



An
Bord
Pleanála

Inspector's Report

ABP-309734-21

Development	The construction of 4 No. detached residential dwellings together with all associated site works and services.
Location	Site to the rear of 'Tigín Bán', Channel Road, Rush, Co Dublin, K56 NN63.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F20A/0678.
Applicant(s)	William Andrews.
Type of Application	Planning Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party.
Appellants	Willian Andrews.
Observers	Felix O'Rourke.
Date of Site Inspection	8 th day of June, 2021.
Inspector	Patricia-Marie Young

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	6
3.4. Third Party Observations	7
4.0 Planning History.....	7
5.0 Policy & Context	8
5.4. Development Plan.....	9
5.5. Variation No. 2, adopted on the 19 th day of June, 2020 is relevant.	10
5.6. Natural Heritage Designations	12
5.7. EIA Screening	12
6.0 The Appeal	13
6.1. Grounds of Appeal	13
6.2. Planning Authority Response	15
6.3. Observations	16
7.0 Assessment.....	16
8.0 Appropriate Assessment.....	42
9.0 Recommendation.....	43
10.0 Reasons and Considerations	43

1.0 Site Location and Description

- 1.1. The irregular shaped appeal site has a stated 0.53ha site area and it is located on the southern side of Channel Road, c126m to the south-west of the heavily trafficked Channel Roads junction with Daly's Lane and Healy's Lane as well as c530m to the north-east of Channel Road's intersection with Spout Road, to the south-west of Rush's town centre, in north County Dublin.
- 1.2. The site consists of a relatively flat portion of land that at the time of my site inspection was in mowed grass with the main area of the site laying behind the rear boundary of two detached dwelling houses that bound the site to the north-east and south-west. The main stretch of the western boundary is adjoined by a field. The boundaries to the side and rear of these adjoining properties are open and porous.
- 1.3. To the rear the site is bound by the small residential development of Rogerstown Court.
- 1.4. The surrounding area is predominantly residential in character though there are many market garden and small horticultural growers in this area also.

2.0 Proposed Development

- 2.1. Planning permission is sought for a development consisting of the construction of 4 no. detached dwelling houses (2 No. 4-bedroom units and 2 No. 5-bedroom units) with an overall floor area of 1,222.4m² consisting of:
 - 2 No. House Type A with a given 191m² gross floor area and each served by a separate domestic garage with a given 29.6m² gross floor area
 - 2 No. House Type B at 361m² and each served by a separate domestic garage of 29.6m².
 - Each dwelling served by 2 no. within curtilage car parking spaces.
 - Connection to Public Foul Drainage Network and Public Water Supply via Channel Road.
 - New vehicular access onto Channel Road.
 - All associated site development works and services.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse planning permission for the following 7 stated reasons:

- “1. *The site is located within the 'RU' zoning objective under the Fingal Development Plan, 2017 - 2023, the objective of which is to 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage' and in a 'Rural Area under Strong Urban Influence' in the 'Sustainable Rural Housing Guidelines for Planning Authorities' (DoEHLG, 2005). The applicant has not demonstrated their eligibility to be considered for dwellings in the rural area of Fingal. The proposed development would contravene materially the rural settlement strategy of the Fingal Development Plan 2017-2023 as it relates to the South Shore area of Rush including Objectives RF43 and RF44, would be contrary to the Ministerial Guidelines and the proper planning and sustainable development of the area.*
2. *The proposed development of 4 dwellings would constitute a multiple unit housing estate, defined as a development of more than 1 no. house, in an area which is subject to a rural zoning objective and would therefore materially contravene Green Infrastructure Map Based Objective 21, the 'RU' Rural land use zoning objective pertaining to the site and the Fingal Development Plan 2017-2023. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
3. *Having regard to the proximity of the proposed development to the coast and in the absence of a flood risk assessment in accordance with the requirements of the Planning System and Flood Risk Management - Guidelines for Planning Authorities, November 2009, the proposal would be contrary to the proper planning and sustainable development of the area.*
4. *The proposed development in its current format would be injurious to the residential amenity of future residents of Houses B-1 and B-2 by reason of*

overlooking opportunities between these proposed units, and as such would be contrary to the proper planning and sustainable development of the area.

5. *The pumping station proposed to serve the development would be located below the minimum separation distance from the dwelling houses as specified in Objective WT12 of the Fingal Development Plan 2017-2023 which relates to provision of appropriate noise and odour buffers from development. As such the proposed development would contravene materially Objective WT12 and would therefore be contrary to the proper planning and sustainable development of the area.*
6. *Insufficient information has been submitted to enable the Planning Authority to fully assess the transportation aspects of the proposed development. In the absence of such information the proposal would be contrary to the proper planning and sustainable development of the area.*
7. *The applicant has not provided adequate information which demonstrates feasibility of connection of the proposed development to the public water and wastewater infrastructure. The proposal would therefore be contrary to the proper planning and sustainable development of the area.”*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report, dated the 18th day of February, 2021, includes the following comments:

- Development on this site is subject to rural settlement strategy. This has not been demonstrated.
- The Green Infrastructure Map Based Objective 21 excludes multiple unit housing estates.
- Generally, the proposed design and finishes are acceptable.
- No undue overlooking arises.
- Water, drainage, and flooding issues raised.
- A comprehensive landscape plan required.

- Any grant of permission should include an archaeological condition.
- This contravenes Objective WT12 of the Development Plan.
- Concludes with a recommendation for refusal.

3.2.2. **Other Technical Reports**

Water Services: No objection, subject to safeguards.

Transportation Planning Section: Includes the following comments:

- The two car parking spaces in curtilage for each dwelling unit is acceptable.
- From a site visit the sightlines are achievable. Yet drawings do not demonstrate this.
- The new front boundary of the site should not exceed a height of 0.9m to ensure adequate pedestrian/vehicle inter-visibility.
- Internal layout is adequate.
- The provision of the junction may require consent.
- All works should be designed and carried out to the Council's standard.

This report concludes with a recommendation for additional information.

Parks & Green Infrastructure Division: Should permission be granted a landscape condition; a contribution to a Local Class 1 Open Space facilities in the Rush Area (Rogerstown Park) and compensatory trees for any loss of trees on Channel Road recommended.

3.3. **Prescribed Bodies**

3.3.1. **Irish Water:** Additional Information sought.

3.3.2. **Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media:** In their response they raise a concern that due to the location of the site that it is possible that subsurface archaeological remains could be encountered during the construction phases that involve ground disturbance. It is therefore recommended that Archaeological Monitoring condition be imposed, and they set out the requirements they recommend include for the same.

3.4. Third Party Observations

3.4.1. During the course of the Planning Authority's determination received a number of Third-Party Observations which raised the following issues:

- This site is not the same context as the precedent example given.
- Concerns are raised in relation to the level of overlooking that would arise from this development on established residential amenities.
- The bank/right of way should not be impacted as it is important to the biodiversity of this area.
- The addition of more houses will destroy further the limited reserve left for nature in this area.
- The design and scale of the development does not positively integrate with the character of the area.
- Back-to-Back developments are not characteristic of this area.
- The overhead power lines run above the shared perimeter/dividing embankment will limit the planting at the perimeters of the site.
- This local area is characterised by market gardening with balanced residential dwellings.
- From time-to-time waterbirds land to rest or forage on the shared embankment.
- Traffic hazard and road safety concerns raised.
- This development is not consistent with the settlement strategy.

4.0 Planning History

4.1. Site:

4.1.1. None.

4.2. In the Vicinity:

4.2.1. **ABP-305876-19 (P.A. F19A/0385):** On appeal to the Board planning permission was **granted** subject to conditions for the construction of four detached dwelling units, a vehicular entrance, together with all associated site works and services.

5.0 Policy & Context

5.1. National

- **National Planning Framework – Project Ireland 2040, 2018.**

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, it refers to the need to facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing.

- **Sustainable Rural Housing Guidelines, 2005.**

These guidelines set out the requirement for a distinction to be made between ‘*Urban Generated*’ and ‘*Rural Generated*’ housing need. A number of rural typologies are identified including ‘*stronger rural areas*’ which are defined as those with generally stable population levels within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas. Examples are given to the types of circumstances for which ‘*Rural Generated Housing Need*’ might apply. These include ‘*persons who are an intrinsic part of the rural community*’ and ‘*persons working full time or part time in rural areas*’.

5.2. Ministerial Guidance

The following Section 28 Ministerial Guidelines and other national policy documents are relevant:

- The Urban Development and Building Height - Guidelines for Planning Authorities (2018).
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Area (2009).
- Urban Design Manual, A Best Practice (DoEHLG, 2009).
- The Planning System and Flood Risk Management Guidelines for Planning Authorities, 2009.

