



An
Bord
Pleanála

Inspector's Report

ABP-311242-21

Development	Demolition of unfinished structures and construction of a 2-storey dwelling and a 3-storey over lower groundfloor apartment block (4 storeys in total) containing 9 apartments in total
Location	Robswall Cottage, Coast Road, Malahide, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0576
Applicant(s)	Deanscastle Developments Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Kevin Flanigan Andrew and Peter Smith
Observer(s)	Malahide Community Forum Richard and Helen Lane Cllr. Anthony Lavin

Date of Site Inspection

24th March 2022

Inspector

Ian Boyle

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1.0 Site Location and Description

- 1.1. The appeal site is located a short distance east of Malahide town centre, in north County Dublin.
- 1.2. It is near Robswall Cottage (K36 YY90), which is directly west of the site, on the far side of a narrow access road / cul-de-sac. There is also a small group of older houses in this location, including Robswall (K36 TH59) (Protected Structure) and a two-storey detached dwelling, which adjoins the site on its northeastern boundary, known as The Bungalow (K36 HT63).
- 1.3. The site accommodates two partially constructed detached dwellings and associated site works. The structures were permitted some time ago, but it is apparent that building work has since ceased and the houses now lie unfinished. The remnants of redundant blockwork, steel supports, security fencing, hoarding and signage can be seen from along public roads and the surrounding vicinity.
- 1.4. The Coast Road (R106) runs along the northern part of the site and open views of the sea are attainable. There is an open grassy area on the site's eastern boundary and the site is surrounded further to the east, south, and west by public amenity lands known as Paddy's Hill. Further to the west, separated by a greenfield area, is a recently constructed housing development comprising a mix of apartments, duplex units, and houses, which is known as Robswall.
- 1.5. There is a separate vehicular entrance to the east to Gannon Park (Sports Club), which is home to Malahide United Football Club, a café/restaurant, childcare facility, and gym. There are grounds and playing pitches to rear and south of the site. There is also a car park and playground in the vicinity.
- 1.6. There is public transport in the area with Dublin Bus services available along the Coast Road in each direction.
- 1.7. The site has a stated area of 0.298ha.

2.0 Proposed Development

- 2.1. The proposed development is for the demolition of unfinished structures and construction of a 2-storey dwelling and a 3-storey over lower ground floor apartment block (4 storey in total) comprising 9 no. apartments (10 no. residential units in total)

14 no. car parking spaces, 11 no. bicycle spaces (with dedicated bike store), bin store, private open space, and ancillary site development works.

- 2.2. The Planning Authority requested further information on 15th January 2021, including an overlay zoning map showing no encroachment into the abutting HA ('High Amenity') zoned lands and to re-examine the proposed bulk/mass/scale and materials palette for the proposed development (Item 1), an updated visual impact assessment / set of photomontages (Item 2), a revised design for proposed Unit 5 to demonstrate compliance with the Apartment Guidelines (Item 3), completion of a daylight and sunlight analysis and overshadowing assessment (Items 4 and 5), a request to address concerns of overlooking an adjacent dwelling (Item 6), car parking provision (Item 7), surface water details (Item 8), confirmation of feasibility to connect to the Irish Water public water / wastewater infrastructure (Item 9), and landscaping details (Item 10).
- 2.3. The Applicant provided further information on 12th April 2021. There were no significant design revisions to the proposed development. The Applicant provided the various requested assessment reports and documentation and these were considered generally acceptable to the Planning Authority.
- 2.4. The Planning Authority requested clarification of further information on 6th May 2021, which required the proposed layout to be amended as any encroachment into the HA zoned lands could constitute overdevelopment of the site and may warrant refusal (Item 1) and consideration to reducing the scale of the development and change of materials palette of the central part of the building to avoid appearing excessively bulky (Item 2).
- 2.5. The Applicant provided clarification of further information on 14th July 2021. The proposed revised development included a modest realignment of the access road and omission of two car parking spaces, which were originally within the HA zoned lands. The area outside of the RS zoning was proposed to be planted and landscaped only. The proposed amendments to the central block, including a window / fenestration redesign, reduced building height and change of external materials were considered acceptable and that this would address previous concerns relating to bulk and scale.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a *Notification of Decision to Grant Permission* on 5th August 2021, subject to 22 no. conditions, which are mainly standard in nature.

Notable conditions include:

Condition 4 – Details of external finishes to be submitted to the Planning Authority for written agreement, prior to commencement of development.

Condition 6 – All bathroom/ensuite windows to be fitted and permanently maintained with obscure glass.

