Table 12.8** Car Parking Standards



- Objective WT07** Require all new developments to provide separate foul and surface water drainage systems and to incorporate sustainable urban drainage systems.
- Objective PM64** Protect, preserve and ensure the effective management of trees and groups of trees.
- Objective DA07** Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone.

## 5.2. Natural Heritage Designations

- 5.2.1. The site is located 0.7km to the south-west of the Malahide Estuary SAC (Site Code 000205).

## 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and its location within a fully serviced urban environment, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

An appeal was received from Peter P. Gillett & Associates Consultants representing the third-party appellants Pascal Wynne and Renata Wynne, who reside at neighbouring dwelling Carrickhill Lodge, Carrickhill Road against the decision made

by the Planning Authority to grant permission for the proposed development. The main grounds of appeal are summarised under the headings below;

#### 6.1.1. **Surface Water Treatment**

- There is hard limestone bedrock located close to the surface area of each site on this former quarry, which by its very nature will have extremely limited permeability.
- The applicant proposes to provide soakaways to dispose of rainwater from the roofs of the 3 no. dwellings. This is incorrect in that a trial hole and percolation test was only carried out for the soakaway for House C 'Ard Aulin' and not for the other two houses.
- The extensive hard surface areas around each house will have permeable paving. This will add to the amount of surface water to be disposed on site.
- Given the steep slope over hard underlying rock down to the appellant's house (Carrickhill Lodge) a short distance directly below, the appellants express concern that in storm periods there would be considerable direct run-off which would impact the stability and structural integrity of the boundary wall and appellant's house itself. There may also be significant seepage of rainwater from this embankment outside of heavy rainfall periods.
- In the absence of a connection to a public surface water or foul drain, which is not permitted, the suitability of the site for the safe and effective disposal of surface drainage should be fully established.
- Permeability tests of a trial hole for each soakaway and for smaller trial holes under the permeable paved areas should be carried out to BRE Digest 365 standards and disposal measures designed accordingly, if deemed suitable.
- The application relied on only one such permeability test of a trial hole carried out over five years ago in a different part of the overall site and took no account of the suitability of the paved areas for the disposal or possible merger of run-off from all drained areas.
- In the previous approved development, it was proposed to agree surface water drainage as a compliance submission. This was not explicitly Conditioned as part of the permission.

- The decision by the Planning Authority under the subject application makes no specific requirement with regards surface water drainage despite the appellant's 2 no. letters of objection, which dealt with this shortcoming in some detail.
- It would be reasonable, equitable and prudent to request the applicant to supply sufficient and verifiable evidence that the disposal of surface water drainage can be provided on site without potential run-off that would impinge on public safety and residential amenity.
- The applicants in their response to this appeal should provide the necessary site tests and set out their design rationale for any disposal measures proposed. Failure to do so may lead to civil proceedings in the future if further damage does occur, especially where it has been signaled and forewarned in advance, as in this objection.
- Clarity and a resolution of this important issue and its potential consequences for the appellants is requested.

#### 6.1.2. **Trees**

- It is unclear which trees if any are to be removed along the southern boundary of the site where their location, height, age and condition is of major concern to the appellants in terms of the safety and the stability of boundary walls and their dwelling itself. The Appellants state that ideally all trees within 10 meters should be removed.
- The appellants do not object to some replanting of suitable species, planted away from the boundary wall and of a type that will not grow to an excessive height or produce a very wide root system like cherry trees etc.
- The application drawings refer to the removal of all trees, while the Landscape Plan submitted by way of additional information under F16A/0125 indicated a mix of felling and retention along the southern boundary.
- Condition No. 3 of An Bord Pleanála's grant of permission under PL06F.247355 required written agreement from the Planning Authority regarding tree felling, replacement and protection measures.

- Given the proposed development is effectively a new application, the proposal should contain specific and up-to-date proposals rather than relying on a tree survey and plan presented over five years ago, which was unclear and ambiguous in terms of detail.
- The appellants request the Board to fully clarify and resolve this issue before making a final decision rather than imposing a compliance Condition.
- The applicants in their response to the appeal may take the opportunity to address this issue with a more detailed and up-to-date plan for tree felling and replacement planting, which would deal with the concerns of the appellants and provides certainty and assurance.

#### 6.1.3. **Treatment Of Sloped Area to the rear of the Appellant's Property**

- Some dumping of garden waste and filling up of the area to the rear of the appellant's property has occurred. This has been the subject of a complaint of unauthorised development to the Enforcement Section of the Council.
- The filling in and leveling out of the sloped area to the rear embankment would result in loss of privacy, disturbance and significant risk to the structural stability of the boundary wall and the appellant's dwelling itself.
- The appellants request that no further deposits or infilling of the subject area occur as part of the development or in the future.
- A detailed landscape plan with appropriate details and ground contouring and spot levels is required to show that this will be adhered to. This could be done by way of the applicant's response to this appeal and controlled and monitored by way of planning condition.
- Screening further up the bank by way of tree and other vegetation should also be provided for in this landscape plan.

