



An
Bord
Pleanála

Inspector's Report

ABP-310034-21

Development	Pedestrian and cycle path
Location	Lands at Mooretown and Abbeyvale Court, Swords, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0095
Applicant(s)	Gannon Properties.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party
Appellant(s)	Abbeyvale Residents Group.
Observer(s)	None.
Date of Site Inspection	11 th August 2021.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.1383ha and is primarily located west of Abbeyvale Court, with access gained from an area of public open space within Abbeyvale Court. The site itself is currently greenfield in nature and was in use for arable farming purposes at the time of my inspection.
- 1.2. The site lies to the south of lands within the boundary of the Oldtown-Mooretown Local Area Plan, which have been partially developed to this point. A section of a planned distributor road has been constructed, to provide access to a school campus to the north, which contains Swords Community College and Broadmeadow Community National School.
- 1.3. The open space area from where access would be taken is enclosed by a block wall approx. 2.3m high and is adjoined by housing at both ends. The area is currently laid to grass with a footpath and grass verge running along its eastern edge.

2.0 Proposed Development

- 2.1. Permission is sought for a pedestrian and cycle path 185m in length, with ancillary works, to provide a new east-west connection from Abbeyvale Court to the proposed Mooretown Distributor Road extension and a new school campus which lies to the north.
- 2.2. The path contains a 2.5m 2-way cycle path and 2m footpath, with 1.5m verges on both sides, enclosed by a 1.8m high paladin fence.
- 2.3. The Mooretown Distributor Road extension is part of the Swords Western Distributor Road, which connects the Rathbeale Road to the Mooretown Local Area Plan lands.
- 2.4. The development was amended at the further information stage, through the incorporation of a gated and security controlled access point from Abbeyvale Court and additional landscaping proposals were also provided.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 29th March 2021, subject to 14 No. conditions.

Condition No. 3 stated that permission is granted for a temporary 5-year period for temporary structures (paladin fence and various tree protection fences).

Condition No. 4 required a number of corrections/amendments to the application drawings, including:

- Wider temporary grass strips on both sides of the footpath/cycleway, each to a minimum depth of 3m and a 1m planting strip along the full length of the paladin fence.
- Lamp standards should be provided within a hard surfaced area, for ease of maintenance, and should be offset to the south of the path.
- Pedestrian and cycle lanes should be segregated horizontally and vertically, with a 1m grass margin provided between lanes.
- Trees should be planted at 15-20m centres along the north and south sides of the paladin fence.
- The applicant was required to submit and agree proposals regarding opening and closing of the proposed gates. Management of same was required to be carried out at the applicant's expense and approved opening times were required to be posted in a number of specified locations.

Condition No. 5 required that the location of subsequent access points to the path, from development lands adjacent, shall be as determined by an approved layout for the development of these lands.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 10th June 2020 and 29th March 2021 have been provided. The first report stated that the proposed development was not listed as being either permissible or not permitted under the applicable zonings and that, therefore, its

acceptability would be established against its contribution towards achievement of the zoning objectives and vision statements, together with other development plan objectives. The report noted that the route of the path is not identified on the development plan map but that the provision and expansion of sustainable transport and permeability options are strongly underpinned by objectives within the development plan. The design and route of the path were considered acceptable but concerns were expressed regarding the attractiveness and functionality of the link from the existing residential neighbourhood to future development lands. The report recommended that additional information should be sought in relation to the following aspects of the development: -

- An Appropriate Assessment Screening Report was requested.
- The applicant was requested to further consider how opening the wall between Abbeyvale Court and the lands to the west would allow for expansion of open space and enclose the proposed path in a safe and attractive manner.
- The applicant was requested to incorporate additional planting, to soften the transition from urban to rural, and with reference to Section 3.2.2 of the Local Area Plan for the area.

3.2.2. The second report followed receipt of the additional information response and a period of further public consultation, following the submission of significant further information. The report summarised and responded to the additional information response submissions and concluded that the development would be consistent with the proper planning and sustainable development of the area, providing a short term solution towards the achievement of high-level objectives of the development plan. It was recommended that permission be granted, subject to 17 no. conditions. Recommended condition Nos. 15, 16 and 17, which related to financial contributions, were identified to be omitted from the final decision.