Condition 10 – A financial contribution to be paid to cover a shortfall in public open space provision.

Condition 15: Submission of details for written agreement of the Planning Authority, of various waste streams, including expected tonnage, which would be generated during the site clearance / demolition and construction phase, prior to commencement of development.

Condition 17: Preparation and submission of a Construction and Environmental Management Plan (CEMP) for written agreement of the Planning Authority, prior to commencement of development.

Conditions 21 and 22: Payment of financial contributions.

3.2. Planning Authority Reports

3.2.1. Planning Report

- The proposed development, subject to conditions, would integrate appropriately with the surrounding context without having any undue impact on the visual or residential amenities of the area.
- The concerns raised in relation to the application of the red line (i.e., extent of site boundary) of the application site are noted. However, the third party is directed to Section 5.13 of the *Development Management Guidelines for Planning Authorities (2007)* where it is stated that the planning system is not

designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts.

- As internal roads layout, parking spaces and open spaces are not suitable for taking-in-charge by the Council for maintenance purposes, it is recommended that a management company be formed which would be responsible for the development.
- Recommend that permission be granted.

3.2.2. Other Technical Reports

Water Services Section: Initially requested further information in relation to surface water and flood risk. Upon receipt of further information, no objection, subject to standard conditions.

Transportation Section: Given the scale of the proposed development there is no need for a detailed traffic and transport statement (TRICS assessment, etc.). The main issues relate to consideration of car parking provision and access, including adequate sightlines.

- 15 no. of the 17 proposed parking spaces should be allocated to the apartments. The house unit should have two in-curtilage parking spaces.
- The proposed boundary fence either side of the access should have the railings with sufficiently spaced vertical elements (spires) to allow visibility through the fencing.
- No objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding a height of 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes.

Upon receipt of further information, no objection, subject to conditions.

Parks Department: No objection, subject to conditions. There is a shortfall in the quantum of public open space generated through the development works of 625sqm. Financial contribution applies.

3.3. Prescribed Bodies

Irish Water: Initially requested further information through the submission of a Pre-Connection Enquiry (PCE) to determine the feasibility of connection to the public water/wastewater infrastructure. Post receipt of further information, Irish Water (IW) advised that the Applicant had submitted a PCE to IW and that this was being assessed.

Dublin Airport Authority: No objection. Refers the Planning Authority to Development Plan Objective DA07. Requests that the predicted noise environment for the site be fully assessed against the future planned growth of the airport, that the Applicant demonstrate internal noise levels for proposed habitable rooms are achieved and maintained, and that appropriate noise mitigation measures be implemented by the Applicant in accordance with the Development Plan.

3.4. Third Party Observations

A number of third party observation were received by the Planning Authority. The main issues raised are as follows:

- Proposal is not how the site was originally intended to be developed.
- Visual impact / impact on scenic views.
- Traffic and access concerns due to substandard access / junction proposed to enter and exit the site.
- Proposed apartment block is excessive in height and would be visually overbearing.
- Overlooking and loss of light / overshadowing.
- Should be limited to 2 no. dwellings on the site only.
- Would be prejudicial to public health due to proximity of the proposed development to an existing septic tank. No proposal by the Applicant to address this concern.
- Existing water mains to 3rd Party property traverses the subject site and the proposed development seeks to build on top of it. Would lead to potential water supply issues.

- Legal ownership of the site is questioned, and reference made to ongoing legal proceedings re: this matter.
- Proposed development would be a material contravention of Local Objective 51, which requires that only two dwellings be built on the site and prior to December 2018.
- Boundary treatment proposed inappropriate.

4.0 Planning History

Subject Site

ABP Ref. 305125-19 (Reg. Ref. F18A/0744): An Bord Pleanála **granted permission** on 12th December 2019 for the completion and alterations to a previously permitted development comprising of 2 no. dwellings with basement accommodation and associated site works (Reg. Ref: F08A/1407 and F11A/0444).

Reg. Ref. F11A/0444: The Planning Authority **granted permission** on 20th March 2012 for revisions to previously permitted development comprising 2 no. houses including the rectification of southern boundary and relocation of approved vehicular access at Site A (Reg. Ref. F08A/1407).

Ref. Ref. F08A/1407/E1: The Planning Authority **refused an extension of duration of permission** on 31st March 2014 for Reg. Ref. F08A/1407 which included the construction of 2 no. single-storey, detached, four-bedroom houses over basement level accommodation and associated site works.