#### 6.1.4. **Legality of the Decision**

- The legality of the decision made by the Planning Authority for modifications to a previous planning permission is questionable as arguably this should have been an entirely new application due to the extent of the modifications requested.

- A further complication arising from this contention, if accepted, is that Condition No. 2 of the decision made requiring compliance with the conditions of An Bord Pleanála under F16A/0125 & PL 06F.247355 may not be valid or enforceable in planning law.
- The main purpose of this appeal is to achieve clarity on what is proposed and permitted and to ensure that the concerns detailed are fully addressed and resolved in this appeal.

#### **6.1.5. Proposed Timber Fence**

- The appellants request that the proposed timber fence along the southern be increased from 1.2 meters to 1.8 meters in height, to better screen the appellant's property.
- The method of constructing the screen fence is acceptable as it is independent of and does not interfere with the rear boundary wall to the appellant's dwelling.

#### **6.1.6. Overlooking**

- The appellants request that this condition No. 3(a) of the Planning Authority's grant of permission be omitted.
- The relocation of the window from the south-eastern elevation to the south-western elevation is undesirable and un-necessary.
- Its implementation may require a substantial modification to the design of the front of House D, increasing its mass and the perception a further overlooking of the appellant's property.

### **6.2. Applicant Response**

6.2.1. The response received from Michael Tweed Architects, representing the Applicants, is summarised as follows;

- The appellant's concerns related primarily to the structural integrity of the boundary between their property and the applicant's property and to a lesser extent, loss of amenity due to overlooking.

- The applicant puts forward that all these issues were addressed by way of the Further Information response submitted under P.A. Ref. F16A/0125 & ABP Ref PL06F.247355 and the Conditions attached to the grant of permission thereunder.
- The applicant was granted permission on appeal under F16A/0125 & ABP Ref PL06F.247355 in February 2017 for an extension to the existing house, construction of 3 no. houses, alteration to driveways and vehicular entrance and all associated works.
- This was a grant of planning permission to construct two houses along the western side of the site, to extend the existing bungalow Ard Aulin by adding a second storey on top of the existing ground floor to make it a two-storey house, and to construct a dormer style house on the eastern side of the site on level ground alongside Ard Aulin.
- During the planning adjudication process the appellants under the subject appeal submitted observations which were essentially the same as those submitted under the subject application.
- The appellants appealed the decision to grant permission and the grounds of appeal were considered by the Board.
- The outcome was a grant of permission subject to 13 no. Conditions.
- Condition Nos. 2, 3, 7 and to an extent Condition No. 5 of P.A. Ref. F16A/0125 & PL06F.247355 required that prior to commencement of development the applicant to submit for the written agreement of the Planning Authority and Irish Water matters which may have an impact the boundary shared with the appellant.
- These Conditions addressed the concerns of the Appellants.
- Much has been made by the appellants in their observations to the subject application and appeal about a lack of action on the part of the applicant in actioning any of the Conditions imposed under P.A. Ref. F16A/0125 / ABP Ref. PL06F.247355.
- This indicates a misconception on the part of the appellants that, on receipt of a grant permission, the applicant should immediately comply with the conditions attached to the permission.

- Compliance with the conditions of a grant of permission only becomes necessary if it is proposed to commence development.
- No development works have commenced under P.A. Ref. F16A/0125 & ABP Ref. PL06F.247355, hence no action has been required in respect of the Conditions imposed.
- The applicant has done nothing wrong.
- The decision to grant permission under the subject application deals with the Appellant's grounds of appeal by way of Condition Nos. 2, 7 and 10.
- Because the current application is for modifications to permission F16A/0125 & ABP Ref. PL06F.247355, Condition 2 of the subject application requires that the *"terms and conditions of the grant of permission made under F16A/0125; ABP Ref. PL06F.247355 shall be complied with in full in the course of the development herein permitted, save for the changes to the plans submitted for this application"*.
- Condition No. 7 of the grant of permission requires that the *"developer shall ensure that construction works do not impact upon the stability and integrity of the adjoining lands"*.
- In the intervening period since the grant of permission under P.A. Ref. F16A/0125 & ABP Ref. PL06F.247355, there have been a number of circumstances arising which prompted the applicant to reconsider the scale of proposed development on the site and also to make modifications to the original grant of permission. These are as follows;
- Firstly the owners of the various parcels of land accessed by way of the lane off Carrickhill Rd Upper agreed to extending the right of way given by Carrickhill Properties. This facilitates a more efficient access into the site along the northern boundary to Ard Aulin and proposed new dormer house, Jasper.
- Secondly, given the rising costs of construction it was necessary to scale back the extent of the proposed development.
- The extension to the existing house Ard Aulin was significantly reduced and will remain mostly unchanged other than reconfiguring the internal circulation area to allow the main access to move to the northern side of the house.

