



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309820-21

<b>Development</b>	Demolition of part of the ground floor at the rear of an existing dwelling house and the construction of single storey extension.
<b>Location</b>	'Deepwater', Thornmanby Road, Baily, Howth, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	F20A/0297.
<b>Applicant(s)</b>	John and Leondra Ward.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Mary Taylor.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	22 <sup>nd</sup> day of June, 2021.
<b>Inspector</b>	Patricia-Marie Young.

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## 1.0 Site Location and Description

- 1.1. 'Deepwater' is the name given to this irregular in shape appeal site which has a stated 0.089ha area. It contains a 2-storey detached dwelling with a given existing floor area of 225.9m<sup>2</sup>, which is setback from the southern side of Thornmanby Road by a linear strip mature dense landscaped front garden area with a pedestrian footpath providing connection to the front door. A solid tall wall adjoins Thornmanby Road's public domain that together with the mature planting onsite limits views of the dwelling. This boundary on its westernmost end contains a vehicle entrance that provides access onto Thornmanby Road directly onto a modest in length paved driveway that accommodates the off-street car parking area for occupants of the subject property. The subject site is located c201m to the east of Thornmanby's junction with the Carrickbrack Road (R105) and c3km from the Main Street's harbour frontage in the north Dublin coastal village of Howth, in an established residential area characterised by detached dwellings on garden plots on the southern side of Howth Summit.
- 1.2. The subject property is located on the northern portion of the site with a large southerly aspect rear garden area whose ground levels fall steeply away in a southerly direction from the rear elevation of the existing dwelling to the rear boundaries of the site. The rear boundary runs alongside the appellants property of 'Glenlion Pines' and it is heavily screened by mature soft landscaping. The views from the public domain as well as from properties in the immediate vicinity are further limited by the significant changes in ground levels between both properties.
- 1.3. In the south easternmost corner of the site is there is septic tank area. Above which is a raised timber decked area. In close proximity is the percolation area.
- 1.4. The western boundary adjoins the meandering residential cul-de-sac of Lions Head, and the eastern boundary runs alongside the access road that serves the detached property of 'Danes Hollow' and its associated buildings.
- 1.5. From the rear elevation and raised levels that form part of the private open space amenity there are pleasant views out towards the Irish Sea and due to the significant number of mature trees present in the immediate surrounding the site setting has an attractive sylvan character.

## 2.0 Proposed Development

2.1. Planning permission is sought for the following:

- Demolition of part of the existing ground floor at the rear of the dwelling. The existing dwelling has a given 225.9m<sup>2</sup>. The area given relating to the demolition is given as 25.38m<sup>2</sup>. Thus, this component of the development would reduce the dwellings floor area to 200.52m<sup>2</sup>.
- Construction of single storey extension to rear elevation with this component having a stated 39.05m<sup>2</sup> floor area with the internal area accommodating a kitchen, dining room, living and utility. Thus, giving rise to 239.57m<sup>2</sup> floor area.
- Internal alterations.
- Upgrading of existing windows.
- Realignment of existing roof to the rear including the provision of 4 dormer windows into its slope. These dormers would give rise to an additional 4.55m<sup>2</sup> of floor area. Thus, giving rise to the dwelling house having a cumulative increased floor area of 244.12m<sup>2</sup>.
- Installation of 10kw photovoltaic panels.
- Installation of a 1.6m high boundary railing to the western boundary with associated planting and landscape works, insulation upgrades, cladding of front wall with natural stone, new vehicular gate.
- All associated site works and services.

2.2. On the 2<sup>nd</sup> day of February, 2021, the applicant submitted their further information response. This provided further clarity in terms of ownership of the red line site area, minor amendments to the proposed alterations and additions to the subject property, clarity on the waste water treatment system and that this development would result in no further loading on it, a visual impact assessment and a Natura Screening Assessment.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The Planning Authority decided to **grant** planning permission subject to 9 no. conditions, as per the recommendations of their Planning Officer, including:

- Condition No. 1:                   Restriction of use of the premises to a single dwelling.
- Condition No. 3:                   Omits the extended deck area at a level of +80.17 along the eastern boundary of the site and indicates that the raised deck area to the rear elevation shall be as indicated on the plans submitted on the 23<sup>rd</sup> day of June, 2020. In addition, it indicates that the accessible terrace/deck area shall only be provided where the rear garden depths to the red line are 11m or more.
- Condition No. 4:                   Requires the finishes to the front boundary wall to be of local stone or equivalent.
- Condition No. 5:                   Requires the provision of a timber fence with a height of 1.2m and temporary heath screen to protect new planting along the western boundary.
- Condition No. 6:                   Drainage.
- Condition No. 9:                   Section 48 Contribution.