Reg. Ref. F08A/1407: The Planning Authority **granted permission** on 29th May 2009 for the construction of 2 no. single-storey, detached, four-bedroom houses over basement level accommodation and associated site works.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

5.1.1. Zoning

The subject site is zoned 'RS – Residential' under the Fingal County Development Plan 2017-2023 ('the Development Plan'), which has the following objective:

'Provide for residential development and protect and improve residential amenity.'

The vision for this zoning is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

Residential is permitted in principle under this zoning.

The surrounding lands are zoned 'HA - High Amenity', which seeks to 'protect and enhance high amenity areas'. The vision for this zone is to protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas, opportunities to increase public access will be explored.

5.1.2. Protected Structure

There is a Protected Structure roughly 22m to the northwest of the site (RPS Ref. 422 - Robswall Castle). It is described in the Development Plan as five-bay two-storey house connected to a 15th century stone tower house.

5.1.3. Landscape Character Area

Coastal Landscape Character

The site is in the 'Coastal' landscape character area as identified under Sheet 14 'Green Infrastructure 1'.

This landscape has an 'exceptional' landscape value and 'high' landscape sensitivity.

The Development Plan states that the Coastal Character Type forms the eastern boundary of the County and contains important beaches, islands and headlands that together create a landscape of high amenity and landscape value. This value is due to a combination of visual, ecological, recreational and historical attributes. The

area's importance is highlighted by the High Amenity zoning covering substantial parts of the area.

Preserve Views

There is a 'Preserve Views' objective on the eastern side of the site along the R106 Road.

5.1.4. **Other Objectives**

Local Objective 51

Applies to the subject site and states *'to permit the completion, before December 2018, 2(no.) residential units associated with planning permission reference number F08A/1407, only'*.¹

Cycle and Pedestrian Route

There is an indicative cycle/pedestrian route to the north along Coast Road.

5.1.5. **Chapter 2 Core Strategy and Settlement Strategy**

Objective SS17

Manage the development and growth of Malahide and Donabate in a planned manner linked to the capacity of local infrastructure to support new development of the area and taking account of the ecological sensitivity of qualifying features of nearby European Sites.

5.1.6. **Chapter 3 Placemaking**

Objective PM38

Achieve an appropriate dwelling mix, size, type, tenure in all new residential developments.

Objective PM39

Ensure consolidated development in Fingal by facilitating residential development in existing urban and village locations.

¹ The Planner's Report states that the date referenced by this Local Objective has now passed and is therefore no longer relevant as it was time-limited and related to a particular application. As such, any application for the site must now be assessed against the objectives and policies as set out in the Development Plan. I note also that the Inspector's Report for ABP Ref. 305125-19 states that the objective is no longer relevant as it cannot be complied within the timeframe stated.

Objective PM40

Ensure a mix and range of housing types are provided in all residential areas to meet the diverse needs of residents.

Objective PM44

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

5.1.7. Chapter 9 Natural Heritage

Objective NH40

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

5.1.8. Chapter 12 Development Management Standards

Section 12.3 is in relation to Design Criteria for Urban Development and seeks to promote High Quality Urban Design.

Section 12.4 provides the Design Criteria for Residential Development. This includes regard to the zoning objectives, mix of dwelling types and residential density.

Objective DMS39

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

Objective DMS44

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

Objective PM45

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

Objective DMS126

Restrict unnecessary new accesses directly off Regional Roads. Ensure premature obsolescence of all county/local roads does not occur by avoiding excessive levels of individual entrances. Ensure that necessary new entrances are designed in accordance with DMRB or DMURS as appropriate, thereby avoiding the creation of traffic hazards.

5.2. National and Regional Planning Policy

National

- *EPA Code of Practice for Domestic Wastewater Treatment Systems, 2021*
- *Sustainable Urban Housing: Design Standards for New Apartments, 2020*
- *Design Manual for Urban Roads and Streets, 2019*
- *Urban Development and Building Heights, 2018*
- *Project Ireland 2040 National Planning Framework, 2018*
- *Architectural Heritage Guidelines for Planning Authorities, DAHG, 2011*
- *BRE Guide 'Site layout Planning for Sunlight and Daylight', 2011*
- *Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, 2009*
- *Urban Design Manual: A Best practice Guide, 2009*
- *Quality Housing for Sustainable Communities – Best Practice Guidelines, 2007*

Regional

- *Regional Spatial and Economic Strategy for the Eastern and Midland Region, 2019*

5.3. Natural Heritage Designations

No natural heritage designations apply to the subject site.

The appeal site is located roughly 70m to the south of the Malahide Estuary SAC (Site Code:000205) and the Malahide Estuary SPA (Site Code: 004025).