5.3. Regional

5.3.1. Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy (RSES) 2019 to 2031.

This is a strategic plan which identifies regional assets, opportunities and pressures as well as sets out appropriate policy responses in the form of Regional Policy Objectives (RPO's). It provides a framework at a strategic level for investment to better manage spatial planning and economic development to sustainably grow the Region to 2031 and beyond. Of relevance to the development sought under this application is the following objective:

RPO 4.83: Support the consolidation of the town and village network to ensure that development proceeds sustainably and at an appropriate scale, level, and pace in line with the core strategies of the county development plans.

Section 4.8 deals specifically with Rural Places, Towns, Villages, and the Countryside.

5.4. Development Plan

5.4.1. The Fingal County Development Plan, 2017 to 2023, as varied, is the applicable Development Plan.

5.4.2. The site is located outside the Rush development boundary, in an area zoned objective 'RU' which seeks to "*protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage*". The rural settlement strategy is applicable to lands zoned 'RU'.

5.4.3. The site is also within the designated '*Highly Sensitive Landscape*' area indicated on the Green Infrastructure Map associated with the Development Plan.

5.4.4. The Channel Road is an '*Indicative Cycle/Pedestrian Route*'.

5.4.5. Local Objective 24 of the Development is relevant. It states that the Planning Authority will seek to: "*ensure that any new residential development in the South Shore, indicated on the map by a boundary line, is in compliance with the specific housing policy relevant to the South Shore Area*". These provisions are set out in the Rural Settlement Strategy' which contains Objective RF43 to 48 inclusive which as applied to the South Shore Area of Rush allows for applicants who may have been resident

within the South Shore Area of Rush or within the confines of the Rush development boundary for a minimum of 10 years to be considered for a dwelling within the rural zoned areas of the South Shore.

- 5.4.6. Other criteria include that the subject site is not subject to flooding or erosion and that the proposed dwelling will not adversely affect the ecological integrity of any Natura 2000 site. This is set out in Objective RF46 and Objective RF47 of the Development Plan, respectively.
- 5.4.7. Objective DMS24 of the Development Plan sets out the minimum requirements in respect of internal rooms and storage provision for dwelling units.
- 5.4.8. Objective DMS29 of the Development Plan sets out a separation distance of at least 2.3m is provided between the side walls of detached semi-detached and end of terrace units.
- 5.4.9. Objective DMS39 of the Development Plan sets out that new infill development shall respect the height and massing of existing residential units. It also sets out that such developments shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.
- 5.4.10. Objective GI20 of the Development Plan requires all new development to contribute to the protection and enhancement of existing green infrastructure and the delivery of new green infrastructure.
- 5.4.11. The Green Infrastructure Map Based Objective 21: “*excludes multiple housing estates in the South Shore area of Rush*”. This is applicable to the subject site.
- 5.4.12. Map Based Local Objective 21 is also applicable to the subject site, and it states: “*ensure that any new residential development in the South Shore, indicated on the map by a boundary line, is in compliance with the specific housing policy relevant to the South Shore area*”.
- 5.4.13. Section 12.4 of the Development Plan sets out the Design Criteria for Residential Development.

5.5. Variation No. 2, adopted on the 19th day of June, 2020 is relevant.

- 5.5.1. This Variation of the Development Plan is particularly relevant to the context of this appeal before the Board.

Of particular note are the following objectives:

- Objective SS01: Seeks to consolidate the vast majority of the County's growth into strong and dynamic urban centres of the Metropolitan Area while directing development in the core to towns and villages, as advocated by national and regional planning guidance.
- Objective SS01a: Seeks to support the implementation of and promote development consistent with the National Strategic Outcome of Compact Growth as outlined in the NPF and RSES.
- Objective SS01b: Seeks to consolidate the existing urban footprint by ensuring 50% of all new homes within or contiguous to the built-up area of Dublin City and suburbs; and 30% of all new homes within targeted existing built-up areas in order to achieve compact growth of urban settlements as advocated by the RSES.
- Objective SS02: Seeks to ensure that all proposed residential developments accord with the County's Settlement Strategy.
- Objective SS02a: Indicates that development will be permitted in principle on lands where there is a LAP or Masterplan in place.
- Objective SS02b: Indicates that new residential development will be focused on appropriately zoned lands within the County.
- Objective SS03: Seeks to identify lands for residential development in order to achieve the housing and population targets set out in the Core Strategy with a focus on urban regeneration and compact growth.
- Objective SS03a: Seeks to support the implementation of and promote development consistent with the National Strategic Outcome of Compact Growth as outlined in the NPF and the Regional Strategic Outcome of Compact Growth and Regeneration as set out in the RSES.
- Objective SS16: Achievement of higher densities in urban areas where in keeping with the character and form of existing residential communities or otherwise appropriate to their context.

5.6. Natural Heritage Designations

- 5.6.1. This appeal site is located c490m to the north west of Rogerstown Estuary SPA and SAC at its nearest point. At further distance of c2.9km to the east of the site is Rockabill to Dalkey Island SAC (Site Code: 003000).

5.7. EIA Screening

- 5.7.1. Having regard to the Class of development described under Section 10(b) of Part 2 of Schedule 5 of the Planning & Development Regulations, 2001, as amended:

Construction of more than 500 dwelling units

Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

- 5.7.2. With the proposed development sought under this application consisting of planning permission for the construction of a modest 4 dwelling unit residential scheme on a site of 0.53ha in its given area this is significantly below the dwelling unit and area threshold.
- 5.7.3. As per section 172(1)(b) of the Planning and Development Act 2000, as amended, an EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the said Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment.
- 5.7.4. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination of the proposed development as originally submitted and also as revised by way of further information.
- 5.7.5. I consider that there is significant lateral separation distance between the site and the nearest European site having regard to the nature, scale and extent of the modest development proposed with the area in between consisting of mainly residentially developed land with public water and drainage infrastructure. The site lies outside of an area identified for potential risk, and there would be assimilative capacity of any

pollution or contamination should it occur during the construction or operational phase of the development sought under this application due to the separation distance between both SAC and SPA identified, with these European sites essentially wrapping around the nearby coastline.

- 5.7.6. On preliminary examination the potential for significant effects on the environment can be ruled out and therefore, there is no need for an EIA and a screening determination in this instance.

5.8. **Built Heritage**

- 5.8.1. This area has a long history of human settlement. The nearest National Monuments relative to the site are located within the curtilage of Whitestown (BA E BY) an NIAH Registered Church Ruin, Graveyard/Cemetery dating back to c1720 to 1760 which has a 'Regional Rating', and its categories of special interest are given as 'Artistic' and 'Social'. This is located c300m to the north west of the site at its nearest point. Within this complex are the following National Monuments 'DU00290' (Classification 'CHUR'); DU00291 (Classification 'GRAV') and DU008-021001 which are described as memorials with the church ruin gable elevations. In close proximity to the church complex there are a number of other National Monuments including DU03738 (Classification 'CIST') and DU00289 (Classification 'HOW').

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The grounds of this 1st Party Appeal can be summarised as follows:
- Reference is made to the Boards decision in appeal case ABP-305876-19.
 - This site is located c280 away from the said appeal case and in an area characterised by the same pattern of development where material contravention of the Development Plan was permitted.
 - The proposed development is appropriate for this site and accords with relevant planning provisions.

- This proposal would consolidate residential development in this area in a sustainable manner and would maximise existing as well as available physical and social infrastructure servicing.
- To the immediate rear of the site there is a residential scheme of 7 dwelling units and the site is within the vicinity of other residential schemes with the remaining area characterised by smaller residential plots containing detached properties. As such the area as it presents is residential in character.
- When constructed the dwelling units would mostly likely accommodate local residents.
- This site represents an underutilised, vacant, infill site in a serviced area.
- The proposed development should succeed in relation to the first reason for refusal as this refusal was the same as that given by the Planning Authority in the precedent case cited and was permitted by the Board under Section 37(2)(b)(iii) and (iv) of the Planning and Development Act, 2000, as amended.
- A four dwelling unit residential development does not represent a multi-unit development as defined by in the Multi-Unit Developments Act, 2011, and as such the second reason for refusal should be dismissed.
- A flood risk assessment has been submitted with this appeal submission and this concludes that the site is located in "Flood Zone C and has a low probability of flooding from both fluvial and tidal sources.
- Revised architectural drawings have been provided with this appeal that demonstrate that overlooking has now been prevented in its entirety between Houses B-1 and B-2.
- A comprehensive technical response addresses the fifth reason for refusal.
- An assessment of the site access and egress arrangements have been carried out as part of this appeal submission and show sightlines of 70m for a road with a speed limit of 50kph.
- Confirmation of the feasibility of this development to be catered for by Irish Water is provided.
- The Board is requested to overturn the Planning Authority's decision in this case.