This notification to grant permission is accompanied by a number of notes including:

- Note 1:                               Section 34(13) of the PDA, 2000.
- Note 3:                               Indicates that consent of the adjoining property is required for any encroachment or oversailing. It also notes that encroachment and oversailing is a civil matter.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The **final Planning Officer's report** is dated the 2<sup>nd</sup> day of February, 2021, and it essentially considers the applicant's further information response. It includes the following comments:

- The applicants sworn affidavit relating to the identity of the lands is noted.
- There is substantial ambiguity regarding land ownership between the subject site and the property to the south (Note: 'Glenlion Pines').
- Reference is made to the Development Management Guidelines and Section 34(13) of the Planning and Development Act, 2000, as amended.
- It is accepted based on the information provided that the existing septic tank is in good working order and that this development would result in no additional loading.
- There is no objection raised to the proposed surface water drainage provisions.
- A number of errors in the submitted drawings are noted.
- The ridge levels of the dormer structures relative to the main ridge of the host dwelling is acceptable.
- Concerns are raised in relation to the deck structure.
- A 11m setback of the deck structure from the rear boundary be imposed.
- Upon consultation with the Parks and Green Infrastructure Department a revised western boundary treatment is recommended.
- The proposed development would not have an adverse impact on the visual amenities of the area or the landscape character.
- A Stage 2 Appropriate Assessment is not required.
- There is insufficient time to request clarification of additional information.

This report concludes that the development would integrate appropriately without undue impact on the visual and residential amenities of the area and a grant of permission is recommended.

### 3.2.2. Other Technical Reports

**Water Services Department:** In their **final report**, dated the 15<sup>th</sup> of February, 2021, no objection is raised, subject to safeguards.

**Parks and Green Infrastructure Division:** No objection.

### 3.3. Prescribed Bodies

3.3.1. None.

### 3.4. Third Party Observations

3.4.1. Two Third Party observations were received during the course of the Planning Authority's determination of this application. The concerns raised primarily relate to the foul drainage provisions serving the subject property; contended inadequacies of the existing waste water treatment system; question marks over the red line site area set out in the submitted documentation; that the site is not suitable for the proposed development sought under this application; through to that this application should have been accompanied by an NIS.

## 4.0 Planning History

### 4.1. Site

4.1.1. No recent and/or relevant planning history.

### 4.2. Immediate Setting

#### 4.2.1. Adjacent site to the south: Glenlion Pines

**ABP-309279-21 (P.A. Ref. No. F20A/0174):** On appeal to the Board planning permission was **granted** subject to conditions for a development consisting of the demolition of a two-storey dwelling and the construction of a three storey 6-bedroom dwelling in its place. This decision was made on the 27<sup>th</sup> day of May, 2021.

**P.A. Ref. No. F19A/0512:** Planning permission **granted** by the Local Authority in July 2020 for the relocation of previously permitted wastewater treatment tank and sand polishing filter serving Glenlion Pines (permitted under P.A. Ref. No. F17A/0434), removal of a concrete septic tank serving Glenlion Lodge and the provision of a new replacement wastewater treatment system, sand polishing filter, the alteration of levels on the site for landscaping together with all associated site works.

**ABP-304845-19 (PA Ref. No. F18A/0768):** On appeal to the Board Planning permission was **granted** by the Board in October 2019 for alterations to existing dwelling 2 storey dwelling and the provision of an extension of 131m<sup>2</sup> with external terrace at ground floor level, an external staircase together with all associated site works.

**P.A. Ref. No. F17A/0434:** Planning permission **granted** by the Local Authority in November 2017 for the removal of existing septic tank and the provision of an Oakstown BAF Wastewater Treatment System and sand polishing filter.

4.2.2. **Neighbouring site to the West/Opposite side of Lions Head cul-de-sac: 'Carnalea'.**

**ABP-306073-19 (P.A. Ref. No. F19A/0447):** On appeal to the Board retention permission was **granted** for alterations to approved development (P.A. Ref. No. F16A/0225), demolition of car port, and construction of replacement green-roofed car port to accommodate 2 cars.

**ABP-303470-19 (P.A. Ref. No. F18A/0145):** Retention for alterations and permission is sought for works to the front of the dwelling. Status: **Withdrawn**.

**ABP-300378-17 (P.A. Ref. No. F17A/0563):** Amendments to previously approved planning permission Reg. Ref. F16A/0225, comprising: (i) construction of 32 sq.m. carport to the front of the approved dwelling to accommodate 2 no. cars to replace a former 34 sq.m. carport located adjacent to the front boundary with Thornmanby Road; (ii) works to the front of the approved dwelling to accommodate level access at ground floor, comprising lowering of the ground level, reconfiguration of the driveway, retaining walls and landscaping; (iii) minor internal alterations to the approved layout of the dwelling at ground and first floor levels; (iv) minor alterations to fenestration detail at ground and first floor levels on the front elevation, and at ground floor level only on the two side elevations, and all ancillary works necessary to facilitate the development. Status: **Withdrawn**.