The site is also approximately 70m south of the pNHA Malahide Estuary (Site Code: 000205).

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development, which comprises the demolition of unfinished structures and construction of a detached dwelling, 9 no. apartments and ancillary site development works in an established urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A total of 2 no. third party appeals were received from residents in the area, including from:
- Andrew and Peter Smith (The Bungalow, Robbs Wall, Malahide), represented by Hughes Planning & Development Consultants.
 - Kevin Flanigan (Robswall Cottage, Coast Road, Malahide), represented by O'Neill Town Planning, and
- 6.1.2. The main grounds of appeal reiterate the issues raised in the third party observations lodged with the Planning Authority. The main concerns are as follows:
- The site is incorrectly and inappropriately zoned 'RS – Residential'.
 - The proposed development would contradict Local Objective 51, which was applied to the land to allow for only 2 no. dwellings to be built on the land. A similar Local Objective (No. 210) was included in a previous Development Plan (2005 – 2011), which also only allowed for two residential units to be constructed.
 - The site is within the middle of High Amenity zoned lands, with the objective to protect and enhance high amenity areas.

- Sightlines are substandard, particularly to the east. Therefore, any increase in traffic from this cul-de-sac would create a serious hazard for road users, pedestrians and cyclists. Being located next to a major sports club, with ancillary activities, would further increase the danger for road users.
- The proposed height exceeds that of what currently exists at adjoining sites and would be greater than the ridge height of the adjoining dwelling, Robswall Cottage.
- The site is in the 'Coastal' landscape character area, which has an exceptional landscape value, high landscape sensitivity and is along a preserved view. The proposed development has not had due regard to the sensitive landscape character of the site, would be injurious to the visual amenity of the area and would not respect the context or the location of the site.
- The proposed development is too close to the septic tank and soakaway area associated with Robswall Cottage on the adjacent site. Furthermore, the proposed development would run over the mains water serving this property and the proposal may impact this.
- There would be a significant loss of residential amenity for adjacent residential properties in terms of overlooking and loss of privacy; loss of daylight and sunlight, caused particularly by the proposed apartment block on adjacent private amenity space areas; overbearing and visual impact, due to size, scale and massing; and loss of historic fabric due to the proposed new vehicular access creating a hole in the outer wall associated with Robbs Wall Castle, which is considered to be within the curtilage of the Protected Structure.
- The proposed development is a material contravention of the Development Plan and the Board, by virtue of section 37 of the Planning and Development Act, 2000 (as amended), must refuse it.

6.2. Applicant Response

The Applicant lodged an Appeal Response with the Board on 28th September 2021. The main issues raised are as follows:

Appeal Response – General

- An Bord Pleanála previously granted permission on the site for the completion of, and alterations to, a previously approved development comprising of 2 no. dwellings, basement accommodation and associated site works (ABP Ref. 305125-19).
- The Planning Authority has stated that Local Objective 51 is no longer relevant as the date specified is has now passed. The expiration of the local objective has been confirmed by the Board in a previous Decision where it was stated that the objective is “no longer relevant as it cannot be complied with” (ABP Ref. 305125-19).
- The proposed dwelling will only be visible from the proposed entrance at the north of the site. It will read as a single storey due to its lower ground floor level.
- The apartment block will be visible from the south and east of the site along Coast Road. However, only three floors will be visible due to its lower ground floor level. The building is also screened by the existing 2.5m high wall.
- Given the height, scale, and location of the proposed development, it is considered there would be no negative impact on residential amenity arising from overlooking or overshadowing. The nearest dwelling is c.30m northeast of the proposed apartment building.
- The proposed development is fully compliant with the relevant Development Management Standards for both dwellings and apartments.
- The proposal is consistent with national and regional planning policy.

Specific Response to Appellant; Kevin Flanigan (Robswall Cottage)

- The appeal includes extensive legal documents purporting that the Appellant owns the site and disputes that the land was sold to the Applicant. This is not true. (The submission includes a solicitor’s letter stating the registered owner of the land is Deanscastle Development Ltd, i.e. the Applicant.)
- The Inspector stated in their report for the previous appeal on the site (ABP Ref. 305125-19) that the issue of ownership is a civil matter and noted the provisions of s.34(13) of the Planning and Development Act, as amended.

Response to Appellant; Andrew Smith and Peter Smith, The Bungalow, Robbswall

- Appellant claims that the amenities of their property would be comprised by the proposed development by way of overshadowing, overlooking and being overlooked.
- The gardens for this property are extensive and it is set well away from the appeal site and proposed development.