- A small extension on the south-western side of the house currently forming the front entrance to Ard Aulin will be taken down and a modest entrance porch will be constructed on the northern side of the house.
- The house will be refurbished and brought up to modern standards of energy conservation.
- With regard surface water drainage, the footprint of Ard Aulin will remain unchanged from the footprint of the house as granted permission under P.A. Ref. F16A/0125 & ABP Ref. PL06F.247355. Therefore the proposed alterations under the subject application have no additional impact on the appellant's property than was the case of the previous approved development.
- P.A. Ref. F16A/0125 & ABP Ref. PL06F.247355 granted permission for 2 no. houses side by side on the eastern side of the site. Both of these required the construction of a retaining structure on the western side of the houses. Of these two houses, the one to the south came closest to the appellant's property and bounded the western end of the appellant's garden.
- Construction costs for these two houses were significant, particularly because of the necessity for the retaining structures.
- The applicant therefore decided to omit the house to the south and reconfigure the house to the north so that no retaining structure was necessary, necessitating only minor works to the existing garden retainment to the west of Ard Aulin.
- House A to be known as Cypress Rock, is now remote from the boundary of the appellant's property. There is no retaining structure.
- Because there is now only one house where previously there were two which had a significant impervious footprint, the surface water drainage from the single house Cypress Rock is substantially reduced.
- Both the distance of House A 'Cypress Rock' from the boundary of the appellant's property and the substantial reduction in surface water drainage will result in a significant reduction of impact on the appellant's property compared to the previously approved development.
- The extent of the alterations to the proposed house to the east of Ard Aulin are minor.



- A small two-storey extension on the northern side of the house and a stepping down of the eastern end of the house has allowed the introduction of an additional bedroom with minimal impact on the footprint of the house.
- Since the proposed extension is on the northern side of the house, this will have little or no structural impact on the integrity of the boundary with the appellant's property.
- The proposed extension is small and the additional surface water drainage required will in turn be small.
- The applicant contends that the proposed alterations to the original development permitted under P.A. Ref. F16A/0125 & ABP Ref. PL06F.247355 will have the effect of significantly reducing impact on the appellant's property and should be welcomed by them.
- With regard overlooking of the appellant's property, the original permitted House B closest to the appellant's property has been omitted, which greatly reduces any issues of overlooking.
- The existing house Ard Aulin will remain as a bungalow, hence greatly reducing any issues of overlooking.
- House D 'Jasper' remains substantially unchanged and therefore there is no potential additional overlooking.
- The 1st floor windows of Jasper are 22 meters from the 1st floor windows of the appellant's house. This is deemed an acceptable distance between first floor windows to protect residential amenity.
- It is proposed to carefully landscape the bank between the applicant's property and appellant's property so that the 1<sup>st</sup> floor windows are fully screened.
- The appellant makes reference to "two additional houses" being proposed on the plateau above the banked/ sloped area bounding their northern wall. This is factually incorrect. Ard Aulin is an existing house and will remain in its current form as a bungalow.

- There is only one additional house proposed on the plateau - House A 'Cypress Rock' located to the west of the plateau on lower ground and well away from the appellant's property.
- The appellant makes reference to damage to the existing garden wall at the western end of the appellant's garden due to tree roots. It is intended to remove these trees.
- The appellant claims that information relating to tree removal, landscaping proposals and surface water drainage was essential information that was omitted, and the contention is made by the appellants that this was "disturbing". The proposed development seeks to modify the development permitted under F16A/0125 & ABP Ref. PL06F.247355.
- The proposed modifications have no material effect on the matters raised such as tree removal, landscaping and surface water drainage, as permitted under P.A. Ref. F16A/0125 & ABP Ref. PL06F.247355.
- There were no omissions from the planning application.
- The appellant claims that no compliance submissions were made in respect of Condition Nos. 2 and 3 under P.A. Ref. F16A/0125 & ABP Ref. PL06F.247355 and that "it would be reasonable to assert that details of these important matters should be included in any new application". While a grant of permission allows an applicant to proceed with the development (assuming all other matters such as compliance with building control are completed) it is up to the applicant to decide if or when to proceed with development.
- A decision to grant permission has been to modify the original planning permission but it remains up to the applicant to decide if or when they will develop the site, in accordance with the provisions of its permission.
- Until such time as development proceeds, the applicant has no duty to attend to, or comply with any of the conditions attached to a planning permission.
- The normal period of a planning permission is 5 years. For this reason, matters relating to tree removal, landscaping and surface water drainage are almost invariably dealt with in planning permissions by way of conditions attached to a

permission, which require compliance submission prior to commencement of development.