6.2. Planning Authority Response

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

- In relation to the first reason for refusal the Planning Authority confirms that the site is zoned 'RU' under the Development Plan and as such the rural settlement strategy applies (Objective RF43 and Objective RF44). Yet no documentary evidence has been provided to demonstrate compliance with the rural settlement strategy.
- Reference is made to the Board decision in relation to ABP-305876-19 (P.A. Ref. No. F19A/0385). In that case the Board granted permission for four dwellings on a brownfield site whereas this site is a greenfield site that is subject to the rural settlement strategy and the rural zoning objective.
- In relation to the second reason for refusal the Board is requested to note that Objective 21 of the Development Plan defines a multiple housing unit as a housing estate with more than one housing unit.
- In relation to the third reason for refusal the applicant has submitted a flood risk assessment with their appeal submission which concludes that the site is located in Flood Zone C and has a low probability of flooding. This is deemed to be acceptable.
- The revised drawing labelled 'Drawing No. 19-26-ABP-0200-HTB) addresses the issue of overlooking.
- The proposed pumping station is below the minimum separation distance referred to in Objective WR12 of the Development Plan. This objective requires a buffer zone of between 35 to 50 meters. The appellants have failed to address this issue.
- In relation to the sixth reason for refusal, the applicant has not included measures for pedestrian priority at the entrance/along the front boundary of the site. In addition, a number of other issues are raised including the crossing point of the access road should be a raised crossing maintaining pedestrian and cyclist priority where appropriate. Moreover, the red line boundaries are not clear, and the works required at the entrance to facilitate the development do not appear to be inside the redline boundary of the site.

- No taking in charge drawing has been submitted.
- The Board is requested to uphold their decision; however, should the Board be minded to grant planning permission it is requested that a Section 48 condition alongside a condition requiring the payment of a Bond/Cash Security to ensure that the roads/footpaths/public lighting/open spaces/underground services within the development are built to the required taking in charge standards so these costs are not burdened on future residents or the council if the scheme is not completed to the required standards.

6.3. Observations

6.3.1. An observation was received by the Board and it can be summarised as follows:

- The separation distance between House Type B and its first-floor rear windows being 12 to 13 metres from the boundary of the observer's property would be injurious to his residential amenities by way of overlooking.
- This development is not in keeping with the existing character of this area.
- The grant of permission for the development sought under P.A. Ref. No. F19A/0385 is not a relevant precedent as it related to a brownfield site and was adjacent to two public roads. As such it related to a different site context.

7.0 Assessment

7.1. Overview

7.1.1. Having carried out an inspection of the site and its setting; having had regard to all documentation on file, all relevant planning provisions for the type of development proposed at this location, alongside conducting an examination of the planning history of residential developments in the area, I consider that the main issues in this appeal case are those that arise from the Planning Authority's reasons for refusal which are the substantive matters addressed by the First Party in their appeal submission to the Board. For clarity purposes, I therefore propose to deal with these matters under the separate given Planning Authority reasons for refusal headings in my main assessment below.

- 7.1.2. I note to the Board that in relation to the First Party's appeal submission the Board received a response from the Planning Authority who considered that whilst in general in their given reasons for refusal still stand, this is not the case on the matters of flooding due to the applicant having demonstrated that the site has a low probability of flooding; on the matter of overlooking the minor revisions to the elevational treatments of the proposed dwellings as set out in drawing titled: 'Drawing No. 19-26-ABP-0200-HTB) have dealt with this concern and that the information provided from Irish Water allayed their water supply and drainage concerns which was also a basis of refusal.
- 7.1.3. As such the Planning Authority was satisfied that the third, fourth and seventh reason for refusals had been addressed and were no longer deemed to substantiate any reason for refusal for the proposed development sought under this application.
- 7.1.4. The other four reasons for refusal had not been overcome in their view by the information provided with this appeal submission and therefore they requested that the Board uphold their decision to refuse planning permission for these reasons.
- 7.1.5. In relation to the documentation provided with this appeal submission in my view it provides more qualitative information upon which a determination of the proposed development, which I have set out under Section 2 of this report above, can be made.
- 7.1.6. In addition, in terms of revisions to the scheme, as said above these consist primarily of a minor amendment to elevational treatment of the dwellings from which there was a substantive concern raised by the Planning Authority that, if permitted, they would give rise to a diminishment of existing residential amenity of properties in their immediate vicinity. I consider that the revisions to the scheme are minor in nature and the additional documentation provided by the appellant in terms of their appeal submission seek to add clarity that would overcome a number of the concerns raised by the Planning Authority in their reasons for refusal. In this instance I do not deem that new public notices are required.
- 7.1.7. This is due to the minor nature of the revisions that they include and given that the modest improvements to the dwellings design for those in proximity of existing residential properties alongside given that these revisions give rise to a qualitative improvement in terms of more successfully safeguarding and protecting the residential amenities of properties in the vicinity of this development.

- 7.1.8. I therefore deem it appropriate and reasonable that the amended drawing be considered as a revision by the Board in its determination of this appeal case. With the proposed development as otherwise being as set out under Section 2 of this report above.
- 7.1.9. In addition, the matter of 'Appropriate Assessment' requires examination. This I propose to examine separately at the end of my assessment below.

7.2. P.A.'s First Reason for Refusal

- 7.2.1. The Planning Authority's first reason for refusal essentially considered that the site is located on lands that are zoned 'RU' under the Development Plan which are subject to a land use zoning objective of protecting and promoting in a balanced way, the development of agricultural and rural-based enterprise, biodiversity, the rural landscape, the built through to the cultural heritage. Together with the site and its surrounding context forming part of an area that is identified under the Sustainable Rural Housing Guidelines for Planning Authorities, 2005, as being a rural area under strong urban influence.
- 7.2.2. It sets out that in such areas applicants for dwellings are required to demonstrate their eligibility for the same in this rural area of Fingal.
- 7.2.3. Therefore, as the applicant had not demonstrated any compliance with the rural settlement strategy as it relates specifically to this area which is referred to in the Development Plan as the 'South Shore area of Rush', to permit, this development would materially conflict with Objectives RF43 and RF44 of the said Plan as well as would be contrary to the said Section 28 Ministerial Guidelines on such matters. This reason concludes that on this basis the proposed development would be contrary to the proper planning and sustainable development of the area.
- 7.2.4. In essence this reason refusal considered that the principle of the proposed development was not acceptable based on the applicant's failure to demonstrate compliance with local through to national rural settlement strategy applicable to this locality where this type of development is strictly controlled.
- 7.2.5. I note to the Board that Objective RF43 of the Development Plan states that the Planning Authority shall: "*consider planning applications for a house located within the South Shore area of Rush from persons who have been resident for a minimum of ten*

years within the South Shore area or within the development boundary of Rush or within one kilometre by road of either of these areas, subject to sustainable planning consideration of climate change impacts”.

- 7.2.6. In addition, Objective RF44 of the Development Plan states that the Planning Authority shall: *“consider planning applications for a house located within the South Shore area of Rush from a mother, father, son or daughter of a resident who qualifies under Objective RF43, and subject to sustainable planning and consideration of climate change impacts”.*
- 7.2.7. By way of the documentation submitted with this application, the applicant is essentially seeking planning permission for four detached dwelling houses on a backland site on Channel Road. As submitted, there is not documentation submitted with it that would support that the proposed dwellings would with certainty be for the future use of persons who have been resident for a minimum of ten years within the South Shore area of Rush and/or within one kilometre by road from either the South Shore area of Rush or the development boundary of Rush. This I note is the primary demonstration sought under Objective RF43 of the Development Plan. Though I am also cognisant that this Development Plan objective also seeks that such applications be subject to sustainable planning alongside have regard to climate change impacts. Matters which I propose to refer to as part of my assessment below.
- 7.2.8. Further, in relation to Objective RF44 this Development Plan, this objective includes an additional range of persons who the Planning Authority shall consider applications for a dwelling house located within the South Shore area of Rush. As set out above it indicates that this includes from a mother, father, son, or daughter of a resident who qualifies under Objective RF43. I also note that this objective is also subject to sustainable planning and consideration of climate change impacts.
- 7.2.9. The applicant has not either as part of the application or the appeal submission demonstrated that they are a mother, father, son, or daughter of a resident who qualifies under Objective RF43 of the Development Plan.
- 7.2.10. In addition, Objective RF44 of the Development Plan states that the Planning Authority shall: *“consider planning applications for a house located within the South Shore area of Rush from a mother, father, son or daughter of a resident who qualifies under*

Objective RF43, and subject to sustainable planning and consideration of climate change impacts”.