6.3. Planning Authority Response

- The application was assessed against the policies and objectives of the Fingal Development Plan 2017-2023, existing government policy and guidelines, and having regard to the Development Plan zoning objective, as well as the impact on adjoining neighbours and the character of the area.
- The proposed development is considered acceptable for the reasons outlined in the Chief Executive's Order and Fingal County Council request the Board to uphold the Planning Authority's Decision.
- It is requested that Condition Nos. 20 (Security Bond), 21 (Open Space Shortfall) and 22 (Section 48 levy) be included in the Board's determination.

6.4. Observations

Third party observations have been received from the following:

- Malahide Community Forum
- Richard and Helen Lane
- Cllr. Anthony Lane

The main issues raised are summarised as follows:

- The proposed apartment block would be visually intrusive and out of character along a scenically important and much visited Coast Road. This is shown in the photomontages submitted by the Applicant.
- The site is surrounded by lands that are zoned 'High Amenity', which seeks to protect these highly sensitive and scenic locations from inappropriate development.

- The proposed development seeks the removal of a section of wall which is part of the curtilage of Robbs Wall Castle (Protected Structure).
- Would lead to traffic and car parking problems, which is made worse by large volumes of people visiting the coast, sea swimming etc.
- The previous permitted development for two houses did not impose on the landscape. However, instead of these sensitively designed houses, the developer is now seeking a towering four storey block of apartments, which would cause overshadowing and intrude upon the visual amenity of the area.

6.5. Further Responses

A response to third party appeal was received by Kevin Flanigan (represented by O'Neill Planning) on 23rd September 2021. The following main issues were raised:

- The proposed dwelling is too close to the existing septic tank and the soakaway.
- There is insufficient visibility for a new vehicular access to be created onto the public road without causing traffic conflict or obstruction.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Principle of Development and Zoning
- Scale, Size, and Design; and Protected Structure
- Visual and Residential Amenity
- Other Issues
- Appropriate Assessment

7.1. Principle of Development and Zoning

Zoning

- 7.1.1. The subject site is zoned 'RS – Residential' under the Development Plan. The zoning objective is to protect and /or improve residential amenity, where residential land uses are permitted in principle.
- 7.1.2. I note also that the surrounding lands are zoned 'HA - High Amenity', which seeks to 'protect and enhance high amenity areas'. The vision for this zone is to protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. The Appellants submit that the presence of the HA zoning heightens the sensitivity of the site's receiving environment, and I would agree with this.
- 7.1.3. I consider that the site can be accurately described as an infill / backland site, such is its setting amongst existing residential development where there are houses directly east, west, and northwest. The principle of infill residential development and consolidation of existing zoned and serviced areas is consistent with the principles set out in national and local policy regarding urban consolidation and densification, including the National Planning Framework (2018) (NPF) and Regional Spatial and Economic Strategy for the Eastern and Midland Region (2019) (RSES). It is also consistent with Objective PM44 of the County Development Plan, which seeks to encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas, subject to the character of the area and environment being protected.
- 7.1.4. In relation to residential density, specifically, I note that the proposed development comprises 10 units (one dwelling and 9 no. apartments) on a site that is approximately 0.3ha. This provides a residential density of roughly 33 units per hectare. The density is marginally below the acceptable density, having regard to the Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities (2009), which recommends that 35-50 dwellings per ha should be provided for in outer suburban sites. Furthermore, planning policy at regional and local level seeks to encourage higher densities in appropriate locations, including on residentially zoned and serviced lands.

- 7.1.5. However, having regard to its coastal setting, the preserve views map-based objective, proximity to adjoining residential properties and a Protected Structure, and location amongst HA zoned lands, I consider the character of the site and its receiving environment to be sensitive. The site, therefore, has certain constraints attached to it, which need to be taken into account as part of this assessment, and which mean that a lower than typical residential density would likely be appropriate in this particular case. I note also that the Sustainable Residential Development Guidelines state that lower density schemes, in certain circumstances, are acceptable, provided the design and location of the new development respects the amenities of existing adjacent housing in terms of sunlight, overlooking, amongst other considerations.
- 7.1.6. In summary, and in terms of striking a balance between the reasonable protection of amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill development on residentially zoned sites, I consider the principle of the development proposed on the site to be acceptable, subject to compliance with the principles of proper planning and sustainable development and adherence to the applicable development management standards.