- In this way, whenever development might commence, the information submitted is current and appropriate to the date of commencement of development, rather than to the date of grant of permission, which may be several years later.
- The decision to grant permission by the Planning Authority under the subject application gives recognition to the fact that it is a modifying permission by reference to Condition 2, whereby all relevant conditions under F16A/0125 & PL06F.247355 must be complied prior to commencement of development.
- Compliance with all the conditions attached to both planning permissions must be obtained, and full documentation, calculations, etc. will be submitted for approval. All of this protects the amenities of the appellant's property.
- Currently, only Ard Aulin is built on the site and the surface water is connected to the existing sewer.
- The proposed development provides 2 no. new houses, Cypress Rock and Jasper, and has the effect of requiring the surface water from Ard Aulin to be drained other than by way of the existing sewer.
- All the proposed hardstanding and paved surfaces in the new development are to be constructed of permeable paving or gravel.
- The appellant contends that this will add to the amount of surface water disposed on site. This is incorrect and a misunderstanding of the effects of permeable paving.
- The use of permeable paving and gravel allows any rainwater to drain freely into the soil in the same manner as if these areas were planting or lawns.
- There is no difference in the rainwater load on to the site, whether these areas are paved or unpaved.
- It is proposed that rainwater from the roof areas of Cypress Rock and Jasper will be drained to approved soakaways.

- The rainwater will drain into the land on the site. Consequently, the introduction of the houses Cypress Rock and Jasper creates no additional rainwater soakage into the ground than exists currently.
- It is incorrect to claim that they contribute to any additional rainwater run-off.
- The only additional rainwater soakage onto the site will be from the existing roof of Ard Aulin.
- The overall area of the proposed 3 sites, Cypress Rock, Ard Aulin and Jasper extends to 2500 sq.m.
- The area of the roof of Ard Aulin is approx. 170 sq.m., equivalent to about 7% of the site area.
- It is proposed that this will drain into a suitable and approved soakaway.
- The applicant contends that the additional rainwater lowered from the roof of Ard Aulin will be small in comparison to the size of the site.
- As with all the proposed soakaways, these will only be constructed once they have been tested and approved by the Local Authority.
- If the ground is found to be unsuitable, then an alternative will have to be agreed.
- Compliance with these matters will happen prior to commencement of developments, if or when the applicant decides to commence development.
- Trees are all comprehensively dealt with by way of Condition No. 10 attached to the decision to grant permission.
- The appropriate time to address these matters in full and in detail is just prior to commencement of development works, as stipulated in Condition No. 10.
- All the concerns of the appellant will be dealt with at this time.
- The applicant confirms that no filling has taken place on the sloped area to the rear of the appellant's property, nor is the intention at any time in the future to fill this area.
- The area has become very overgrown with scrub and brambles. This is natural wild growth, not filling of the area.

- The appellant did make a complaint to the Planning Authority that unauthorised development was occurring. This was investigated by the Enforcement Section.
- The applicant clarified that no development work had commenced, that the material in question was simply garden waste from the clearing of an extensive bramble patch in the existing Ard Aulin garden, and that therefore this was not unauthorised development. Shortly after the complaint all the garden waste was moved off site.
- The proposed development does not include or involve the filling in or leveling of the sloped area to the rear embankment. However, it is the intention to take out the trees along this bank and to clean and tidy up the grounds.
- The applicant is agreeable to providing a 1.8m high screen fence along the southern boundary of the site, as suggested by the appellants.
- The applicant is at a loss to the appellant's claim that they should have sought an "entirely new application". The applicant still wishes to carry out the principal elements of granted permission under P.A. Ref. F16A/0125 & ABP Ref. PL06F.247355 but in a modified form.
- Subject to advice from the Applicants Agent, modifying planning permission was sought and it would appear that the Planning Authority agreed and registered the submission as a valid planning application.
- The applicant is at a loss which regards the appellant's claim that Condition No. 2 of the decision to grant permission under P.A. Ref. F16A/0125 / ABP Ref. PL06F.247355 may not be valid or enforceable in planning law. Such a condition is regularly attached to a planning permission for modifications to a previous permission to ensure that all conditions from the "root" permission through any modifying permissions are all complied with.
- The applicant fully intends to comply with all of the conditions of F16A/0125 / ABP Ref. PL06F.247355 and the subject application/appeal if granted permission.