3.2.3. Other Technical Reports

An undated **Transportation Planning Section** report has been provided, which outlined no objection to the development subject to a number of recommended planning conditions.

Reports from the **Water Services** department dated 26th March 2020 and 18th February 2021 have been provided, which expressed no objection to the development.

Parks and Green Infrastructure Division reports dated 20th March 2020 and 3rd April 2021 have been provided. The first report stated that further consideration should be given to integration between the path, future open space lands and Abbeyvale Court. Particular concerns were expressed regarding the combined impact of the proposed paladin fence and the existing block wall which encloses the open space area. The second report requested that the operation of the path should be clarified and recommended a number of conditions, to be applied as part of any grant of permission.

A **Community Archaeologist** report dated 13th March 2020 has been provided, which advised that archaeological assessment has been undertaken on the site in the past and there is the potential for further finds. Supervision of groundworks was recommended to be required, controlled by condition.

An **Environment Department (Waste Infrastructure and Management)** report dated 20th March 2020 has been provided, which expressed no objection to the development.

3.3. Prescribed Bodies

- 3.3.1. Irish Water made submissions dated 3rd April 2020 and 26th February 2021, outlining no objection subject to a number of standard recommended conditions.
- 3.3.2. The National Transport Authority made a submission dated 3rd April 2020 which advised that under the Cycle Network Plan for the Greater Dublin Area both the Rathbeale Road and Brackenstown Road comprise part of the primary/secondary cycle infrastructure and that, in the interests of residents at Mooretown, Rathbeale and Applewood, permeability through and within the lands should be provided. The submission also advised that the proposed path would provide the only means of permeability through the Mooretown lands to Rathbeale and that it is essential that residents have an option for connection, other than a circuitous car journey.
- 3.3.3. The Dublin Aviation Authority made a submission dated 6th April 2020, advising that it had no comments on the application.

- 3.3.4. The Irish Aviation Authority made a submission on 23rd March 2020, advising that it had no comments on the application.
- 3.3.5. The Department of Culture, Heritage and Gaeltacht (DAU) made a submission dated 6th April 2020, which advised that archaeological monitoring should be undertaken as part of the development.
- 3.3.6. The application was also circulated to An Taisce but no responding submission was received.

3.4. Third Party Observations

- 3.4.1. A number of third party submissions were received on the initial public consultation, the issues raised in which can be summarised as follows: -
- The subject lands are not included within the local area plan and are not identified for rezoning. There is also no provision for a pedestrian/cycle link in this area within the development plan.
 - Residents were not consulted.
 - The development was considered to be contrary to the open space zoning.
 - The development was considered contrary to conditions associated with permission Reg. Ref. 92A/0261.
 - It was considered that full test trenching, in respect of archaeological potential, should be undertaken.
 - Concerns were expressed that the proposed path does not connect to a cycle network.
 - The development was considered premature.
 - It was considered that inadequate details of the proposed development had been provided.
 - Local roads within the estate were considered inadequate to accommodate the development, which will lead to traffic congestion and road safety issues.
 - It was considered that there are adequate drop-off facilities provided at the school site.

- Concerns were expressed regarding impact on residential amenity.
- Concerns were expressed regarding the potential for anti-social behaviour, noise, pollution and litter.
- The applicant's legal entitlement to deliver the development was questioned.
- The development was considered likely to impact on biodiversity.
- The development was considered likely to impact on property values in the area.

3.4.2. A number of submissions were also received in support of the development, which in particular cited improvements to walking and cycling infrastructure in the area. One supporting submission included an analysis of the extent of housing which would benefit from improved access to the school campus, referenced planning policy supports for this type of infrastructure development and responded to a number of objector concerns.

3.4.3. A number of additional submissions were received following the additional information response, further issues raised within these submissions can be summarised as follows: -

- The findings of the AA Screening Report were accepted.
- Concerns were expressed that there is no guarantee that the identified integration of the path with the development of the wider landholding will be delivered.
- Amendments to the development were noted, but were considered inadequate to address previously expressed concerns.
- The design of the development was considered unsightly and proposed security fencing and gates were considered out of place.