Local Objective 51

- 7.1.7. In terms of Local Objective 51, I note that there is much discussion of this in each of the appeal submissions. The general argument is that the proposed development would contravene the objective as it was only ever applied in order to allow for the completion of the two unfinished, detached houses – the remains of which are evident onsite – within a specified time period (i.e. ‘December 2018’). The Appellants argue that as the date has now passed, permission should be refused for the proposed development as it is a breach of the objective.
- 7.1.8. In my opinion, as the objective is specifically linked to a particular application (Reg. Ref. F08A/1407), and because it is time-bound to a date in the past, it is not possible for it to be complied with and, therefore, is no longer applicable.
- 7.1.9. I do not consider that the intention of the objective is to stymie, or completely prohibit, future housing development on the site, which is effectively the argument put forward by the Third Parties. This would run counter to the residential zoning that applies to the land under the current Development Plan (2017-2023), for which residential development is permitted in principle. In my view, any forthcoming

application for the site is required to be assessed against the objectives and policies set out in the current Development Plan; but that there is no prohibition on making an application for housing on the site.

7.1.10. I further note the commentary in the previous Inspector's Report for ABP Ref. 305125-19, where it is stated 'I ... note that this Specific Local Objective in the County Plan has now expired... This objective is no longer relevant as it cannot be complied within the timeframe stated'. I would concur with this interpretation of the matter.

7.2. Scale, Scale and Design; and Protected Structure

7.2.1. The appeal site is situated amongst a small group of older houses, including Robswall Cottage, which is to the west, on the far side of a small access road, Robswall Castle (Protected Structure, RPS Ref. 422), which is to the northwest, and The Bungalow, which adjoins the site on its northeastern boundary.

7.2.2. The proposal is for the redevelopment of the site, including the demolition of unfinished structures on the land, and the construction of a 2-storey dwelling at the front (north) part of the site ('Block A') and a 3-storey (over lower groundfloor) apartment block at the rear section of the property ('Block B'). The apartment block comprises 9 no. apartments and is 4 storeys in height in total with the lower ground floor set down into the landscape.

7.2.3. The positioning of the two blocks on the site is based on the completion of a previously permitted development, comprising 2 no. dwellings, associated basement accommodation, and ancillary site works. (ABP Ref. 305125-19).

7.2.4. A design rationale and site analysis has been submitted in support of the proposal. I have had regard to this document, as well as the other supporting material accompanying the application, including the relevant technical plans, drawings and photomontages that have been submitted.

7.2.5. During my site inspection, I noticed the property had been excavated and cut in; potentially as part of the site clearance and preparation works for the previous, partially completed development. A portion of the surface of the site has had the top layer of ground removed, which has the effect of levelling and lowering the site in

relation to surrounding lands. (See drawing sections on Drwg. No. P02_02 in this regard.)

- 7.2.6. The proposed dwelling (Block A) would be mainly only visible from the proposed entrance at the front of the site. From most other vantage points it would present as a single storey dwelling – or a low two storey dwelling – due to its lower groundfloor level set deep into the landscape. There is also a tall wall running along part of the eastern boundary of the site, such that the lower sections of the proposed house would be hidden from public view. Therefore, the height, volume and scale of the proposed dwelling would not be excessive, in my opinion, despite its proximity to the Coast Road and would be in keeping with the prevailing height of the surrounding area.
- 7.2.7. Similarly, I consider that Block B would comprise an appropriate height, volume and scale of development. The proposed 4-storey height would clearly be taller than the proposed house and the overall bulk and massing more evident to the surrounding area. However, it would not result in an abrupt transition in scale and is unlikely to be transformative in terms of visual impact on the surrounding area, which already accommodates urban development in form of houses of varying styles and heights, a sports club, floodlights, large surface car park, gym and childcare facility.
- 7.2.8. Block B would be situated towards the south (rear) part of the site, which is away from the Protected Structure of Robswall Castle, the preserve views objective, and nearby, adjoining residential houses. The apartment block would have an overall height of 14.3m and whilst it would be taller than other buildings in the immediate area, it has a fine grain appearance composed of a series of differently sized and shaped building volumes, which lends itself to help reduce the potential for overdominance or overbearance. This is in accordance with Objective PM45 of the Development Plan, which promotes the use of contemporary and innovative design solutions and to respect the character and architectural heritage of an area.
- 7.2.9. The apartment building comprises varying heights, setbacks, and elevational treatments across these volumes, and I note that the proposed layout is staggered and stepped back on each side. The intention of this to break-up the massing of the overall building and I consider that this has been successfully achieved by the scheme architect.