### 6.3. Planning Authority Response

The Planning Authority confirms that the proposed development was assessed against the policies and objectives of the Fingal Development Plan 2017 – 2023 and existing Government policy and guidelines. The proposed development was assessed having

regard to the Development Plan zoning objective and its impact on neighbouring property and the character of the area. The Planning Authority requests An Bord Pleanála to uphold its decision. In the event the Planning Authority's decision is upheld, the Planning Authority requests that Condition Nos. 3, 13 and 14 are included in An Bord Pleanála's determination.

#### 6.4. **Observations**

None

### 7.0 **Assessment**

Having examined the application details and all other documentation on file, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows;

- Drainage and Structural Stability Issues,
- Trees and Landscaping,
- Treatment of Sloped Areas,
- Legality of the Decision,
- Overlooking,
- Appropriate Assessment.

I am satisfied that all other issues were fully addressed by the Planning Authority and that no other substantive issues arise. The issues for consideration are addressed below.

#### 7.1. **Drainage & Structural Stability Issues**

7.1.1. The appellants object to the proposed development on the grounds, inter alia, that;

- The site has extremely limited permeability, by reason that it is a former quarry with hard limestone bedrock located close to the surface area of each site.
- The extensive hard surface areas around each house will add to the amount of surface water drained from the site.

- Given the steep slope of the site over hard underlying bedrock, there will be considerable direct run-off and seepage of rainwater during storm, heavy rain and other periods. This would impact the stability and structural integrity of the southern boundary wall and the appellant's dwelling Carrickhill Lodge located below / to the south of the site.
- A percolation test of a trial hole was only carried out for the soakaway for House C 'Ard Aulin' and not the other 2 no. proposed dwellings.
- The application relies on only one permeability test of a trial hole carried out over five years ago in a different part of the site and took no account of the suitability of the paved areas for surface water drainage.
- Surface Water Drainage was not dealt by way of Condition under the original permission, P.A. Ref. F16A/0125 & ABP Ref PL06F.247355.
- In the absence of a connection to a public surface water or foul drain, the suitability of the site for the safe and effective disposal of surface drainage should be fully established.
- Permeability tests of trial holes for each soakaway should be carried out to BRE Digest 365 standards and disposal measures designed accordingly.
- The decision by the Planning Authority under the subject application makes no requirement with regards surface water drainage despite the appellant's 2 no. letters of objection.
- The applicant should be requested to supply sufficient and verifiable evidence that the disposal of surface water drainage can be provided on site without potential run-off that would impinge public safety and residential amenity.

7.1.2. The applicant contends this, as detailed in Section 6.2 above. The Planning Authority in its assessment addressed the issue of stability whereby it refers to Item No. 1 of Further Information submitted under P.A. Ref. F16A/0125, whereby the applicant submitted a report from Aidan Egan Engineers, which stated that the development as proposed took account of the existing topography of the site and would not negatively affect the current stability or loading of retaining walls or boundaries of adjacent properties. The Planning Authority report states that the applicant will be requested to submit a report from a suitably qualified professional demonstrating that the proposed

development can be safely constructed without impacting upon the stability of the site and neighboring properties, particularly Carrickhill Lodge. Condition No. 7 of the grant of permission by the Planning Authority addressed this issue requiring that *'the developer shall ensure that construction works do not impact upon the stability and integrity of the adjoining lands'*.

7.1.3. With regards Drainage, the Council's Water Services Division report outlined no objections to the proposed development subject to standard Conditions. Condition No. 8 of the grant of permission by the Planning Authority requires that *'the developer shall comply with the following requirements of the Planning Authority; (a) No surface water / rainwater shall discharge into the foul water system under any circumstances. (b) The surface water drainage shall be in compliance with the 'Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April 2006'*. Condition No. 2 of the grant of permission requires that *'the terms and conditions of the grant of permission under Reg. Ref. F16A/0125 / An Bord Pleanála PL 06.247355 shall be complied with in full, save for the changes to the plans submitted or this application'*.