- 7.2.11. Based on the information provided with this application and on appeal it is evident that to permit the proposed development in this instance would contravene materially the above stated Development Plan objectives and for this reason it would be contrary to the settlement strategy set out in the Development Plan. Further it would also be contrary to the limited circumstances under which the Sustainable Rural Housing Guidelines for Planning Authorities, 2005, consider dwellings on land identified as being under strong urban influence being deemed acceptable and arguably the National Planning Framework, which requires for rural areas under urban influence, to facilitate the provision of single housing based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements, in such circumstances the demonstration of functional economic and social need for dwelling houses under National Policy Objective 19 of the National Planning Framework is required.
- 7.2.12. Further, as the application seeks permission for four dwellings with no demonstration of rural generated housing need for the future occupants of the four dwellings arguably this development could be considered as one that is not one that is generated from within this particular rural locality but is more likely to be urban generated.
- 7.2.13. In this instance the appellants acknowledge that this development is contrary to the rural settlement strategy; however, they seek that the Board have regard to the recent precedent they established under ABP-305876-19 (Note: P.A. Ref. No. F19A/0385), whereby they contend that a similar development was refused for the same first given reason as was given by the Planning Authority in their notification to refuse planning permission. That is to say the Planning Authority also considered that the proposed development of four dwellings on land subject to the same land use zoning as the subject site would constitute a material contravention of its Development Plan objectives relating to its rural settlement strategy for the South Shore Area of Rush.
- 7.2.14. In this case they note that the Board granted permission for the four dwellings on the basis of Section 37(2)(b)(iii) and (iv) of the Planning and Development Act, 2000, as amended. Noting that the Board in this particular case had regard to Government policy, in particular the national planning provisions as well as having regard to the

pattern of development in the area. Based on these considerations the Board considered it appropriate that planning permission should be granted for the proposed development in this appeal case.

7.2.15. The grounds of appeal assert that there is sufficient rationale for similarly permitting the proposed development under Section 37(2)(b)(iii) and (iv) of the Act.

7.2.16. Because of the particular wording used by the Planning Authority in the first reason for refusal, i.e., “*would contravene materially*” the rural settlement strategy of the Fingal Development Plan, 2017 to 2023 as it relates to the South Shore Area of Rush, including Objectives RF43 and RF44 set out above, Section 37(2)(b) of the Planning and Development Act, 2000, as amended, I concur would apply in this case. In addition, as said this appears to be accepted by the applicants in their appeal submission to the Board where they contend that two of the subsections of Section 37(2)(b) of the said Act should be used by the Board to overcome the first reason for refusal and to ultimately make a favourable decision in this case.

Section 37(2)(b) of the said Act states:-

“(2)(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that:

- (i) the proposed development is of strategic or national importance;*
- (ii) there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned;*
or
- (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister, or any Minister of the Government; or*
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”*

- 7.2.17. In the light of this legal requirement, the first issue to be decided by the Board is whether it considers that the development comes within any of the four exceptions provided for in this Section, as outlined above, but particularly subsections (iii) and (iv), having regard to the Board's decision under appeal case ABP-305876-19 and having regard to the arguments set out in this First Party Appeal.
- 7.2.18. Based on the precautionary principle and for clarity I therefore propose I propose to deal with each of the four exceptions listed in Section 37(2)(b), in turn, to see whether they apply in this present case. If any do apply, so as to permit the Board to grant a permission, then the question to be determined is whether the Planning Authority's first reason of refusal is overcome and subject to no other substantive matters upon which to base a refusal whether a favourable decision should, in the circumstances of the present case, be made. If they do not apply, then the Board is precluded from granting a permission for the development sought in this case.
- 7.2.19. In respect of subsection (i). While the provision of residential development is a focus of local, regional to national planning provisions given the recognised shortage of supply, it would be credible in my opinion to accept that this private commercial led development of four dwelling houses is of strategic and/or of national importance. Alongside against the context where this provision is not one that corresponds in a successful manner with providing a phased development of residentially zoned land within the settlement boundaries of Rush itself for which local and regional planning provisions seek this settlement's consolidation or urban form through to that such developments occur in a phased manner. I note that this site at its nearest is located c0.8km from 'TC – Town and District Centre' zoned lands and there are parcels of undeveloped residentially zoned land through to brownfield and infill sites more centrally located than this site, which is located on what is effectively a backfill site on rural zoned land (Note: 'RU' zoned land) where residential development is permitted in limited circumstances only in accordance with the rural settlement strategy. Which under Variation No. 2 of the Development Plan has as part of the overall settlement hierarchy for the Fingal Development Plan area been amended to align itself with regional through to national planning provisions that have occurred in the years since the current Development Plan was adopted. As this development does not align with the local settlement strategy, the advocated approach for residential developments set out under RSES through to National Planning Framework, as a residential

development it could not be one that is consistent with strategic and national approach either in terms of addressing sustainable provision of housing to meet the acknowledged shortage that exists nationally.

- 7.2.20. In respect of subsection (ii). Having examined the Development Plan, including the recent variations made to it under Variation No. 2, insofar as the proposed development is concerned, I do not consider that there are conflicting objectives within the local planning provisions and I consider its recent variations ensure that it now aligns in a consistent manner with regional through to national planning provisions on the matter of residential development through to the development of the South Shore area of Rush and also how the settlement of Rush is to be facilitated to develop having regard to local planning on this matter through to regional and national planning provisions.
- 7.2.21. In respect of subsection (iii) as said Variation No. 2 effectively seeks the alignment of the Development Plan with the National Planning Framework and the Regional Spatial & Economic Strategy. It sets out significant amendments to the Development Plan's written statement and Maps. Chapter 1 sets out that where any objectives contained within the Development Plan are considered to be materially inconsistent with those of the National Planning Framework, the Regional Spatial and Economic Strategy of the Specific Policy Requirements of Guidelines issued under Section 28 of the Act the aforementioned documents shall take precedence. It also sets out that future growth will take place in accordance with an overarching hierarchy of settlement centres with each identified to accommodate an agreed quantum of future development appropriate to its respective position in the hierarchy.
- 7.2.22. In this regard, it identifies the settlement of 'Rush' as a Moderate Sustainable Growth Town' with this identification aligning with the current regional planning guidelines and it seeks that growth in this settlement focus on its consolidation as a separate town.
- 7.2.23. It includes a number of amended objectives including but not limited to Objective SS01a which seeks to support the implementation of and promote development consistent with the National Strategic Outcome of Compact Growth as outlined in the NPF and RSES. In tandem with this Objective SS01b seeks to consolidate existing urban footprints by ensuring 50% of all new homes within or contiguous to the built-up

area of Dublin City and suburbs as well as 30% within targeted existing built up areas in order to achieve compact growth of urban settlements as advocated by the RSES.

- 7.2.24. Of additional relevance is Objective SS02b, Objective SSO3a and Objective SS15.
- 7.2.25. In relation to Objective SS02b, it indicates that new developments will be focused on appropriately zoned lands within the County within appropriate locations proximate to existing settlement centre lands where infrastructural capacity is readily available, they are located along an existing or proposed high quality public transport corridor and on appropriate infill sites in the town centres in a phased manner alongside the delivery of appropriate physical and social infrastructure.
- 7.2.26. In relation to Objective SS03a it seeks to support the implementation of and promote development consistent with the National Strategic Outcome of Compact Growth as identified in the National Planning Framework as well as the Regional Strategic Outcome of Compact Growth and Regeneration as set out in RSES. In relation to Objective SS15 it seeks to strengthen and consolidate the existing urban areas.
- 7.2.27. As such the local planning provisions have particularly evolved and changed since the Boards decision in relation to the modest development of four dwellings under ABP-305876-19 and I consider that the context of this site is not fully comparable to that of the site to which the aforementioned appeal case relates. In that it is a greenfield backland site, that is located at a more remote location in comparison from the town centre of Rush and at its closest point as said it is located c0.8km to the west of the '*TC – Town and District Centre*' zoned land which could be considered the town and district centres edge.
- 7.2.28. Moreover, it is also more remote from residentially zoned land and is at a distance from more centrally located yet undeveloped residentially zoned land within the development boundaries of Rush.
- 7.2.29. This in my view is particularly evident when one has regard to Development Plan Map 'Sheet 6B Rush'. Which indicates that the site lies significantly outside of the settlement boundary of Rush as well as outside of its Masterplan Area on land that only allows this type of development in limited circumstances. Of further not Objective SS02a sets out that development will be permitted in principle on lands where there is an existing adopted LAP or Masterplan in place. And only when these lands are substantially developed will permission be granted without such a framework. There

is no framework for the South Shore area of Rush's rural zoned land that lies outside of Rush's settlement boundary and Masterplan area. As well as there is no coherence or sustainability in terms of the pattern of how residential development has occurred in the last number of decades in this area.