- 7.2.10. I note also that the balconies on the east and west elevations are recessed, and the style of fenestration whereby windows are staggered and of various size and dimensions is appropriate and visually appealing. This provides a good aesthetic quality, which is helpful, in my opinion, of further reducing the overall massing of the apartment block, particularly when viewed from its more visually exposed elevation, which is to the east, along the Coast Road (see Photomontage Proposed Views A and B in this regard).
- 7.2.11. I do not consider that the building would be excessively visible, or that it would have a significant domineering presence on the surrounding vicinity, particularly given the contemporary and high-quality design that is proposed in this instance. Therefore, and in my view, the proposed development would be in accordance with Objective PM45, which promotes contemporary and innovative design solutions to respect the character and architectural heritage of the area; and also Objective NH40, which seeks to protect views and prospects that contribute to the character of the landscape from inappropriate development.
- 7.2.12. The proposed development incorporates high quality materials and finishes, and I note that the Applicant is proposing to remove and reuse a section of stone from the existing stone wall to construct the new pillars at the site entrance and to extend the existing low stone wall to the west, which I consider appropriate. There is already a gap in the wall near where the new vehicular entrance would be situated, as well as another opening used as a gated pedestrian entrance for The Bungalow, and I do not consider that the creation of a new entrance in this particular location would materially alter the character of the Protected Structure.
- 7.2.13. The proposed cladding for the house and apartment block utilises brick materials, which are a mixture of dark grey and light brown/beige and would be used alternately on the individual stepped in/out sections of the building. The intention is to further break-up the massing of the overall development and avoid any overly monolithic affects. The windows (aluminium frame) and parapet coping also use a dark grey shade of material, which is in keeping with the proposed brickwork, and would help achieve the subtle style of architecture that is sought by the Applicant. In summary, I consider the proposed materials and finishes have been well-selected, of a high-quality and are appropriate for the site context, and its surrounding vicinity.

- 7.2.14. I note that certain notations on the drawings state the final spec is to be confirmed. Therefore, in the event permission is granted, I recommend that a condition be attached requiring the Applicant to submit, and agree in writing with the Planning Authority, details of the materials, colours and textures of all external finishes, prior to commencement of development.
- 7.2.15. In summary, the Applicant has sought to achieve a design that integrates the proposal appropriately within its sensitive, receiving environment, and I consider that they have done this successfully. I consider that the architectural treatment, character, scale and form of the development proposed would not physically dominate the landscape, which has a preserve views objective and surrounded by HA zoned lands, is of a high-quality design, would be sympathetic to the special character and integrity of the nearby Protected Structure. It would, therefore, be in accordance with the relevant policies and objectives of the County Development Plan, including Objective DMS4, which encourages and promotes the development of underutilised infill and backland sites in existing residential areas, subject to the character of the area and environment being protected.

7.3. **Visual and Residential Amenity**

Visual Impact and Overlooking

- 7.3.1. I do not anticipate that the proposed dwelling within the north part of the site would lead to any significant residential amenity or visual impact due to overlooking, overshadowing, or overbearance. The dwelling is setback at its nearest points by approximately 20m from Robbswall Cottage, which is to the west, and 15m from The Bungalow, which is to the east.
- 7.3.2. There would be an existing cul-de-sac / lane and accessway associated with the proposal separating the appeal site from Robbswall Cottage; and I note that there is a tall wall and hedge running along the appeal site's northwest boundary. Similarly, I consider the dwelling to be sufficiently setback from both the house and shared boundary associated with The Bungalow and I note that a section of land along its western boundary is an existing driveway into the property. I also consider the gardens associated with this property as relatively expansive / spacious, such that the existing level of privacy would not be unduly affected by the proposal.

- 7.3.3. The proposed apartment block has been situated on the site and designed in such a manner so to avoid overlooking of abutting residential properties. This is achieved by way of a considered elevational treatment and careful positioning of windows and balconies throughout the scheme. The proposed balconies are situated on the east and west sides of the block and there is no direct outwards line-of-sight from these locations to any of the adjoining residential properties. Conversely, I note that the balconies and terraces on the eastern side of the Block B would provide a good level of passive surveillance of the communal amenity space which is within the east part of the subject site (shown as an orange shaded area on the Proposed Site Layout Plan (P02_03)).
- 7.3.4. I note that the apartment block includes windows on the northern elevation of the building for kitchen/living room spaces and access lobbies. However, again, the windows are orientated in such a way to avoid excessive overlooking of neighbouring residential sites and, instead, provide views that are mainly internal to the appeal site, rather than directly into third party lands.
- 7.3.5. As noted above, the use of varied materials and high-spec finishes would also help avoid any overly monolithic affects, and I consider that the height, massing and volume of the development proposed would not be excessive for the site context or its surrounding vicinity.