7.1.4. The proposed development under the subject application is seeking modifications to the development permitted on appeal under P.A. Ref. F16A/0125 & ABP Ref PL06F.247355. The principal amendments provide for the omission of previously permitted House B and modifications to the layout and design and House A and D. The drainage scheme of the permitted development is shown on Dwg. No. P-01 and the drainage scheme of the proposed modifications to the permitted development are shown on Dwg. P-02. Having regard to the Planning Inspectors report of the original permission under ABP Ref PL06F.247355, the issue of Structural Stability was addressed, whereby the Inspector concurred with the Planning Authority that it would be reasonable to attach a condition requiring details of boundary treatment around the site and along common boundaries to any grant of permission. Condition No. 2 imposed by the Board under ABP Ref PL06F.247355 requires that *'details of all existing and proposed boundary fencing/walling along the perimeter of the site and along common boundaries, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. These details shall include full provision to ensure the structural integrity of the southern boundary of the subject site, and provision to ensure that any surface water provision does not interfere with, or impact upon, the structural integrity of this common boundary'*. Condition No. 2



imposed by the Board under ABP Ref PL06F.247355 requires that '*Water supply and drainage arrangements, including the attenuation and disposal of surface water, taking into account the requirements of condition number 2 of this permission, shall comply with the requirements of the planning authority for such works and services*'.

7.1.5. Given the nature of the proposed development which provides for a reduction in scale of permitted development on the site and surface water run-off thereupon, I am satisfied that the terms of Condition Nos. 2 and 5 under ABP Ref PL06F.247355, along with Condition Nos. 2, 7 and 8 imposed by the Planning Authority under the subject application will protect the structural stability of the southern boundary wall and the appellant's dwelling Carrickhill Lodge and ensure the proposal complies with the Council requirements and drainage standards. I recommend, therefore, that the appeal should not be upheld in relation to this issue.

## **7.2. Trees and Landscaping**

- 7.2.1. The appellants object to the proposed development on the grounds, inter alia, that;
- There is lack of clarity on the trees to be removed along the southern boundary of the site, where their location, height, age and condition is of major concern to the appellants in terms of the safety and stability of the boundary wall and appellant's dwelling Carrickhill Lodge.
  - The drawings submitted with the application refer to the removal of all trees while the Landscape Plan submitted by way of additional information under F16A/0125 indicated a mix of felling and retention of trees along the southern boundary.
  - The proposed development should provide specific and up-to-date plans and proposals rather than relying on a tree survey and plan presented over five years ago, which was unclear and ambiguous in terms of detail.
- 7.2.2. The applicant contends this, as detailed in Section 6.2 above. The Planning Authority in its assessment refers to the Parks and Green Infrastructure Department report and the Conditions recommended thereunder, which were imposed by way of Condition No. 10 of the grant of permission. This condition requires that;
- (a) Prior to the commencement of site works a detailed landscaping plan shall be submitted to the Parks & Green Infrastructure Division for the written approval showing*

*tree protection measures to BS5837 (2012) standard (e.g. tree protective fencing, ground protection mats and 'No Dig' construction techniques) for retained trees along the southern & western boundaries, replacement tree planting on a minimum size 10-12cm girth on a 'one-for-one' basis for those removed. Boundary treatments for both existing external and proposed internal boundaries shall be set out in a comprehensive manner and shall include boundary heights to the front of the dwellings. These shall be set out and agreed in writing. Note strip foundations for boundary walls are not permitted within root protection areas.*

*(b) All tree planting shall be completed in the first planting season following substantial completion of works and any failures replaced at the developer's expense until such time that the plantings are established.*

As detailed above, Condition No. 7 of the grant of permission requires that *'the developer shall ensure that construction works do not impact upon the stability and integrity of the adjoining lands'*.

7.2.3. The issue of structural stability has been addressed under Section 7.1 above. Having regard to the Planning Inspector's report of the original permission under ABP Ref PL06F.247355, the issue of Trees and Landscaping was addressed, whereby the following was detailed;

- The amenity value of the existing mature trees on site was noted.
- The initial landscape masterplan submitted with the application indicated that the majority of the trees would be retained save as to facilitate the remodelling of the existing vehicular access.
- In response to a request for further information however, the arboricultural impact assessment and a tree survey report recommended that all 42 trees within the site should be removed.
- The landscape plan and other drawings submitted with the application were not updated to reflect this intention.
- Fingal County Council Parks Planning Section noted that the majority of the existing trees are not the most appropriate, in proximity to houses because of limb drop and request that the applicant be required to provide a detailed landscape plan clearly indicating a replanting programme to compensate for the loss of trees.

- The loss of the native trees would be regrettable but not one which warrants a recommendation to refuse permission in this instance, particularly noting the views of the Planning Parks Section report.