## 5.0 Policy & Context

### 5.1. Development Plan

- 5.1.1. Fingal County Development Plan, 2017 to 2023, is applicable. Under this Development Plan the site is zoned ‘RS – Residential’. The stated land use zoning objective for such land is: “to provide for residential development and protect and improve residential amenity”.
- 5.1.2. Objective PM46 of the Development Plan is relevant. It encourages sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.
- 5.1.3. Objective RF51 of the Development Plan is relevant. It seeks to ensure that the development of any coastal site through the extension or replacement of existing buildings or development of any new buildings is of an appropriate size, scale, and architectural quality and that it does not detract from the visual amenity of the area or impact negatively on the natural or built heritage.
- 5.1.4. Chapter 12 sets out Development Management standards.
- 5.1.5. Section 12.4 indicates that extensions to existing dwellings will be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area. Factors such as overshadowing, overbearing and overlooking impacts are referenced, along with proximity, height, and length along mutual boundaries.
- 5.1.6. Sheet No.10 Baldoyle / Howth indicates that views along Thormanby Road in the vicinity of the site are listed for protection. Objective NH33 is therefore relevant. It seeks to ensure the preservation of the uniqueness of a landscape character type by having regard to the character, value and sensitivity of a landscape when determining a planning application. Identified views and prospects are afforded protection Objective NH40 of the Development Plan. This objective seeks to protect views and prospects that contribute to the character of the landscape, particularly those identified in the Development Plan, from inappropriate development.

- 5.1.7. The appeal site lies within a Coastal Landscape Character Type and on the prominent headland of Howth, which is also the subject of a Special Amenity Area Order (1999). Under the SAAO the site is within an area described as 'Residential Area'.
- 5.1.8. Objective HOWTH 4 of the Development Plan is relevant. It seeks to protect and manage the Special Amenity Area, having regard to the associated management plan and objectives for the buffer zone.
- 5.1.9. The Coastal Landscape Character Type is considered to be highly sensitive to development (Table LC01) and the said Development Plan sets out principles to guide development in such areas and landscape character assessment policy objectives NH33-NH39. These objectives seek to preserve the uniqueness of landscape character type and ensure that development reflects and reinforces their character.

## 5.2. Local – Other

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

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

Objective 2.1 of the SAAO seeks to preserve views from public footpaths and roads.

Policy 2.1.1 of the SAAO sets out that the Council will preserve views from the network of footpaths and roads shown on Map B.

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

Objective 2.2 of the SAAO seeks to preserve the distinctive profile of the peninsula viewed from the roads on the shorelines of Dublin Bay and the Baldoyle Estuary.

Objective 2.6 of the SAAO seeks to preserve the wooded character of existing residential areas.

Schedule 3 of the SAAO relates to areas defined as residential (Note: Map A) and sets out objectives for the prevention and limitation of development.

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

### **5.3. Natural Heritage Designations**

- 5.3.1. The nearest European Sites (Natura 2000) are Howth Head SAC (Site Code: 000202) and Rockabill to Dalkey Island SAC (Site Code: 003000) which are located c115m and c200m to the south east of the site, respectively, at the nearest point. In addition, within 1km of the site is Howth Head Coast SPA (Site Code: 004113). There are also a significant number of SAC's and SPA's beyond 1km of this appeal site.

### **5.4. EIA Screening**

- 5.4.1. None required under Part 2, Schedule 5 of the Planning & Development Regulations, 2001, as amended.

## **6.0 The Appeal**

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

- 6.1.1. The grounds of this 3<sup>rd</sup> Party appeal can be summarised as follows:
- The Board is sought to refuse planning permission.
  - The appellants contend that the boundary between their property and the subject site is in dispute.
  - The appellants contend that the percolation area serving subject site is located within the boundary of their property.
  - The existing septic tank is insufficient and requires an upgrade.

- It is contended that given the pollution, which is currently being created by the percolation area, a Natura Impact Statement should accompany this application.
- As the further information response was not deemed significant no opportunity was given to the appellants to make comments on it.
- This development is unsuitable with regards to landownership and the location of the percolation area. The appellants are happy to otherwise support the other proposed works to the subject property sought under this application.

## 6.2. Applicant Response

6.2.1. The 1<sup>st</sup> Party's response can be summarised as follows:

- There are no works proposed to the site boundaries and there is no planning substance or foundations to the appellants comments on the matter of landownership.
- The first party's septic tank is on their property which is a private property and the appellant, and their agents have never requested access to inspect it and have provided no corroborating evidence to support their various allegations. It is considered that the comments made about the septic tank and its percolation area are without foundation or substance.
- The appellant has provided no proof of overflowing and leaking of sewage.
- There is no foundation or substance that there are any foul odours emanating from the septic tank and percolation area.
- The septic tank is in perfect working order, is emptied as well as serviced annually with documentation provided to prove the same. It is also registered on the Domestic Wastewater Treatment Systems Register in Accordance with the Water Services (Amendment) Act, 2012 and it is further contended that they are fully compliant with these regulations.
- This proposal for a domestic extension and will not increase the loading on the septic tank.
- A screening assessment has been conducted and it concludes that no natura impact assessment is required for the proposed development.

- The proposed development has nothing to do with the grounds raised by the appellant in their appeal submission.
- The Board is requested to exercise its powers under Section 138 and dismiss this appeal.

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

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

- The issue of ownership is not a planning matter.
- This application was assessed against the policies and objectives of its Development Plan, the zoning objective of the lands, the residential and visual impact on the area.
- Subject to the conditions attached to its notification to grant planning permission the Planning Authority are of the view that the proposed development is acceptable.
- Should the Board grant permission it is requested that Condition No. 9 be imposed.