3.4.4. A further submission in support of the development was also received as part of the further consultation period.

4.0 Planning History

4.1. I did not encounter any previous planning records in my review of the site's planning history.

Relevant Nearby History

F20A/0096 - *Lands to the west of the subject site*: Permission granted on 5th May 2021 for a c. 400m long southerly extension to the newly constructed Mooretown Distributor Road including verges, cycle paths, footpaths, water supply, foul and surface water drainage, surface water attenuation, utilities and ancillary works. The Mooretown Distributor Road is part of the Swords Western Distributor Road which connects the Rathbeale Road to the Mooretown Local Area Plan lands.

F21A/0273 – *Lands to the west of the subject site*: Current application for a c.457m long extension to an existing 2.5m high boundary wall, and all associated works. A request for additional information was issued by the Planning Authority on 8th July 2021.

5.0 Policy Context

5.1. Development Plan

5.1.1. The subject site is subject to a number of land use zonings under the Fingal County Development Plan 2017-2023, as follows: -

- OS - Open Space with an objective to '*Preserve and provide for open space and recreational amenities.*'
- RA – Residential Area with an objective to '*Provide for new residential communities subject to the provision of the necessary social and physical infrastructure.*'
- GB - Green Belt with an objective to '*Protect and provide for a Greenbelt.*'

5.1.2. The development plan zoning map also identifies a Road Proposal objective in the area west of the Abbeyvale estate and west of the subject site. Table 7.1 identifies this road as the Swords Western Distributor Road.

5.1.3. The lands to the north of the estate are identified for the preparation of a new Local Area Plan.

5.1.4. Relevant objectives within the development plan include: -

SWORDS 6: Prioritise the early construction of the following critical infrastructure:

- The Western Distributor Road.

(a number of other projects are listed)

SWORDS 11: Provide for a comprehensive network of pedestrian and cycle ways, linking housing to commercial areas, to the town centre and to Metro stops and linking the three water bodies (the Ward River Valley, the Broadmeadow River Valley and the Estuary) to each other subject to Screening for Appropriate Assessment if required.

MT13: Promote walking and cycling as efficient, healthy, and environmentally-friendly modes of transport by securing the development of a network of direct, comfortable, convenient and safe cycle routes and footpaths, particularly in urban areas

MT17: Improve pedestrian and cycle connectivity to schools and third level colleges and identify and minimise barriers to children walking and cycling to primary and secondary schools.

MT19: Design roads and promote the design of roads, including cycle infrastructure, in line with the Principles of Sustainable Safety in a manner consistent with the National Cycle Manual and the Design Manual for Urban Roads and Streets.

PM32: Have regard to the joint Department of Transport, Tourism and Sport and the Department of Environment, Community and Local Government's Design Manual for Urban Streets and Roads (DMURS), (2013) and the National Transport Authority's Permeability Best Practice Guide (2015), in the provision of good urban design.

5.2. **Oldtown - Mooretown Local Area Plan 2010**

5.3. The subject site is outside of the local area plan boundary, however; the LAP zoning map identifies an indicative route for the Western Distributor Link Road, to the west of the Abbeyvale estate and connecting to Brackenstown Road to the south.

5.4. Section 3.2.8 'Green Corridors and Links' outlines a commitment to '*provide for a comprehensive, direct and safe network of pedestrian and cycle routes within the plan lands and linking in within the adjoining area.*'

5.5. Natural Heritage Designations

- 5.5.1. The site is not located within or adjacent to any designated European Site, the closest such site being Malahide Estuary SAC and SPA complex, which lie approx. 3km to the east.

5.6. EIA Screening

- 5.6.1. The proposed development falls within the category '*Infrastructure Projects*' under Schedule 5, Part 2 of the Planning and Development Regulations 2001-2020, where mandatory EIA is required in the following circumstances:

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

- 5.6.2. The subject site has a stated area of 0.14ha, well below the applicable 20ha threshold for 'elsewhere' locations.
- 5.6.3. I have given consideration to whether sub-threshold EIA is required. The introduction of a pedestrian and cycle path of 185m in length on primarily greenfield lands will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on the Malahide Estuary SAC and SPA complex (as discussed elsewhere in my Report). On this basis I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination a sub-threshold environmental impact assessment report for the proposed development is not necessary.