- 7.2.30. In addition to the Variation No. 2 amendments to the local planning provisions which seek to consolidate development and to ensure that development occurs in a phased sequential manner on appropriately zoned land, Objective SS20 of the Development Plan, also seeks to ensure that development within this area occurs in a planned manner based on the capacity of local infrastructure and the like to support it. With development concentrated within the defined town boundaries.
- 7.2.31. In relation to RSES I note that Regional Planning Objective 4.83 seeks to support the consolidation of the town and village network to ensure that development proceeds sustainably and at an appropriate scale, level, and pace. As well as that it occurs in a manner that is in line with the core strategies of the applicable county development plan and in a manner that is consistent with the Sustainable Residential Development Guidelines which also advocate compact, sequential through to phased growth of appropriately zoned land.
- 7.2.32. Furthermore, the National Strategic Outcome 1 of the National Planning Framework advocates compact growth with Section 1.3 of the said framework advocating the careful management and sustainable growth of compact urban settlements as it considers that these add value as well as create more attractive places in which people can live and work.
- 7.2.33. The said framework also targets 40% of housing into the existing footprint of built-up areas. In addition, under Section 2.6 it highlights the issues that have arisen in the country from the continuous process of pushing development outwards towards greenfield locations with the framework advocating a preferred focus and approach to brownfield land, building infill sites and either redeveloping existing sites through to building but with a focus on compact settlements, smart and sustainable growth.
- 7.2.34. Based on the above considerations I am not satisfied that there is positive planning justification in this case for permission to be granted for the proposed development having regard to regional through to national planning policy provisions.

- 7.2.35. In respect of the subsection (iv) whilst I consider that this area has a strong pattern of residential development that appears to have arisen in an *ad hoc* manner over the preceding decades in the absence of any substantive infrastructure improvements to address the substandard nature of the road network that caters for development within the South Shore area of Rush. The network of restricted in width roads in this area I observed are in places such that they are unsuitable for two-way traffic through to they lack certain infrastructure such as footpaths to provide safe, functional, and meaningful connectivity to the town centre as well as other amenities and services that are more centrally located within this settlement that future residents would be likely to be reliant upon.
- 7.2.36. I therefore raise it as a substantive concern that to permit, albeit a modest in nature, scale and extent residential development at this location remote from the development boundaries, Masterplan boundaries through to residentially zoned land, on greenfield backland where residential developments are subject to demonstrating compliance with a rural settlement strategy, would be contrary to local, regional and national planning provisions which in a manner consistent with one another seek to achieve compact, sequential, through to phased development of settlements irrespective of their size and scale.
- 7.2.37. I do not consider that *ad hoc* pattern of residential development that is present in the vicinity and the surrounding area of the site is in itself of sufficient basis in this case to override the approach that is advocated for residential development in local, regional through to national planning provisions. At a location that is served by a substandard local road network, that is remote and poorly reachable by foot or other sustainable modes of transport to the centre of Rush and the amenities through to services it contains. Particularly where there is available land zoned in this settlement more centrally located through to underutilised, infill and brownfield sites where residential developments are deemed to be acceptable subject to safeguards and yet to be developed.
- 7.2.38. I also consider that the site context is different to that of the site which appeal case ABP-305876-19 related and also that the planning context has changed since the Board made its determination on appeal case ABP-305876-19. Particularly by way of Planning Authority's adoption of Variation No. 2, on the 19th day of June, 2020. I also note that this Variation sets out an agreed quantum of future development appropriate

for settlements like Rush in terms of its residential future development relative to its respective position in Fingal's settlement hierarchy. I note that there is no demonstration provided that this development, if permitted, through to the precedent it would set would not result in an imbalance of such development away from the residentially zoned land which is zoned to cater specifically for this agreed quantum of development.

7.2.39. In conclusion, having reviewed the detailed criteria set out in Section 37(2)(b) of the Act, I do not consider that there are any material grounds by which the Board could justify a grant of permission in this case. I therefore concur with the Planning Authority in terms of their first reason for refusal.

7.3. P.A.s Second Reason for Refusal

7.3.1. The Planning Authority's second reason for refusal considers that the proposal which seeks planning permission for four dwelling units would constitute a multiple housing estate, in an area that is subject to a rural zoning objective. For this reason, it considered that the proposed development would therefore "*materially contravene Green Infrastructure Map Based Objective 21, the 'RU' Rural land use zoning objective pertaining to the site and the Fingal Development Plan 2017-2023*". This reason concludes that on this basis the proposed development would be contrary to the proper planning and sustainable development of the area.

7.3.2. The Planning Authority in their response to the grounds of appeal request that the Board have regard to this objective being a map-based objective whereby the implication on rural zoned land is that a multiple housing estate is a development where more than one housing unit is proposed.

7.3.3. The appellant on the other hand wishes the Board to have regard to how multi-unit developments are defined in the Multi-Unit Development Act, 2011, where these relate to residential developments that contain not less than five residential units.

7.3.4. Given that the development for the reasons set out in Section 7.2 above is not a development that there are any material grounds by which the Board could justify a grant of permission under Section 37 (2)(b) of the Act and given that the subject lands are subject to 'RU' land use zoning for which residential developments are only permitted in limited circumstances. Including for example demonstration of compliance with Objectives RF43 and RF44 of the Development Plan alongside are a

type of development that is consistent with local, regional through to national planning provisions for this type of development, the principle of the development is not acceptable in this case whether one or four dwelling units are proposed under this subject application and irrespective of whether one accepts the local or national given definitions for what comprises a multi-unit housing estate in the South Shore area of Rush.

- 7.3.5. In conclusion I consider that in this instance the principle of development is not acceptable as no demonstration of compliance with the settlement strategy for the South Shore area of Rush has been demonstrated through to this remote from centre site, if permitted, for the proposed development of four dwelling units would not facilitate the compact, sequential, phased, and sustainable development of Rush which is the approach advocated at local, regional through to national level.

7.4. P.A.'s Third Reason for Refusal

- 7.4.1. The Planning Authority's third reason for refusal notes that having regard to the proximity of the proposed development to the coast and in the absence of a flood risk assessment in accordance with the requirements of the Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009, the proposed development, if permitted, would be contrary to the proper planning and sustainable development of the area.

- 7.4.2. In order to demonstrate that this reason for refusal could be overcome, as part of the appeal submission a FRA was prepared by suitably qualified professionals and submitted with the appeal documentation. This document sets out that its objectives are four-fold:

- 1) To identify the potential sources of flood risk.
- 2) To confirm the level of flood risk and identify key hydraulic features.
- 3) To assess the impact that the proposed development has on flood risk.
- 4) To develop appropriate flood risk mitigation and management measures which allow for the long-term development of the site.

- 7.4.3. This report had regard to relevant guidelines alongside had regard to the likely effects of climate change and the long-term impacts this would have on the development and its setting.

- 7.4.4. It sets out that the nearest watercourse is located approximately 90m to the north of the site (Note: The Rush West Stream), with this watercourse flowing in a south easterly direction into the settlement of Rush, where it turns south west and flows in a northerly direction to where it discharges into the Rogerstown Estuary c510m from the site and at a point where the estuary is tidal.
- 7.4.5. It also sets out the low and relatively flat ground levels of the site as ranging from 7.9mOD adjacent to Channel Road and 6.07mOD in the south western corner of the site, with the groundwater vulnerability at the site classified as low and with no presence of alluvium that would support historic flooding of the site. It also notes no karst features, wells, or springs at the site.
- 7.4.6. This I noted to be the case during my inspection of the site.
- 7.4.7. Various sources were examined to establish the flood history of the site and its setting with one past event located c120m to the south east of the site at the junction of Crescent Road/South Shore Road. No specific history of flooding pertaining to the site and its immediate setting were found by the authors of the report.
- 7.4.8. From the various investigations carried out this report concluded that the site is in Flood Zone C and that there is a low probability of flooding, with the main source of flood risk to the site identified as the Rush West Stream. The FEMFRAM flood maps also confirmed this conclusion with no overtopping of the watercourse up to the 0.1% AEP flood event in the vicinity of the site. The site was also noted to be elevated and at a significant distance from the coastline. As such it was also not considered to be at risk of peak wave heights.
- 7.4.9. This report sets out a number of mitigation measures including setting out recommended finished floor levels ranging from 7.25mOD – 7.05mOD for the nearest properties to the Channel Road. Whilst the two dwellings to the rear the recommended finished floor levels of 7.05mOD is indicated. These included climate change and required freeboard in their calculations. It also noted that as Channel Road was located in Flood Zone C access and egress would not be an issue during a 0.1% AEP flood event. It also sought that surface water drainage be designed to meet the overarching Fingal Development Plan requirements and the guidance set out under the GDSDS document.