## **7.0 Referrals**

7.1. This appeal case was referred by the Board to An Chomhairle Ealaíon, An Taisce, Failte Ireland, The Heritage Council, and the Development Applications. No responses were received.

## **8.0 Assessment**

### **8.1. Preliminary Comment**

8.1.1. Prior to considering this assessment it is in my view important to give consideration to the 1<sup>st</sup> Party contention that the appeal submission made by Mary Taylor, the appellant, is without foundation and/or substance. They also consider that it is vexatious in its nature and therefore should be dismissed by the Board under its powers under Section 138 of the Planning and Development Act, 2000, as amended.

8.1.2. On this matter I note that I have examined the appeal submission and I am of the opinion that the appellant raises concerns that are valid planning matters in that they

essentially contend that the proposed development is an inappropriate development for this appeal site based on foul water drainage concerns and the matter that the applicants do not have sufficient interest in the land to make this application. I therefore do not recommend that the Board dismisses this 3<sup>rd</sup> Party appeal case under its Section 138 powers.

## 8.2. Overview

8.2.1. The Board has received a 3<sup>rd</sup> Party appeal seeking that the Board overturn the decision of the Planning Authority to grant planning permission subject to conditions based on matters relating to landownership, foul water drainage together with the unsuitability of the site for the proposed development sought. Having carried out my inspection of the site and its setting alongside having examined all documentation on file, planning history of the site and its setting through to having had regard to all relevant planning provisions I consider that there are no other substantive planning issues that arise.

8.2.2. I therefore propose to set my assessment out under the following broad headings:

- Landownership
- Foul Drainage
- AA

8.2.3. In relation to these broad headings, I propose to deal with the appellants concerns that this application has not been accompanied by an NIS under a separate section at the end of my assessment titled AA.

8.2.4. As previously set out under Section 2 of this report the proposed development sought consists of minor demolition of works of an existing ground floor rear extension, the construction of a new rear single storey extension which according to the Planning Application Form would have a floor area of 43.6m<sup>2</sup> with together with the other alterations and additions proposed, including the provision of dormer windows to the rear roof would give rise in a total floor of 244.12m<sup>2</sup>. This I note is only a marginal increase in the floor area of the existing dwelling which is given as 225.9m<sup>2</sup>.

8.2.5. The site itself is not an insubstantial site given its 0.089ha area relative to the size of the dwelling thereon and whilst forming part of a designated SAAO, it is residentially zoned under this policy document with this residential zoning corresponding with the

land use zoning for the site and its setting under the applicable Development Plan, which is '*RS – Residential*'. The Development Plan in relation to such lands sets out the following land use zoning objective for 'RS' zoned land: "*to provide for residential development and protect and improve residential amenity*". The accompanying vision for such lands is to: "*ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity*".

- 8.2.6. In this residentially zoned land, residential types of development are deemed to be generally acceptable subject to safeguards.
- 8.2.7. In particular in relation to the development sought under this application, which essentially is an extension to an existing dwelling alongside alterations to its interiors and exterior presentation Chapter 12 of the Development Plan is of particular relevance.
- 8.2.8. In relation to ground floor rear extensions Chapter 12 indicates that these will be considered in terms of their length, height, proximity to mutual boundaries and remaining useable rear private open space.
- 8.2.9. In relation to roof alterations, it sets out these will be assessed against a number of criteria including:
- Consideration and regard to the character and size of the structure, its position on the streetscape and proximity to adjacent structures.
  - Existing roof variations on the streetscape.
  - Distance/contrast/visibility of proposed roof end.
  - Harmony with the rest of the structure, adjacent structures, and prominence.
- 8.2.10. Further on the matter of dormer extensions to roofs Chapter 12 indicates that these will be considered with regard to the impact on the existing character and form, the privacy of adjacent properties through to the design, dimensions, and bulk of any roof proposal relative to the overall size of the dwelling and gardens will be the overriding considerations. It indicates that these generally should not form a dominant part of a roof. Objective DMS41 reiterates this guidance.
- 8.2.11. The subject dwelling is not afforded any specific protection, nor does it form part of the visual setting of any designated Protected Structure. It also does not form part of any

grouping of buildings or streetscape scene that is afforded specific protection though does form part of the highly scenic setting of the Howth SAAO.