In conclusion, the Planning Inspector recommended that a revised landscape plan, including a record of trees which can be retained, together with details of replanting proposals to compensate for the loss of trees which are necessary to be removed to be agreed with the Planning Authority by way of a compliance condition, in the event of a grant of permission. Condition No. 3 imposed by the Board under ABP Ref PL06F.247355 requires that *'A detailed landscaping plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This landscaping plan shall provide for the retention of trees along the southern and western boundaries of the site, where this can be achieved without compromising public safety and the longer-term stability of these trees. The landscaping plan shall also provide for replanting where such trees cannot be retained. Approved replanting shall be carried out in the first planting season following the substantial completion of the three dwellings hereby permitted, or, if the dwellings are constructed at different times, after the substantial completion of the nearest dwelling(s) to the relevant trees'*.

7.2.4. Given that the proposed development is seeking modifications to development permitted under F16A/0125 & ABP Ref PL06F.247355, and having regard in particular to the Condition Nos. 2 and 3 imposed by the Board under PL06F.247355 and Condition Nos. 2, 7 and 10 imposed by the Planning Authority under the subject application, I am satisfied that the terms of these Conditions will protect the structural stability of the boundary wall and appellant's dwelling Carrickhill Lodge located below the site and ensure the proposal complies with Council standards with regards the protection, preservation and management of trees, in accordance with Objective PM64 of the Development Plan. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

### **7.3. Treatment Of Sloped Areas**

7.3.1. The appellants express concern that some dumping of garden waste and filling up of the area to the rear of the appellants property has occurred and has been the subject enforcement proceedings with the Planning Authority. As detailed in Section 6.2

above, the applicant contends that no filling has taken place on the sloped area to the rear (north) of the appellant's property and puts forward that this area has become very overgrown with scrub and brambles. The applicant acknowledges that the appellant made a complaint of unauthorised development with this regard to the Planning Authority, which was investigated by the Enforcement Section. The applicant clarified to the Enforcement Section that no development work had commenced and that the material in question was simply garden waste from the clearing of an extensive bramble patch in the existing Ard Aulin garden. Shortly after the complaint, all the garden waste was moved off the site. The Planning Authority makes no reference to on-going enforcement proceedings on the site. It is my view that any unauthorised development at the site, as asserted by the applicant should be dealt with by enforcement proceedings, which is a function of the Council.

- 7.3.2. The appellants also express concern that the filling in and leveling out of the sloped area to the rear of the appellants property, Carrickhill Lodge, would result in loss of privacy, disturbance and significant risk to the structural stability of the boundary wall and the appellant's dwelling itself. The issue of structural stability has been addressed above. With regards overlooking, the proposed development is seeking modifications to the layout and design of previously approved Houses A, C and D, the omission of previously approved House B (closest to the boundary with Carrickhill Lodge) and is not seeking any changes to the topography and ground levels of the land to the rear of Carrickhill Lodge. The separation distance between House C and D from the southern boundary will remain unchanged. The principal of the dwellings has been approved by the Board under ABP Ref PL06F.247355. It is my view that the modifications proposed will not have a material affect on the lands to the rear of Carrickhill Lodge and, as such will not result in a loss of privacy of Carrickhill Lodge, a put forward by the appellants. I consider therefore, the appeal should not be upheld in relation to this issue.

#### **7.4. Legality of the Decision**

- 7.4.1. The appellants question the legality of the decision made by the Planning Authority to grant permission for the modifications to the permitted development, given that a new application should have been sought due to the extent of the modifications requested. The appellants also contend that Condition No. 2 of the grant of permission requiring

compliance with the conditions of An Bord Pleanála under F16A/0125 & PL 06F.247355 may not be valid or enforceable in planning law.

- 7.4.2. With regard the legality of the decision of the Planning Authority to grant permission for modifications to the permitted development, I refer the Board to the ruling of the High Court in the case of South-West Shopping Centre Promotion Association Ltd. And Stapleyside Company v. An Bord Pleanála [2016] IEHC 84 whereby Ms. Justice Costello judged that *'the Board had jurisdiction to treat the application for planning permission as a "revision", "variation" or "amendment" of existing planning permissions and that it acted intra vires in assessing the application as an application to amend or vary an existing planning permission'* and that *'I see no reason in principle why an extended planning permission may not be amended in the same manner as a planning permission may be amended within the normal life of the permission i.e. by imposing conditions that save, as amended, the planning permission be carried out in accordance with the terms of the extant planning permission'*. Furthermore Ms. Justice Costello judged that *'the parts of the development which are not modified or varied have the benefit of a valid planning permission and thus issues relating to the totality of the development (as opposed to the modifications) should not be revisited'*. Ms. Justice Costello concludes that *'the correct basis upon which to assess an application to amend existing planning permissions is to assess the proposed changes, variations and amendments in the light of all applicable current development plans and ministerial guidelines and other planning policies. In light of those matters the proposed amendments should be assessed to see whether they meet the requirements of the proper planning and sustainable development of the area. Matters that are the subject of an extant grant of planning permission ought not to be reassessed. Accordingly, I hold that the Board was required to assess only the modifications of the Development in the application to amend the existing planning permissions for Development'*. On this basis and having regard to the nature, scale and extent of the proposed development which seek modifications to the development as permitted by the Board under ABP Ref PL06F.247355, I am satisfied that the Planning Authority and the Board have the jurisdiction to assess an application to amend or vary an existing planning permission. I note Condition No. 1 of the Planning Authority's grant of permission requires that *'The terms and conditions of the grant of permission made by Fingal County Council under Reg. Ref. F16A/0125 / An Bord*