6.0 The Appeal

6.1. Grounds of Appeal

The issues raised within the Grounds of Appeal can be summarised as follows: -

- It is understood that the open space area within Abbeyvale Court is managed and maintained by the Council for the benefits of the public. It is unclear if the Council has consented to the application, on lands which the applicant has no legal interest in. If it is considered the applicant has insufficient legal interest in the lands, the application should be deemed to be invalid.
- The development represents a material contravention of conditions 6 & 7 of permission Reg. Ref. 92A/0261, under which the Abbeyvale estate was built. Conditions attached to this permission were so attached in order to create a viable open space within the estate and they should not be disregarded or omitted at this stage, following years of continuous use of the area by residents. It is considered the Planning Authority is legally prevented from materially contravening conditions attached to a valid planning permission granted in the past.
- The proposed connection was not identified as an objective of the development plan and as such is a material contravention of it, which can only be rectified by the inclusion of a local objective as part of the new development plan.
- The proposed connection was not identified as an objective of the local area plan.
- The proposed development forms part of a route extending more than 900m to the new school campus and includes part of the distributor road which will not accommodate traffic and will not be surveilled or overlooked until the lands are developed in the future. The absence of passive surveillance is contrary to the principles of connectivity and permeability which the applicant has quoted within the application.
- The safety and security of users is at risk in the absence of passive surveillance and the requirement to plant trees and hedgerows will increase such vulnerability.
- The provision of this link route should not be considered until such time as the residential-zoned lands between the link and the new school have been built out, where same would overlook the route.
- A masterplan should be prepared, to demonstrate how the development of these lands will provide adequate overlooking of the route. The masterplan provided as

part of the AI response only identifies overlooking of a small part of the route and suggests that achievement could be problematic.

- Delaying the proposed link until the remaining section of the distributor road has been constructed would also allow for alternative travel options along the route and would reduce potential car movements through Abbeyvale Court, associated with accessing the route.
- The pattern of traffic and drop-off and pick-up times within Abbeyvale Court is likely to generate significant traffic, to the detriment of the residential amenity of residents.
- No assessment or estimate of vehicle movements through the estate was provided with the application. This is considered pertinent to the application and could have been ascertained through a traffic and transport assessment. Traffic volumes are likely to lead to congestion and road safety issues.
- The application contained no traffic management proposals and the Planning Authority's Transportation department did not provide any recommendations for same. Traffic impacts were acknowledged by the Planning Authority in its assessment, but were not given inadequate weight.
- The Planning Authority should have evaluated the proposal in accordance with the RS zoning objective which applies to the estate, which seeks to provide for residential development and protect and improve residential amenity. It is considered that residential amenity will be significantly affected by the development, which is a material contravention of the zoning objective.
- Little information has been provided in relation to the proposed management of the gated access to the route. There is no guarantee that any locks will be retained indefinitely or will be consistently adhered to. Taken together with the absence of passive surveillance, there is potential for criminality or anti-social behaviour.
- There are no proposals for taking-in-charge in the future, which has implications for management and maintenance of the area if the developer failed to maintain the route to an acceptable standard.

- The route has not been designed to offer protection from scramble motorbikes, etc.
- Bisecting the existing public open space area will reduce its amenity and utility value. It is highly used and provides a safe and uninterrupted play space. The new path and fast-moving bike movements will adversely affect safety and is likely to result in parents not allowing their children to use the space.
- The route will significantly increase movements from the Mooretown lands through Abbeyvale, further impacting on the quality of life of residents.
- The Board is requested to refuse permission for the proposed development.

6.2. Applicant Response

6.2.1. The applicant made a submission on the appeal, dated 25th May 2021, the contents of which can be summarised as follows: -

- Gerard Gannon is the registered owner of part of the public open space at Abbeyvale Court and a copy of Folio evidence from the Property Registration Authority has been provided.
- The Manager's Order in respect of Reg. Ref. 92A/0261 outlines the reasons underpinning the provision of the wall which encloses the area of open space at Abbeyvale Court, which was requested by the adjoining landowner in order to provide a permanent barrier for the protection of livestock. As the adjoining lands have been rezoned and the lands sold, the substantive reason for providing the wall is considered no longer relevant. The proposed development is not considered to be a material contravention of that permission. A grant of permission will supersede the permission and its conditions.
- The development, whilst not expressly listed as permitted in principle or not permitted under the zonings, is compliant and consistent with local objectives, the Mooretown-Oldtown LAP, development plan objectives, the Urban Design Manual and DMURS, all of which promote sustainable transport modes. In particular reference is made to Objectives Swords 11 and 12, PM32 and MT13 of the development plan.