- 8.2.12. Further, the dwelling itself, from my inspection of the site is of limited architectural or other merit and as such I do not raise any particular concerns in relation to its alterations and additions as part of improving its residential amenity for its occupants. In addition, the substantive works proposed to it relate to the rear of the dwelling and what appears to be a later also of little merit single storey extension for which demolition is sought. This together with the natural and manmade features that are present will result in the proposed development being one which is not easily legible or appreciable from the public domain. Moreover, what would be legible would form part of a streetscape scene that contains a wide variety of architectural periods and design responses to their Thornmanby Road and Howth Head summit location.
- 8.2.13. Having examined the proposed development against all relevant Development Plan residential standards including private open space and car parking provisions I consider that these are met and in similarity to the Planning Authority I raise no substantive concerns on the principle of the demolition works through to the breadth of alterations and additions proposed to the subject dwelling in order to improve its internal residential amenities as well as to provide a marginal increase to its overall habitable floor area.
- 8.2.14. Moreover, the proposed alterations and additions are subordinate to the host dwelling and the new rear extension is of a contemporary and light weight design that takes advantage of the site's topography and position of the dwelling in order to capture the attractive scenic views of the coast that are available to the rear of this dwelling but in a manner that does not impinge on the established residential amenities of adjoining and neighbouring properties in its vicinity, including that of the appellants, by way of overlooking, overshadowing through to reduced privacy. And subject to the requirements of Condition No. 3 which provides further comfort that no undue overlooking and reduction to privacy of properties in the vicinity would arise by way of ensuring that the proposed deck area does not impinge into the 11m separation distance to the rear boundary.
- 8.2.15. I also observed that there is dense planting and boundary treatments that further provide robust screening of the proposed rear extension and the dormer windows are



subordinate to the main modified roof structure with in excess of 11m to the rear boundary of the site. I therefore do not consider that the dormer windows proposed, if permitted, would result in significant additional overlooking and/or a level. On this matter I further consider that in suburban contexts a level of overlooking or perception of overlooking can be reasonably expected.

8.2.16. In relation to the external expression of the proposed modifications sought subject to agreement of all external materials, treatments, and finishes, including the provision of the revised western boundary set out under Condition No. 5 of the Planning Authority's notification to grant of permission which would ensure a qualitative visual outcome in terms of impact on the visual amenities of the area where they are visible in a limited and localised context, I raise no substantive concerns.

8.2.17. In relation to the western boundary treatment, I consider that the requirements of Condition No. 5 align with the SAAO guidance and approach for boundary treatments within what is a highly sensitive to change and of high amenity value setting.

8.2.18. I therefore broadly concur with the Planning Authority's notification to grant permission for the proposed development sought under this application; notwithstanding, the concerns raised by the appellant in this case require further examination as part of the Board making any determination of the merits and appropriateness of the development sought through to whether it fully accords with the proper planning and sustainable development area. I propose to do this in my main assessment below in the order of the broad headings set out in Section 8.2.2 above.

### **8.3. Landownership**

8.3.1. The appellant in their grounds of appeal raise concerns that the red line area includes land that is in disputed ownership between them and the applicant. On this matter they contend that the percolation area which forms part of the proprietary wastewater drainage system that serves the subject premises is located on land that is in their ownership. I am cognisant that the requirements of Section 22 of the Planning and Development Regulations, 2001 (as amended), requires the applicant to submit the written consent of the legal owner's application sites and provide documentary evidence of the owners' interest where this matter arises.

8.3.2. However, having examined the documentation provided by the appellant I am not satisfied that they have provided sufficient evidence that would make me doubt that

applicant's further information response on the matter of landownership relative to the red line area of the site or that supports without doubt that their consent is required for the making of this application through to carrying out the works that are proposed under this application.

- 8.3.3. I am also of the view that any decision on the planning application does not purport to determine the legal interests held by the applicants or indeed any other interested party and I note that Section 34(13) of the Planning and Development Act, 2000 as amended. It indicates that: "*a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development*".
- 8.3.4. Based on the information on file, including that provided by the applicants as part of the further information, I consider that the applicant has demonstrated sufficient legal interest in the site area to bring forward the proposed development on the subject site, without the requirement of providing consent of another party to make this application.

#### **8.4. Foul Drainage Matters**

- 8.4.1. In relation to the appellants foul drainage concerns I am also satisfied having examined the documentation on file and having conducted an inspection of the site that the proposed development as set out in this application does not relate to an area of land that lies between both properties that they contend is under dispute.
- 8.4.2. The documentation provided, in particular the applicants further information response, together with the limited actual additional floor area proposed that would arise from the development sought, i.e., an increase in habitable floor area of the dwelling from 225.9m<sup>2</sup> to 244.12m<sup>2</sup>.
- 8.4.3. Together with the proposed internal reconfiguring of the subject dwelling as part of the alterations sought, in my view, supports that no additional loading on an existing proprietary foul drainage system would arise from the proposed development were it to be permitted. It also clearly sets out that no amendments, upgrades or otherwise are proposed to the foul drainage infrastructure on site and shows that surface water would be dealt with separately within the confines of the site in a manner that would be consistent with best practices.
- 8.4.4. I note that the documentation provided indicates that the existing septic tank is in good working order, is regularly maintain and of the standard required to serve a dwelling

house of this size at such a location in a manner that accords with EPA guidance on such matters. In particular the 2021 Code of Practice for Domestic Waste Water Treatment Systems (Populations Equivalent to  $\leq 10$ ).