- 7.4.10. This report concludes that having carried out a flood risk assessment in a manner that accords with the requirements of 'The Planning System and Flood Risk Management' guidelines, the site is located on 'Flood Zone C' land and subject to mitigation measures no substantive flood risk issues would arise.
- 7.4.11. I note that 'Flood Zone C' under the said guidelines have the lowest probability of flooding and having examined available information on this matter I can find no evidence that would dissuade me that the conclusions of this report are not correct. I also note that the Planning Authority also deemed that the concerns raised in their third reason for refusal had now been satisfactorily addressed by the appellant in their appeal submission. Therefore, should the Board be minded to grant permission for the proposed development sought under this application I recommend that the mitigation measures set out in this report are imposed alongside a suitable drainage condition that seeks final surface water drainage design as well as other related matters be subject to prior written agreement with the Planning Authority so as to ensure that an appropriate standard of development is achieved and that surface water drainage is suitably dealt with within the confines of the site.

7.5. P.A.'s Fourth Reason for Refusal

- 7.5.1. The Planning Authority under their fourth given reason for refusal considered that the proposed development, in the manner proposed, would be injurious to the residential amenity of future residents of Houses B-1 and B-2 by reason of overlooking opportunities between these proposed units.
- 7.5.2. As part of the appeal submission a revised drawing eliminating the potential for overlooking to arise between these aforementioned dwelling units has been submitted (Note: Drawing No. 19-26-ABP-0200-HTB).
- 7.5.3. I note that the Planning Authority in their response to the grounds of appeal were satisfied that the overlooking concern as set out under the fourth reason for refusal has been addressed in a satisfactory manner and they raised no further concerns in relation to the matter of overlooking.
- 7.5.4. Notwithstanding, I note that the Board received an observation from an occupant of an adjoining property, No. 6 Rogerstown Court, also raises overlooking concerns in relation to the proposed development as permitted and considers that inadequate separation distance has been provided between House Type B and his property with

the house design having windows at first floor level that would compromise the residential amenity of their property.

- 7.5.5. Of concern the majority of drawings submitted with this application and on appeal set out the development in a site context relative to existing dwellings that address Channel Road as well as the adjoining backland dwelling that bounds part of the western boundary of the site.
- 7.5.6. Notwithstanding, it would appear that at first floor level between nearest proposed dwelling unit (Note: B-1) and the observer's property there is well in excess of the Development Plan minimum standard of 22 metres separation alongside a rear garden depth exceeding 11-metres proposed.
- 7.5.7. Whilst I acknowledge that the proposed development, if permitted by the Board, would give rise to a change of context, it is not uncommon in areas where there is a significant proliferation of residential development with these having varying building heights as well as solid to void treatments, including dormer and above for a level of overlooking to arise.
- 7.5.8. As part of this application a number of semi-mature trees alongside a native hedgerow is proposed which would in part help to mitigate against the perception of being overlooked from the first-floor level of the two dwellings (Note: B-1 and B-2) proposed nearest to the rear boundary and the observer's property. This is in addition to the proposed retention of the existing boundary bank which I note has raised heights as well as native planting present. Overtime I consider that the additional planting would significantly reduce the perception of being overlooked.
- 7.5.9. I also consider that there limited potential for overlooking from the level of glazing that is proposed at first floor level of house type B with the openings consisting of mainly small rooflights with each dwelling containing one dormer type window serving a bedroom.
- 7.5.10. Based on the above considerations I consider that the level of overlooking that would arise from the proposed development, if it were permitted, and the observer's property is not one that would in itself substantiate a reason for refusal in this case and as said subject to appropriate conditions that seek to achieve appropriate boundary screening that the proposed development would be in accordance with the proper planning and sustainable development of the area.

7.6. P.A.'s Fifth Reason for Refusal

- 7.6.1. The Planning Authority's fifth reason for refusal related to the proposed pumping station to serve the development. On this matter the Planning Authority considered that it would be located below the minimum separation distance from the dwelling houses as specified under Objective WT12 of the Development Plan. It indicates that the required separation distances are appropriate to deal with associated noise and odours with the separation distance providing a buffer between the pumping station and the proposed dwelling units. Due to the failure to provide the required minimum separation distance it was considered by the Planning Authority to permit the proposed development would "*contravene materially*" this Development Plan objective and as such it would be contrary to the proper planning and sustainable development of the area.
- 7.6.2. I note that Objective WT12 of the Development Plan indicates that an appropriate buffer zone shall be established around all pumping stations suitable to the size and operation of each station. In this regard it sets out that the: "*buffer zone should be a minimum of 35 metres – 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise*".
- 7.6.3. I also note that the pumping station, which has a given 4m by 3m dimension is located at the end of the new cul-de-sac road serving the proposed four dwellings in a small pocket of communal open space with all the proposed four dwelling units connected to it and a run of c94m to where it connects to the wastewater foul sewer on Channel Road with just over 12m lateral separation distance from the nearest proposed dwelling which is labelled as B-1 in the submitted suite of drawings.
- 7.6.4. The Planning Authority in their response to the grounds of appeal consider that this substantive matter has not been addressed and as such this reason for refusal still stands.
- 7.6.5. The appeal response includes a technical response prepared by the appellants consulting engineers and indicates that the proposed foul drainage network, including the pump station has been designed in accordance with the current Irish Water Code & Practice for Wastewater Infrastructure (Note: Section 5.0 – Pump Stations). In addition, they indicate that design acceptance would be sought from Irish Water and

the works would be completed to Irish Waters recommendations and specifications with the foul sewage infrastructure becoming an asset of Irish Water.

- 7.6.6. It is set out that the applicable COP includes general criteria including that small pump stations (Type 1 – Pump Stations for up to 5 dwelling units) should be located no closer than 5m to a property boundary in order to minimise the risk of odour, noise and vibration nuisances. With the separation distance to be measured from the pump station site boundary to the boundary of the nearest habitable property. It also sets out for facilities to control odour should be installed so that no odour nuisance impact arises in close proximity to dwellings and public areas.
- 7.6.7. It is contended that both the wastewater and water infrastructure design is in accordance with Irish Water’s COP as well as standard details for this quantum and type of residential scheme.
- 7.6.8. In addition, as part of the appeal submission it is indicated that the design details have been submitted to Irish Water for confirmation of feasibility and Irish Water’s response, which has also been included with this submission. This submission confirms the feasibility of the development without infrastructural upgrades to their wastewater system as well as the water supply infrastructure.
- 7.6.9. Upon completion of the scheme this infrastructure would be ultimately taken over as an asset by Irish Water subject to the infrastructure being satisfactorily completed to their required standards.
- 7.6.10. In a letter from Irish Water to the appellants consulting engineers it is indicated that based on the details that have been provided to them with the pre-enquiry together with the carrying out of a desk top survey that there is currently capacity in the water and wastewater network at this location to facilitate the proposed development without infrastructure upgrade. This letter indicates that the availability of capacity; however, it also indicates that this may change at any date after this assessment and also that Irish Water is not responsible for the management or disposal of storm water or ground waters with these matters to be subject to the agreement with the Planning Authority.
- 7.6.11. In this site context to meet the lateral separation distance requirements of Objective WT12 of the Development Plan for the proposed pumping station would effectively mean that should residential development occur on this site that despite the capacity at present for the wastewater drainage as well as water supply to serve the modest

scheme of four dwellings that the unit numbers would have to be lower than that proposed. Moreover, it would appear that the lateral separation distance of between 35 to 50 meters does not take account of smaller pumping stations like the Type 1 one proposed to meet the needs of a residential scheme of less than 5 dwelling units in a serviced location as well as the current COP requirements for the same. Furthermore, this objective indicates that the buffer zone around all pumping stations should be suitable to the size and operation of each station.