- Consideration should also be given to the time-expired Oldtown-Mooretown local area plan, a key element of which was the provision of direct and well-designed green corridor linkages.
- Although the proposed path is c.120m south of the extent of the LAP lands and the lands were not zoned for residential development at the time of the LAP, the LAP included objectives for the creation of connections to established neighbourhoods via green spaces at Glasmore Abbey Church, Castleview and Ashton Green/Broadmeadow Park. It is not unreasonable to expect that a similar objective for a connection via the open space at Abbeyvale Court or via the cul-de-sac at Abbeyvale Place would have been considered, had the adjacent lands been zoned for residential development at that time.
- The expansion of residential zoned lands at the west edge of the town needs to bring certain objectives along with it and the provision of enhanced pedestrian and cycle connections, where the opportunities exist, should be taken.
- Regarding DMURS compliance, the Abbeyvale estate has an impermeable street layout, in a segregated form of street design and limits sustainable transport options and connectivity. Walking distances are lengthy, with route choices limited and complicated. The proposed development is an intervention that fully aligns with the principles of DMURS.
- The development is proposed in advance of residential development in order to encourage pedestrian and cycle movements between the existing neighbourhoods and the new school site. It is acknowledged that the route will not benefit from passive surveillance for some time and the applicant has proposed to manage security and public safety by locking the path connection outside of school hours. The management system is already in place for the completed section of the Western Distributor Link Road connecting Rathbeale Road to the school campus and this has worked successfully since the schools opened.
- The development is not considered to be premature. If anything, upfront delivery of infrastructure should be welcomed.

- The planned development of the adjacent lands is the subject of an upcoming SHD application and the detailed layout, including integration of the route, will be agreed with the Planning Authority at the pre-application stage. The sketch layout provided as part of the additional information response is indicative.
- Regarding impacts on residential amenity, whilst there may be some increase in traffic movements the likelihood is that the real change will be local footfall and cyclists.
- The Board is requested to uphold the decision of the Planning Authority and to grant permission.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority made a submission dated 24th May 2021, which requests the Board to uphold its decision on the application.

6.4. Observations

- 6.4.1. None received.

6.5. Further Responses

- 6.5.1. None received.

7.0 Assessment

- 7.1. Having inspected the site and considered the contents of the appeal in detail, the main planning issues in the assessment of the appeal are as follows:

- Site ownership;
- Principle of development and Material Contravention;
- Impact on residential amenity;
- Proposed layout;
- Other issues;
- Appropriate Assessment.

7.2. Site Ownership

- 7.2.1. The question of the applicant's legal interest in the lands has been raised in the appeal, which states that the area of open space in question is understood to be managed and maintained by the Council and that it is unclear if the Council has consented to the application, on lands which the applicant has no legal interest in. The appellant further states that if it is considered the applicant has insufficient legal interest in the lands, the application should be deemed to be invalid.
- 7.2.2. In response to the appeal, the applicant has asserted ownership of part of the public open space at Abbeyvale Court, including through the provision of a copy of Folio evidence from the Property Registration Authority.
- 7.2.1. Section 5.13 of the *Development Management Guidelines* (DOEHLG, 2007) provides detailed guidance on the issue of land ownership disputes within planning applications, outlining that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts. Reference is made to Section 34(13) of the Act, which outlines that a person is not entitled solely by reason of a permission to carry out any development. Further, the Guidelines advise that permission should only be refused on the basis of land ownership where it is clear that the applicant does not have sufficient legal title.
- 7.2.2. From the information available to me, it has not been clearly demonstrated that the applicant does not have sufficient legal title and, with reference to advice within the Development Management Guidelines, I consider it would be unreasonable to refuse permission on this basis.