- 8.4.5. During my inspection I did not smell any malodours emanating from the septic tank or in the vicinity of the percolation area. Nor did I observe any evidence of leakage or that there was any labouring of the pump when it activated.
- 8.4.6. In relation to the location of the percolation area and the appellants contention that this piece of infrastructure is on their property, I consider that the substantive issue here is 'civil' in nature and is outside of the Boards remit in their adjudication of this appeal case. To clarify the Boards remit is to make a *de novo* determination of this application with its decision purely related to the planning appropriateness of the proposed development at this location.
- 8.4.7. Based on the information provided, I am satisfied, that the foul drainage infrastructure issues raised are not robustly demonstrated by evidence and there is no substantive planning reason for the proposed development to be refused on this matter. I am also satisfied based on the information provided by the applicant that the existing foul drainage infrastructure that serves the subject dwelling is operating in a manner that is not prejudicial to public health and/or resulting in pollution/contamination of any land, water or otherwise.

## 8.5. Other Matters Arising

- 8.5.1. **Procedural Matters – Public Participation:** I note the comments made by the appellants in relation to their lack of opportunity to make comments on the applicant's further information response, on the basis that the Planning Authority had deemed the response to not be significant. The Board does not have an ombudsman's role on such matters and is considering this appeal case *de novo* and in this regard, I consider that the public notices provided with the initial application as lodged with the Planning Authority clearly sets out the proposed development which having examined the applicant's further information response is not significantly altered by way of the applicant's further information response. The appellants have also had the right under legislative public participation planning provisions to make this appeal and highlight their concerns in relation to the proposed development alongside the further information documentation submitted.

8.5.2. **Procedural – Quality of the documentation:** I consider there is merit in the Planning Authority’s Planning Officer’s concerns that there are issues with accuracy in the drawings submitted with this application. The Planning Authority did not seek to rectify this by way of their additional information request. Having examined the documentation on file together with the carrying out of an inspection of the site and its setting I am of the view that these deficiencies are not of such breadth that would significantly hinder the Board from making its determination of this application. Notwithstanding, the Board may consider it prudent to seek by way of further information a revised and accurate set of drawings of what is proposed and what is sought for demolition that are accompanied by correct labelling.

## 9.0 **Appropriate Assessment**

### 9.1. **Introduction Comment:**

9.1.1. I first of all I note that the appellant as part of her appeal submission to the Board contends that this application should have been accompanied by an NIS. I also note that this issue is one that was raised by the Planning Authority as part of their further information. With Item No. 5 of the Planning Authority request seeking that the applicant carry out a screening for ‘Appropriate Assessment’ and in this regard to submit a ‘Screening Report’, and if necessary, a Natura Impact Statement with this to be prepared by a suitably qualified person. I also note that this item sought that the applicant ensure that these documents have regard to foul and surface water drainage measures existing and proposed to serve the development sought.

### 9.2. **Stage 1 - Screening**

9.2.1. As part of their further information response a document titled: ‘Deepwater, Thornmanby Road, Baily, Howth, Residential Development - A report for Appropriate Assessment Screening’, dated January, 2021, and prepared by BioSphere Environmental Services, who I note specialise in the preparation of such environmental reports.

9.2.2. This report sets out its scope as two-fold. Firstly, whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of a Natura 2000 site; and, secondly whether it is possible that the project may have a significant effect on a Natura 2000 site (European Site), either

alone or in combination with other projects or plans, in view of the site's conservation objectives.

9.2.3. This report methodology in examining the above is set out as follows:

- Description of plan or project.
- Identification of relevant Natura 2000 Sites alongside setting out their qualifying interests and conservation objectives.
- Assessment of likely effects (Direct, Indirect and Cumulative).
- Screening Statement with conclusions.

9.2.4. **Project Description and Site Characteristics**

9.2.5. In terms of the description of the plan or project the site the report essentially describes it as an established detached residence surrounded by mature, landscaped gardens and being adjoined by other detached residences to the east, south and west, with all habitats on site classified as buildings and artificial surfaces, amenity grassland and ornamental/non-native shrubs. It adds that there are no streams, open channels, or natural habitats on site. Having carried out an inspection of the site and its setting I concur with the site description given. In terms of the proposed development, it sets out the alterations and additions including the installation of the 1.6m high boundary railing to the western boundary alongside associated site works. I consider that the description of the project reflects the nature, scale and extent of the development sought.

9.2.6. In terms of drainage, it indicates that there is small outfall pipe to the south of the tank, based on report by Heffernan & Associates, it reiterates that there would be no additional loading and that the proposed surface water drainage is compliant with Sustainable Drainage Systems (SuDS) as well as the Greater Dublin Strategic Drainage Study.

9.2.7. Under Table 1 of the report, it sets out Natura sites within the plans setting, including but not limited to Howth Head SAC (Site Code: 000202) and Rockabill to Dalkey Island SAC (Site Code: 003000) which it sets out lateral separation distances alongside that these particular Natura sites have a theoretical hydrological link due to natural drainage being a pathway between source and receptor. I also note that the list provided is extensive and it extends to 10km geographical area.

9.2.8. In relation to the nearest Natura sites, it sets out in relation to Howth Head SAC, which is within c190m to the south of the site that as natural drainage from the project area is towards the SAC, a theoretical hydrological linkage exists, with the site being the source, the natural drainage being the pathway and the Natura site being the receptor. Similarly, the same conclusion is made with Rockabill to Dalkey Island SAC.