- 7.6.12. In my view the Planning Authority has not provided any evidence that the Type 1 pumping station proposed to serve the proposed development, infrastructure which I note that the documentation on file indicates is acceptable in principle to Irish Water and in addition to subject to its satisfactory provision would take this piece of infrastructure in charge, would give rise to significant odour, noise through to vibration nuisances that in turn would impact properties that are located within 35 to 50m buffer zone from it. Including that an overburdening of loading that could occur from this pumping station, which I note that Irish Water does not permit any overburdening by surface water that arises on the site and requires that this should be dealt with separately within the confines of the site
- 7.6.13. In conclusion, I am not satisfied based on the information provided that the buffer zones between existing and proposed residential properties due to the design of the pumping station being one which would meet the general current COP requirements would give rise to significant adverse odour, noise, and vibration nuisance if the proposed development were to be permitted. And if permitted given that the lateral separation distances meet the current COP requirements would materially contravene Objective WT12 of the Development Plan which essentially requires that such applications demonstrate that they establish an “*appropriate*” buffer zone around all pumping stations suitable to the size and operation of each station.
- 7.6.14. As said the proposed Type 1 designed pumping station is specifically suited to the quantum of dwelling units proposed under this application and Irish Water clearly set out the suitability of the same alongside the capacity without any infrastructure to cater for the wastewater generated by the proposed development were it to be granted at present.

7.6.15. Further, whilst I do not discount the reasonableness and appropriateness of Objective WT12 of the Development Plan based on the information provided, I am of the view based on the information provided that this reason for refusal can be sustained.

7.7. P.A.'s Sixth Reason for Refusal

7.7.1. The Planning Authority's sixth reason for refusal as set out in its decision notification considers that insufficient information has been submitted to enable them to fully assess the transportation aspects of the proposed development. Therefore, in the absence of such information the proposal would be contrary to the proper planning and sustainable development of the area.

7.7.2. The appeal documentation includes a drawing titled 'D1687-D1-PL2' which shows that the sightlines can be achieved in accordance with the required standards for a road with a speed limit of 50kph. The documentation provided notes that 70m sight distance can be achieved in both directions.

7.7.3. Planning Authority in their response to the grounds of appeal consider that the information provided with this appeal does not allay this concern. In that they have not provided for a pedestrian priority at the entrance along the front boundary of the site.

7.7.4. In addition, they note that the crossing point of the access should be raised with the view of maintaining pedestrian and cyclist priority where appropriate. To further complicate this, in their view, the red line boundary is not clear on the sightline drawing provided and it is therefore unclear whether the aforementioned works required at the entrance to the site are within the redline boundary as well as no taking in charge drawing has been submitted.

7.7.5. Having inspected the site and having regard to documentations provided with this application as well as part of the appellants appeal submission I share the view of the Planning Authority in that there is insufficient information provided to assess fully transportation aspects of the proposed development in terms of road safety aspects and how it integrates in a successful manner with Channel Road as well as maintains the safety of more vulnerable road users at the proposed new entrance.

7.7.6. In addition, I am not convinced that the sightlines as shown are not obstructed by the existing boundaries present on the adjoining boundaries on either side or that sufficient regard was had to the fact that the actual depth of the footpath alongside the

sites roadside boundary is of a restricted width and that there is an '*Indicative Cycle/Pedestrian Route*' proposed along Channel Road.

- 7.7.7. Moreover, there also appears to be an overlap within the redline area of part of a boundary that serves an adjoining property as well as the restricted in width public domain and the staggered roadside boundary proposed alongside the maintenance of a limited setback from the roadside edge does not offer any improvements to the safe movement of vulnerable road users along the heavily trafficked Channel Road.
- 7.7.8. On the basis of information provided, while I note that the Planning Authority raised no objection to the loss of a tree in the adjoining stretch of pedestrian footpath and/or footpaths to accommodate the proposed entrance onto Channel Road, subject to safeguards. I am not satisfied that required sightlines can be achieved or that an appropriate in design access and egress entrance onto the public domain of Channel Road is proposed in the scheme proposed.
- 7.7.9. As such I consider that the concerns raised by the Planning under their sixth reason for refusal is with merit and have not been satisfactorily overcome by the appellant in their appeal submission to the Board. I therefore consider that, if permitted, in the form proposed the proposed roadside and entrance arrangements onto Channel Road would add to road safety concerns and issues for road users.

7.8. P.A.'s Seventh Reason for Refusal

- 7.8.1. The Planning Authority's seventh reason for refusal relates to the applicant failing to demonstrate feasibility of connection of the proposed development to the public water and wastewater infrastructure. For this reason, it was considered that to permit the proposed development would be contrary to the proper planning and sustainable development of the area. As discussed in the previously in this report as part of the appeal documentation it has been confirmed that at the time the applicant submitted their pre-connection enquiry to Irish Water that the existing public water and wastewater infrastructure had available capacity without any upgrading works to facilitate the proposed development. The Planning Authority in their response to the grounds of appeal are now satisfied that this concern has been addressed.
- 7.8.2. Therefore, based on the information provided with this appeal I consider that the Planning Authority's seventh reason for refusal has been satisfactorily overcome and I am satisfied that the proposed development does not warrant refusal on this matter.

7.9. Other Matters Arising

7.9.1. Visual Amenity Impact

Whilst I consider that the proposed architectural resolution for the proposed four dwellings is not of any particular innovative merit nor could they be considered to be contemporary or traditional in their design aesthetic. Nonetheless I acknowledge that the dormer type of dwelling unit, is not an uncommon built form within the South Shore area of Rush and the palette of materials chosen are also not out of character with the wide variety present in the South Shore area of Rush.

Arguably, the choice of a dormer typology would be subservient to two storey properties that adjoin it and also it would not be significantly overbearing in terms of single storey properties it would adjoin or in its vicinity of it also.

As such I raise no substantive visual impact concerns in relation to the choice of a dormer built form on what is a backland site having regard to its overall site context.

Moreover, the proposed four dwelling units would be accessed from new a shared tree lined cul-de-sac access road which would be the main element of the proposed development as viewed from the public domain of Channel Road. As the site benefits from a very limited road frontage onto Channel Road with the proposed dwellings sited in a manner whereby, they largely correspond in their placement with the existing dwellings on either side of the site's Channel Road frontage the tree lined access road together with the proposed boundary treatments around the new proposed subdivisions that includes soft landscaping would be the main component of the proposed development that would be visible from the public domain.

Further, the topography of the site and the surrounding area is relatively flat with the site also benefitting from raised embankments particularly along its eastern, rear and part of its western boundaries.

These features of the site and the design resolution together with the existing as well as the proposed landscaping scheme put forward would further limit the views into the site and in turn the visibility of the proposed development as perceived from properties in its immediate vicinity.

Particularly as appreciated from their semi-private and private domains.

In addition, within the immediate area there are examples of backland residential development. These are mainly *ad hoc* built insertions into this significantly residentially developed in recent decades once rural area that was in part characterised by the presence of horticulturally based rural activities.

Overall, I consider that the visual amenity impact of the proposed development would be localised and in time as the landscaping scheme matures the visibility within its context would also further lessen.

I therefore do not consider that the proposed development, if permitted, would give rise to a significant diminishment of the visual amenities of the area and the loss of trees required to facilitate sightlines from the proposed new entrance onto Channel Road could be argued to be compensated by the tree lined avenue access road proposed that also terminates at a pocket of open space with additional tree planting.

7.9.2. Residential Amenity Impact – Future Occupants

I consider that the substantive concern from the proposed design was the level of overlooking between proposed dwelling B-1 and B-2. This overlooking arose from a first-floor window serving a habitable room with poor lateral separation distance between the two proposed properties. As discussed previously in this assessment this has now been addressed. As such I raise no further concern on this matter or indeed having regard to the lateral separation distances between the proposed dwellings and existing dwellings in the vicinity of the site as these meet the required Development Plan standards for the same.

Moreover, in terms of the internal and external residential amenity qualitative and quantitative standards, the proposed development as designed is broadly consistent with the requirements of the Development Plan.

Notwithstanding, this locality requires improvement in terms of sustainable and safe connectivity to the main centre of Rush as well as the facilities, services, and amenities it contains.

This connectivity could arguably be improved by phased and sequential development of the settlement from a centre out approach as part of seeking the settlements consolidation which is in part sought under Objective SS20 of the Development Plan.

This objective seeks to manage the development and growth of Rush in a planned manner linked to the capacity of local infrastructure to support new development.

I therefore raise a concern that in the absence of this development, which as discussed is remote from centre, being easily accessible by more sustainable modes of transport, in particular by foot and by bicycle that the disjointed development of out of centre sites like this would result in more reliance in my view by such new developments on private car to meet their transportation needs. This is not consistent with sustainable planning and consideration of climate change impacts which is advocated under Objectives RF43 and RF44 previously discussed in my assessment above is part of what is required to be demonstrated by applicants for developments on 'RU' zoned land.