7.3. Principle of Development and Material Contravention

- 7.3.1. The proposed development traverses lands subject to three separate land-use zonings; Open Space, Residential Area and Green Belt. Pedestrian and cycling infrastructure is not listed as a 'permitted in principle' or 'not permitted' use under any of the zonings and, in accordance with the accompanying note provided under each of the zoning matrixes at Section 11.8 of the development plan, the proposal falls to be assessed in terms of its contribution towards the achievement of each respective zoning objective and vision statement and its compliance and consistency with the policies and objectives of the Development Plan.

- 7.3.2. The objective of the Open Space zoning is to '*Preserve and provide for open space and recreational amenities*' and I note that the vision statement outlines that there will be strict development controls, with only community facilities and other recreational uses considered.
- 7.3.3. The objective of the Residential Area zoning is to '*Provide for new residential communities subject to the provision of the necessary social and physical infrastructure.*' I note that the vision statement outlines that high quality new residential environments with good layout and design will be provided, with adequate public transport and cycle links and within walking distance of community facilities.
- 7.3.4. The objective for the Green Belt zoning is to '*Protect and provide for a Greenbelt.*' The vision statement outlines a Green Belt will demarcate the boundary between urban and rural or between settlements and its role is to check unrestricted urban sprawl. It also states that the Greenbelt will be attractive and multi-functional, serving the needs of communities.
- 7.3.5. I have outlined relevant development plan objectives at Section 5.1 of this report and, in particular I would highlight Objectives MT13 and MT17, both of which support the provision of cycle routes and footpaths.
- 7.3.6. I also consider the recent grant of permission for a 400m long southerly extension to the newly constructed Mooretown Distributor Road, granted by the Planning Authority under Reg. Ref. F20A/0096, is of relevance. This road extension traverses lands which are zoned Green Belt and is the connection point from the proposed development, to allow onward connection to the school campus.
- 7.3.7. I do not consider that the proposed development, which would improve permeability and connectivity from the Abbeyvale estate, would be contrary to or would undermine any of the applicable Open Space, Residential Area or Green Belt zonings. Moreover, the development is supported by other objectives of the development plan, as I have previously outlined, and is also supported by DMURS, which acknowledges the benefits which can accrue to communities from well-placed linkages, which reduce walking distances to essential services¹. I therefore consider

¹ Design Manual for Urban Roads and Streets, 2019, Section 3.3.3 'Retrofitting'

the development to be acceptable in principle, subject to consider of the key issues discussed in further detail below.

7.3.8. The appellant has also raised concerns that the development is premature, pending the build-out of the adjacent lands for housing or the preparation of a detailed masterplan. I am satisfied that a layout can be devised which would overlook and integrate the proposed development. I would however recommend that, should the Board decide to grant permission, a condition be attached requiring that the development shall not be commenced until such time as the development approved under Reg. Ref. F20A/0096 has been completed, in order to ensure that the entirety of walking and cycling link to the school campus is provided.

7.3.9. Regarding the appellant's argument that the development is a material contravention of the development plan, I have previously outlined that pedestrian and cycling infrastructure is not listed as a 'not permitted' use under any of the applicable zonings and it is not in direct contravention of any development plan objective. I am therefore satisfied that the issue of material contravention does not arise in this instance and that the provisions of Section 37(2) of the Act are not applicable.

7.4. Impact on Residential Amenity

7.4.1. A key issue within the grounds of appeal is the impact of the development on residential amenity, including in relation to the loss of usable amenity space, traffic volumes and the potential for anti-social behaviour.

7.4.2. Regarding concerns over the loss of usable amenity space, the development includes hard-surfaced cycle and pedestrian paths through the open space, together with a single lighting pole, which lead to the gated access onto the main part of the route. Whilst there will undoubtedly be an impact on the character of the space, I do not consider that its provision would have a detrimental impact on usability. I also consider that a minor impact on the character of the space must be balanced against the wider benefit to residents of enhanced permeability and connectivity to the schools campus.

7.4.3. The development may lead to some additional traffic within Abbeyvale Court but I do not consider it likely that traffic levels would be such that congestion or road safety issues would arise. In any case, I note that there is a turning circle at the end of the cul-de-sac, for any additional vehicles to manoeuvre before existing Abbeyvale

Court. The primary purpose of the proposed development is to provide a direct walking and cycling connection to the school campus within the local area plan lands and, in this respect, I agree with the applicant that it is likely that the majority of users will be pedestrians and cyclists from the surrounding area. I note in this regard that the Planning Authority's Transportation Planning Section report did not express any concerns in relation to the development.