9.2.9. In relation to the other Natura sites identified in Table 1 of the report it examines these based on the best practice 'Source – Pathway – Receptor' conceptual model for environmental management risk assessment. It also sets out the following attributes that would inform the assessment:

- The nature of the works, i.e., renovations to an existing occupied dwelling house.
- The presence of an existing maintained septic tank on site and surface drainage characters of the site that are described as "excellent".
- The context and character of the site within a wider residential area.
- The location of the site on Howth Peninsula and in proximity to area of high conservation importance.

That the absence of hydrological linkages or otherwise between the project area and the identified sites it indicates that it can be concluded with full scientific certainty that for the majority of the sites identified in Table 1 there is no realistic pathway between the source and the receptor.

#### 9.2.10. **Assessment of Direct and Indirect Effects: Construction**

In relation to Howth Head SAC and Rockabill to Dalkey Island SAC, in terms of potential direct impacts, it concludes that it is not anticipated based on scientific certainty that there can be a risk of a direct impact such as disturbance to qualifying interests by the project as there is no pathway from the source to the receptor and as all works are confined to the Deepwater site with established residences present between this project site and both aforementioned SACs.

In terms of potential indirect impacts, this report gives consideration as to whether the proposed project has the potential to impact on the qualifying interests of the two listed designated sites as a result of the possible flow of surface or ground water of potential polluting substances generated on site during the construction and/or operational phases to the SAC area. It notes that there is potential for the generation of dirty water

on site containing potential pollutants like suspended solids, concrete run-off, and oil residues. In relation to the same it is indicated that the contractor will ensure that contaminated water does not enter local drains or seepage areas which could lead towards the cliffs and shoreline to the south and the designated SAC areas.

It is further indicated that the contractor would have a Construction Management Plan prepared prior to the commencement of works. With this setting out measures that will be in force for the duration of the construction phase to ensure protection of surface water and ground water alongside the control of potential pollutants generated on site. It notes that the main purpose of this plan would be to ensure that storm water and wastewater runoff is managed, and that contaminated water does not leave the site with its measures being compliant with the Control of Water Pollution from Construction Sites, Guidance for Consultants and Contractors (C532) and the Environmental Good Practice on Site (3<sup>rd</sup> Edition) (C692). It outlines the measures would include but not be limited to:

- Management of suspended solids in run-off.
- Concrete run-off.
- Accidental spills and leaks.
- Monitoring.

In the reports review of the potential risks of indirect impacts it sets out that due to the small nature of the proposed works within a private residence surrounded by other established residences; the absence of open drains or seepage areas on site; and, even in the worst case scenario where some untreated run-off escaped from the site towards the cliffs and seashore, it is considered that it would not be expected to contaminate surface or ground water due to the distance which is sufficient to dilute the concentration prior to reaching the aforementioned nearby SACs and their qualifying interests which are the Vegetated Sea Cliffs and Dry Head (Note: Howth Head Cliffs SAC) and the Reefs and Harbour Porpoise (Note: Rockabill to Dalkey Island SAC).

It therefore concludes that with full scientific certainty that the construction phase of the project work would not have significant impacts on any Qualifying Interests of the two SACs or the integrity of these two Natura sites.

#### 9.2.11. **Assessment of Direct and Indirect Effects: Operational Phase**

In relation to operational phase of the proposed development the report considers that having regard to the foul and in addition the additional surface water drainage arrangements proposed as part of this development, based on best scientific data, that the project would have no significant indirect impacts would arise on Howth Head Cliffs SAC and Rockabill to Dalkey Island SAC. It also noted that there is an established foul water arrangement which is served annually with the septic tank being in excellent working order with this project resulting in no additional loading. On this basis, it is concluded with full scientific certainty that no significant impacts would arise on the aforementioned SAC's or any other European sites.

#### 9.2.12. **In-combination Effects**

In terms of 'in-combination' effects the report sets out an examination of the planning history of the site's setting alongside indicating that no significant large-scale developments in this area of Howth are proposed. I note that this correlates with the planning history I have set out previously in this report above (Note: Section 4). On this basis it concludes that no significant impacts would arise on the aforementioned SAC's or any other European sites.

This report concludes that *"beyond reasonable scientific doubt, it has been demonstrated that the proposed project, either individually or in combination with other plans or projects, would not be likely to have a significant effect on any Natura 2000 site"* and therefore a Stage 2 Appropriate Assessment is not required.

#### 9.2.13. **Report Conclusion:**

The authors of the appropriate assessment screening submitted with the appeal documentation concludes that based on best scientific evidence that the proposed project is expected to have no significant effect on the conservation objectives of Howth Head SAC (Site Code: 000202) and the Rockabill to Dalkey Island SAC (Site Code: 003000), either alone or in combination with other plans or projects. It therefore concludes that it is not necessary to proceed to Stage 2 and carry out an Appropriate Assessment.

#### 9.2.14. **Screening Determination:**



The proposed development was considered in light of the requirements of section 177U of the Planning and Development Act 2000 (as amended). Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on any European Sites in view of the sites' conservation objectives, and Appropriate Assessment including the submission of Natura Impact Statement is not, therefore, required.