7.9.3. **Residential Amenity Impact – Properties in the Vicinity**

In relation to residential amenity impact on properties in the vicinity it would appear over the last number of decades what was once an area characterised by rural activities, in particular horticulturally based rural enterprises. The latter appears to have substantially dwindled with some of these enterprises having relocated away from the South Shore area of Rush to less densely developed land. This has resulted in pockets of once agricultural land progressively being redeveloped to accommodate *ad hoc* housing. There does appear to be an adjoining horticultural land use adjoining the eastern boundary of the site's main area. Having regard to this area's proximity to a number of strong urban settlements, in particular Dublin city, which it is in easy reach of. It is apparent that this area has been under significant pressure from urban generated residential demand for a considerable time with this demand also being added too by the area's proximity to the Irish sea and the amenities present in this seaside settlement which provides for a pleasant environment to live.

As such the rural character and function of this area has been significantly diminished by residential development and its network of minor country roads now contain significant linear residential development which it struggles to accommodate.

In this area I also observed examples of smaller housing schemes like the adjoining Rogerstown Court that adjoins the rear boundary of the site and there are many examples of backland development, including an example of the same that adjoins the western boundary of the main site area.

As such the low to medium density of residential development that now prevails has meant that it is not uncommon that a level of overlooking is either present or would arise from any new residential developments.

In this instance the proposed development has positioned the proposed dwellings on site in a manner that ensures that they meet the required lateral separation distance requirements of 22m between opposing first floor windows. Alongside the dormer design in general has been careful in its placement of window openings at first floor level so that no undue overlooking or diminishment occurs to the residential amenities of properties in its vicinity.

In addition, this is aided by reinforcing the proposed site boundaries with fencing and planting. The planting also includes the placement of semi-mature single stand trees.

Overall, I am satisfied that subject to standard conditions that the proposed development, if permitted, would not give rise to any undue overlooking that would seriously injure the amenities of properties in its vicinity.

In terms of overshadowing, I consider that the lateral separation distance, the orientation of the site, the restricted dormer height of the proposed dwellings, together with the positioning of the proposed dwelling units away from sensitive boundaries I consider that no undue overshadowing would arise.

Though in saying this I note that the documentation provided does not demonstrate that this is the case by providing an analysis of the same. The Board therefore could seek further information on this matter with this to be carried out to demonstrate that it meets accepted standards as a precaution should it be minded to grant planning permission. Given the substantive grounds already given upon which planning permission for the proposed development should be refused to seek this information given the fundamental issue that the principle of the proposed development is not acceptable would in my view be unreasonable and inappropriate in this case at this juncture.

In terms of general nuisances that would arise from the construction and operational phases I consider that there are standard conditions that would deal with the construction phase. In addition, the duration of nuisance that would arise during the construction phase would be for a limited duration and subject to compliance with

standard conditions which seek to mitigate adverse impact during this phase this concern would not warrant refusal of permission.

In terms of the occupation phase, while I acknowledge that there would be a significant change in context for adjoining properties, should permission be granted by the Board, I do not consider that subject to appropriate standard conditions that the proposed residential development would give rise to any undue disamenity or serious injury of established residential amenity that would substantiate a refusal of permission.

7.9.4. **Lighting:** Should the Board be minded to grant permission I recommend that it impose a condition requiring a lighting scheme to be agreed 'in writing' with the Planning Authority, based on the fact that a poor designed lighting scheme could have adverse residential and visual impacts. Particularly for adjoining properties whose side boundaries and rear private amenity spaces would adjoin the proposed new cul-de-sac road that would serve the proposed scheme.

7.9.5. **Landscaping:** Should the Board be minded to grant permission I recommend that a condition requiring improvements to the landscaping along the boundaries of the site, particularly the rear and western boundary of the site, should be imposed. I also consider it appropriate and reasonable for such a condition to deal with ensuring that a qualitative landscaping scheme is implemented on site and that any loss of trees from the public domain of Channel Road is appropriately compensated for to the satisfaction of the Planning Authority. I am also of the view that a quality landscaping scheme, particularly in terms of the addition of trees and hedgerows could enhance the biodiversity of this area. In its present condition the site is in my view of low biodiversity value and is essentially a mowed pocket of greenfield land with limited qualitative natural features present or indications that it is important for foraging, nesting, or any other purpose for local wildlife.

7.9.6. **Entrance:** Should the Board be minded to grant permission I recommend that a condition be imposed requiring the redesign of the roadside entrance and boundary to the satisfaction of the Planning Authority so that the required sightlines are achieved. Alongside that a safe crossing point should be required and specifically designed for the entrance onto Channel Road, with this entrance facilitating pedestrian and cyclists as priority in the hierarchy of movement. This condition should be subject to the prior written agreement of the Planning Authority in advance of any works commencing on

site and where these works require the consent of other land owners this should be demonstrated.

- 7.9.7. **Archaeology:** Should the Board be minded to grant permission I recommend that it include the condition put forward by the Development Applications Unit of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, in the interest of ensuring the preservation of features or other objects of archaeological interest that may be present below ground. This I consider is reasonable given the rich built heritage of this area including the site's proximity to a number of National Monuments.
- 7.9.8. **Public Open Space Shortfall Contribution:** Objective DMS57 of the Development Plan requires a minimum public open space provision and in the design of the proposed development is deficient in open space provision by 350m². Given this substantive shortfall I concur with the Planning Authority's Parks and Green Infrastructure Division that any grant of permission should include a condition requiring a Section 48 contribution in lieu of this shortfall with this contribution to be used towards upgrading of Local Class 1 Open Space facilities in the Rush Area, namely Rogerstown Park.
- 7.9.9. **Surface Water Drainage:** Should the Board be minded to grant permission for the proposed development I recommend that an appropriate Surface Water Drainage condition be imposed and as per the general requirements of Irish Water no surface water drainage should be permitted to discharge into the foul water system under any circumstances.

8.0 Appropriate Assessment

- 8.1. Having regard to the development proposed and the nature of the receiving environment despite the sites close proximity to a number of European sites, I consider that no 'Appropriate Assessment' issues arise given that the site has no tangible connectivity to any European site, including hydrological link with the site located at a distance from the nearest watercourse (Note: Rush West Stream), the site is greenfield land with no evidence of contamination thereon through to is located in a serviced area where it has been demonstrated that there is capacity in the public water as well as public wastewater supply that there is current capacity to absorb the proposed development. It is therefore 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.

9.0 Recommendation

- 9.1. I recommend that planning permission be **refused** for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. Having regard to the location of the proposed development in South Shore area of Rush c0.8km to the west of Rush's town centre and district edge on rural zoned land and Variation No. 2 of the Fingal Development Plan, 2013 to 2013, in particular Objective SS01a which seeks to support the implementation of and promote development consistent with the National Strategic Outcome of Compact Growth as outlined in the NPF and RSES; Objective SS02 which seeks to ensure that all proposed residential developments accord with the County's Settlement Strategy and are consistent with Fingal's identified hierarchy of settlement centres; Objective SS02b which focuses new residential development on appropriately zoned lands within the County, within appropriate locations proximate to existing settlement centre lands; and, Objective SS03 which places a focus on urban regeneration and compact growth. Alongside Regional Policy Objective 4.83 of the Regional Spatial and Economic Strategy for Eastern and Midlands Area, 2019 to 2031, which seeks to 'support the consolidation of the town and village network to ensure that development proceeds sustainably and at an appropriate scale, level and pace in line with the core strategies of the county development plans'. It is considered that the proposed development would be contrary to Objective SS20 of the Development Plan which seeks to manage the development and growth of Rush in a planned manner. To permit the proposed development on 'RU', rural zoned land where the principle of residential development is only deemed to be permissible in limited circumstance, including demonstration that the proposed development is compliant with Objective RF43 and RF44 of the Development Plan as it relates to the South Shore area of Rush and in a context where there is residentially zoned land that is more suitable and appropriate to the type of multiple

dwelling scheme proposed in closer proximity to Rush's town centre. Alongside the site is outside of and remote from Rush's development boundaries as well as Masterplan boundaries. Therefore, to permit the proposed development at this location would not be inconsistent with the development of Rush in a manner that achieves a compact urban form, phased and sequential development in a manner that is consistent with local and regional planning provisions but also the National Planning Framework which is underpinned by seeking to secure the compact growth of settlements. Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on Channel Road at a point where sightlines are restricted in both directions and inadequate provisions have been proposed to avoid conflict at the entrance with vulnerable road users.

Patricia-Marie Young
Planning Inspector

22nd day of June, 2021.