- 7.4.4. Regarding concerns over the potential for anti-social behaviour, I share these concerns insofar as the provision of a un surveilled and isolated route has the potential to give rise to anti-social behaviour issues. However, in saying this the route is quite straight with good forward visibility and security arrangements have been proposed, to ensure that the gates are closed and locked outside of school hours. On balance, I consider adequate provision has been made to mitigate the potential for anti-social behaviour. Should the Board be minded to grant permission, I would recommend a condition be attached requiring the applicant to agree security measures (locking/unlocking of gates) with the planning authority.

7.5. **Proposed Layout**

- 7.5.1. From the Abbeyvale Court side, the development will present as hard-surfaced cycle and pedestrian paths leading to a c.10m wide opening which includes a c.6m wide gated access. Limited details of the gate's construction have been provided but it can be seen from the drawings that its 2m height would be below the 2.3m height of the wall. I do not consider the creation of the access would have any material impact on the character or the visual amenities of the area. The specific design and materials used for the gate can be agreed with the Planning Authority, should the Board be minded to grant permission.
- 7.5.2. On the west side of the Abbeyvale Court access, the route would be enclosed by a 1.8m paladin fence, with 1.5m wide grass verges on either side of the cycle path and footpath. Visibility of the route is likely to be confined to immediate views from the distributor road extension. I have some concerns regarding the visual impact of the paladin fence, but I accept that in the circumstances, where there is no passive surveillance or overlooking until such time as the surrounding lands are development, there is a requirement to maintain a safe and secure route for users. I note that the Planning Authority attached conditions 2 and 4 to its decision, which

required the removal of the paladin fence after 5 years and required tree planting along both sides of the fence. Should the Board be minded to grant permission, I would recommend that similar conditions are attached to its Order.

- 7.5.3. The layout of the route itself would take the form of a 2.5m wide 2-way cycle path and 2m wide footpath, with 1.5m wide grass verges on either side.
- 7.5.4. The National Cycling Manual provides guidance on the layout on the width and layout of cycle lanes or tracks. For a basic two-way cycling regime, the Manual advises that the cycle way itself should be a minimum of 1.75m wide, with additional allowances for inside and outside edges (i.e. buffer zones for the protection of cyclists). In this instance the route does not involve any interaction with vehicles so reduced provision for inside and outside edges is appropriate and I am satisfied that they can be accommodated within the available 2.5m width.
- 7.5.5. Section 4.3.7 of the Manual advises that where a route is likely to have frequent use by pedestrians, consideration should be given to raising the adjacent footpath and/or reducing speed differential through cycle calming. The proposed development does not incorporate grade separated paths and cycle calming measures have not been identified. Should the Board be minded to grant permission, I would recommend a condition be attached requiring the detailed layout of the route to be agreed with the Planning Authority and that it should reflect guidance contained within the National Cycling Manual.
- 7.5.6. In addition to the requirement for tree planting along the route, condition No. 4 of the Planning Authority's decision required that wider temporary grass strips, of minimum depth 3m, should be provided along both sides of the route and that a planting strip of minimum depth 1m should be provided within these areas. I agree that such additional landscaping measures will improve and soften the appearance of the route but, particularly as the adjacent lands will be developed for housing in the future, a balance needs to be struck between the level of planting and maintaining a view over the route, for the purposes of passive surveillance. Should the Board be minded to grant permission, I would recommend a condition be attached requiring the applicant to agree landscaping proposals with the Planning Authority.

7.6. **Other Issues**

7.6.1. The grounds of appeal state that the development is a material contravention of conditions attached to permission Reg. Ref. 92A/0261, under which the Abbeyvale estate was built. I am satisfied that, should permission be granted by the Board, the proposed development will supersede the conditions attached to Reg. Ref. 92A/0261, insofar as they relate to the open space area and the boundary wall.

7.7. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

7.7.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

7.7.2. A screening report for Appropriate Assessment was not submitted with this application/ appeal case. Therefore, this screening assessment has been carried de-novo.