I have had particular regard to the information available on file and that publicly available, the close proximity of the site to Howth Head SAC (Site Code: 000202); Rockabill to Dalkey Island SAC (Site Code: 003000) and Howth Head Coast SPA (Site Code: 004113) which range in proximity from the appeal site from c115m to c365m at their nearest point. And the locational factors of the site which I note is situated on the southern side of Howth Summit at high ground levels with the lands significantly in a southerly direction towards the Irish sea shoreline including Doldrum Bay and Lions Head which form part of Howth Head SAC on land and Rockabill to Dalkey Island SAC the nearest stretch of coastline, respectively.

Alongside my determination is based on the following:

- The nature, scale, and extent of the proposed development.
- The limited duration of the construction works.
- The presence of an existing wastewater treatment on site to which no additional loading is proposed nor any alterations to it.
- The lack of any watercourse bounding or running through the site.
- The distance of the proposed development from European Sites (See Table 1 below).
- The qualifying interests of both identified European sites within the possible zone of influence, and their sensitivity relative to the nature, scale and extent of the development sought (See Table 1 below).
- The hydrological assimilative capacity of the landscape and the marine scape of this locality between the source, pathway, and receptor.

- Regard was had to the topography of the site and it's setting together with its natural and man-made attributes.

**Table 1: Qualifying interests & conservation objectives of European sites within a possible zone of influence of this appeal site.**

European Site	Qualifying Interests	Conservation Objectives
<p><b>Special Area of Conservation: Howth Head SAC</b></p> <p><b>Site Code: 000202*</b></p> <p>Distance from the appeal site: c115m to the south at its nearest point.</p>	<p>1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</p> <p>4030 European dry heaths</p>	<p>A site-specific conservation objective aims to define favourable conservation condition for a particular habitat or species at that site.</p> <p>The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.</p>
<p><b>Special Area of Conservation: Rockabill to Dalkey Island SAC</b></p> <p>Distance from the appeal site: c200m to the south at its nearest point.</p>	<p>Reefs [1170]</p> <p>Phocoena phocoena (Harbour Porpoise) [1351]</p>	<p>A site-specific conservation objective aims to define favourable conservation condition for a particular habitat or species at that site.</p> <p>The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.</p>

It is therefore reasonable, in my view to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on Howth Head SAC (Site Code: 000202) and the Rockabill to Dalkey Island SAC (Site Code: 003000), in view of their Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required in this case.

In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects on the projects on any European Sites and I had regard to the fact that this proposal whilst including demolition would result in a minimal increase in total floor area of this dwelling from its existing stated 225.9m<sup>2</sup> to 244.12m<sup>2</sup> on an established and mature residential site served by a proprietary foul wastewater treatment system which meets current requirements.

## 10.0 Recommendation

10.1. I recommend that planning permission be **granted**.

## 11.0 Reasons and Considerations

11.1. Having regard to the location of the site on zoned lands in Howth, the existing nature, scale and extent of development on this suburban plot which contains an existing detached dwelling house, the modest nature of the proposed demolition, alterations and additions works together with the pattern of development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity and would not conflict with the provisions of the Fingal County Development Plan, 2017 to 2023, or the 1999 Howth Special Amenity Area Order. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and as amended by the further plans and particulars submitted on the 2<sup>nd</sup> day of February, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The extended deck area at level +80.17, along the eastern boundary indicated on the plans submitted on the 2<sup>nd</sup> day of February, 2021, shall be omitted. The raised deck area to the rear elevation of the house shall be as indicated on the plans submitted on 23<sup>rd</sup> June 2020. Proposed Ground Floor Plan 'DBH\_PL\_P\_04'. An accessible terrace/deck area shall only be provided where rear garden depths to the red line boundary are 11m or more.

**Reason:** In the interest of clarity.

3. The dwelling hereby permitted shall be used as a single dwelling unit apart from such use as may be exempted development for the purposes of the Planning and Development Regulations, 2001, as amended.

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

4. The finishes to the front boundary wall shall be local stone or equivalent.

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

5. A timber rail fence with a height of 1.2m and temporary heath screen to protect new planting shall be provided along the western boundary.

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

6. All external finishes to the additions and alterations of the dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. These shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

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

8. (a) All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works. In the event of any such spillage or deposit, immediate steps shall be taken to remove the material from the road surface at the applicant/developers own expense.

(b) The applicant/developer shall be responsible for the full cost of repair in respect of any damage caused to the adjoining public road arising from the construction work and shall either make good any damage to the satisfaction of Fingal County Council or pay the Council the cost of making any such damage upon issue of such a requirement by the Council.

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

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s identified for the storage of construction refuse).
- (b) Details of site security fencing and hoardings.
- (c) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site.
- (d) Measures to obviate queuing of construction traffic on the adjoining road network.
- (e) Measures to prevent the spillage or deposit of clay, rubble, or other debris on the public road network.
- (f) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels.
- (g) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater.
- (h) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil.
- (i) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

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

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

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

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

**Advisory Note:** Include Section 34(13) of the PDA, 2000, as amended.

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Patricia-Marie Young  
Planning Inspector - 19<sup>th</sup> day of July, 2021.