*Pleanála PL 06F.247355 shall be complied with in full in the course of the development herein permitted, save for the changes to the plans submitted for this applications'.* Such Condition ensures the planning permission is carried out in accordance with the terms of the extant planning permission. The appellant's contention that Condition No. 2 of the grant of permission requiring compliance with the conditions of An Bord Pleanála under F16A/0125 & PL 06F.247355 may not be valid or enforceable in planning law, is without basis and contrary to the ruling of the aforementioned case. On this basis, I consider the appeal should not be upheld in relation to this issue.

## 7.5. Overlooking

The appellants request that Condition No. 3 (a) of the grant of permission by the Planning Authority be omitted. Condition No. 3 (a) requires that the *'Proposed first window on the south-eastern elevation of House D (Jasper) as demonstrated on drawing no. P-05 shall be omitted. This window shall be relocated to the south-western elevation in the form of a dormer structure which would reflect the dimensions of the two other dormer structures on this roof slope including set down from the ridge'*. The appellants put forward that the relocation of the window from the south-eastern elevation to the south-western elevation (at first floor level) is undesirable and unnecessary and that its implementation may require a substantial modification to the design of the front of House D, increasing its mass and the perception further overlooking of the appellant's property.

- 7.5.1. The proposed first floor window ope on the south-eastern elevation would be 5.4m from the boundary is faces. Chapter 12 of the Development Plan sets out standards with regards separation distances and requires that *'A minimum standard of 22 metres separation between directly opposing rear first floor windows shall be observed, normally resulting in a minimum rear garden depth of 11 metres'*. While I note that there is no dwelling located directly to the south-east of proposed House Type D, I consider that relocation of the window ope to the south-western elevation would prevent overlooking of the private amenity space serving neighbouring dwelling Ard Carrick. The relocation of the window ope to the south-western elevation would be consistent with the dormer windows on the rear / south-western elevation of the dwelling as permitted under Reg. Ref. F16A/0125 & An Bord Pleanála PL 06F.247355

and its separation distance of c. 23m from the first floor dormer window opening serving Carrickhill Lodge would comply with Objective DMS28 of the Development Plan.

#### 7.6. **Appropriate Assessment**

7.7. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### 8.0 **Recommendation**

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

#### 9.0 **Reasons and Considerations**

9.1.1. Having regard to the layout, design and scale of the proposed modifications to the development permitted under ABP Ref. PL06F.247355 and P.A. Ref. F16A/0125 and the surrounding existing development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of property in the vicinity or the amenities afforded to the occupants of the permitted housing, would not prejudice the orderly development of the surrounding area and would be consistent with the zoning objective pertaining to the site 'RS' to 'provide for residential development and protect and improve residential amenity'. The proposed development would therefore be in keeping with the proper planning and sustainable development of the area.

#### 10.0 **Conditions**

1.	The development shall be completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and
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	<p>particulars submitted on the 25<sup>th</sup> day of January 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on appeal on the 14th day of February 2017 under ABP Ref. PL06F.247355, and any agreements entered into thereunder.</p> <p><b>Reason:</b> In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.</p>
3.	<p>Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority, revised drawings detailing the following amendments;</p> <p>(a) The proposed first window on the south-eastern elevation of House D (Jasper) as demonstrated on drawing no. P-05 shall be omitted. This window shall be relocated to the south-western rear elevation in the form of a dormer structure, reflecting the dimensions of the two other dormer structures on this roof slope including a set down from the ridge. In the event a dormer structure cannot be provided on this roof slope, a rooflight may be provided.</p> <p>(b) Privacy screens with obscure glazing, c. 1.8m high shall be provided to each side of the first floor terrace associated with House Type A.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>Prior to commencement of development, the developer shall submit for the written agreement a structural report demonstrating the proposed development would not impact on the stability and integrity of adjoining lands, property and common boundary walls.</p>



	<p><b>Reason:</b> In the interest of protecting the residential amenities of adjoining property.</p>
5.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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Brendan Coyne  
Planning Inspector

11<sup>th</sup> August 2021