Screening for Appropriate Assessment- Test of likely significant effects

7.7.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.7.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

7.7.5. The development is summarised at Section 2 of this Report. In summary, permission is sought for a pedestrian and cycle path 185m in length, with ancillary works to provide a new east-west connection from Abbeyvale Court to the proposed Mooretown Distributor Road extension and the Swords Community College campus. The proposed route would be accessed from a boundary wall within Abbeyvale Court and it would be enclosed by 1.8m paladin fence on both sides, for its length.

Submissions and Observations

- 7.7.6. The submissions from the applicant and the Planning Authority are summarised as Section 6 of this Report. No submissions were received from prescribed bodies or third parties.

European Sites

- 7.7.7. The development site is not located in or immediately adjacent to a European site. The closest European sites are Malahide Estuary SAC (000205) and SPA (Site Code 004025) complex, which lie approx. 3km to the east.
- 7.7.8. There is no hydrological connection between the subject site and the European sites.
- 7.7.9. The proposed development is of a small scale nature, involving limited construction. Having regard to the small scale nature of the development, and in the absence of any hydrological connection to any European site, I consider the likelihood of significant impacts on any European site is very low. I am therefore satisfied that the potential for likely significant effects on qualifying interests within the SAC and SPA can be excluded.
- 7.7.10. The subject site is currently greenfield in nature and was in use for arable farming purposes at the time of my inspection. The SPA is designated for waterbird populations and their wetland habitat. The subject site does not contain any wetland habitat. The likelihood that the site is of value to qualifying interests is low and, in any case, even if it were of limited value, it is unlikely that its loss would have a significant effect on the qualifying interests. I am therefore satisfied that the potential for likely significant effects on qualifying interests within the SPA can be excluded.

Mitigation measures

- 7.7.11. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

Screening Determination

- 7.7.12. 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 European Site Nos. 004025 or 000205, or any

other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

Having regard to the Open Space, Residential Area and Green Belt zonings which apply to the subject lands, together with supports provided in particular by objectives MT13 and MT17 of the Fingal County Development Plan 2017-2023 and supports provided by the Design Manual for Urban Roads and Streets, it is considered that, subject to compliance with the conditions below, the proposed development would represent an appropriate form of development providing enhanced permeability and connectivity to the recently opened school campus site, which would not be seriously injurious to the amenities of residential property in the area and which would not result in the creation of a traffic hazard. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 2nd March 2020, as amended by further information submitted on 16th 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.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>Construction of the proposed pedestrian and cycle path shall not commence until such time as the road extension approved under Fingal County Council permission Reg. Ref. F20A/0096 has been completed.</p> <p>Reason: In the interests of amenity and public safety.</p>
3.	<p>The applicant shall submit and agree security management proposals for the proposed development with the Planning Authority, prior to the commencement of development.</p> <p>Reason: In the interests of amenity and public safety.</p>
4.	<p>Details of the proposed tie-in of the development and the distributor road shall be submitted to and agreed in writing with the Planning Authority prior to the commencement of development.</p> <p>Reason: In the interests of pedestrian and cyclist safety.</p>
5.	<p>The proposed pedestrian and cycle link shall comply with the provisions of the National Cycling Manual (NTA, 2011) and its detailed layout shall be agreed with the Planning Authority prior to the commencement of development</p> <p>Reason: In the interests of pedestrian and cyclist safety.</p>
6.	<p>Permission is granted for the 1.8m high paladin fence for a temporary period of 5 years from the date of this Order, at which point it shall be removed from the site.</p> <p>Reason: In the interests of visual amenity</p>
7.	<p>A landscaping strategy shall be submitted to and agreed in writing with the planning authority, prior to commencement of the development. The development shall thereafter be carried out in accordance with the agreed scheme.</p> <p>Reason: In the interests of visual amenity.</p>
8.	<p>Public lighting shall be provided along the pedestrian and cycle path route in accordance with a public lighting scheme which shall be submitted to and</p>

	<p>agreed in writing with the planning authority prior to commencement of the development.</p> <p>Reason: In the interests of amenity and public safety.</p>
9.	<p>Surface water drainage arrangements, which shall incorporate SUDS measures, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
10.	<p>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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
11.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation relating to the proposed development, and</p> <p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall</p>

<p>agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>

Barry O'Donnell
Planning Inspector

23rd August 2021.