Sunlight, Daylight & Overshadowing

The Applicant submitted a Sunlight & Daylight Assessment of the proposed development as part of further information. I have considered the assessment against the provisions of 'BS 8206-2:2008 (British Standard Light for Buildings - Code of Practice for Daylighting)' and 'BRE 209 - Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice (2011)' ('BRE Guidelines'). Both documents are referenced in the Section 28 Ministerial Guidelines on 'Urban Development and Building Heights (2018)' and 'Sustainable Urban Housing: Design Standards for New Apartments (2020)'. I note also that Section 12.4 of the Development Plan requires that proposals for new residential development should comply with the recommendations of the BRE Guidelines.

- 7.3.6. The Applicant's report illustrates that each of the habitable rooms on the ground floor of the proposed apartment building would achieve / exceed the minimum Average Daylight Factor (ADF) levels set out in the BRE Guidelines. The lowest ADF is for a

bedroom associated with Apartment R01.1, which is 1.15%, and therefore above the required standard of 1% set out under the BRE guidance. The other rooms attain ADF levels ranging between roughly 1.2% and 2.4%.

- 7.3.7. In relation to potential overshadowing of adjoining residential lands, I note that the proposed development would not cause excessive overshadowing of the most affected property, which is The Bungalow (northeast of the appeal site). Figures 6 and 7 include a light radiation map of the amenity areas affected. The rear garden of this property would still maintain the minimum two hours of sunlight in excess of 50% of the garden area on the 21st March, which is the required test date according to the guidance. The proposed apartment block would cast a small shadow on a section of garden within the southern part of the property. However, most of the garden would remain unaffected during this time and retain a direct line-of-sight to sunlight throughout the day on 21st March.
- 7.3.8. The Sunlight & Daylight Assessment (Section 3.1) shows that there would be no loss of daylight to the existing windows of the house due to the proposed height and separation distance between it and the proposed development.
- 7.3.9. I have also carried out a physical inspection of the appeal site, and its surrounding vicinity, and viewed the technical drawings accompanying the application. I am satisfied due to the minimum separation distance of approximately 26m from the nearest dwelling, and overall height of the proposed development, which is four-storeys (albeit, with the lower groundfloor level set down into the site) that there would no significant overshadowing impacts on any adjoining / nearby houses, or their associated amenity spaces, caused by the proposed development.
- 7.3.10. In summary, I do not consider that the proposed development would injure the residential amenities of the area or of property in the vicinity, by way of visual impact, overlooking, loss of daylight or sunlight, or otherwise, and that it would provide an acceptable standard of amenity for future residents.

7.4. **Other Issues**

Traffic and Access

- 7.4.1. The proposed access serving the new development would be from an existing cul-de-sac which already serves the two houses west of the site. The access to the

proposed house and apartment block is to be via a shared vehicular entrance, close to the junction with the Coast Road. There is a pedestrian crossing point and traffic lights approximately 50m to the east, and the site is within the 50km/hr speed limit zone.

- 7.4.2. There is no through-road to another destination from the cul-de-sac, south of the appeal site, or otherwise, and I do not consider that the additional vehicular movements generated by the proposal would alter conditions on the local traffic network to any noticeable extent. A total of 10 no. housing units are proposed, which I consider negligible in the context of adding additional traffic volumes to a existing and permitted access arrangement, and I note that the new access would not be directly onto the Coast Road, which is in accordance with Development Plan Objective DMS126.
- 7.4.3. The Road Safety Authority (RSA) online database shows that there is no record of significant collisions within the vicinity of the site; and I note that a frequent public transport service is available in the area in the form of a regular bus service, which has bus stops serving both directions, within a few minutes' walk of the site.
- 7.4.4. The Council's Transportation Section did not raise any concerns regarding the proposed access arrangement. However, I note that the issue of visibility splays and sightlines was duly considered. The transportation section report (dated 29th April 2021) states no objection to the proposed development, subject to conditions, including that 'no objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding a height of 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes'.

Legal Issues / Land Ownership

- 7.4.5. The Appellant residing at Robswall Cottage has submitted legal documentation asserting that he is a co-owner of the appeal site. It is also stated that there is a continuing dispute regarding the legal status of the lands and proceedings of this nature are ongoing.
- 7.4.6. Conversely, the First Party includes a solicitor's letter stating the registered owner of the land is Deanscastle Development Ltd (i.e. the Applicant) and that they have sufficient legal interest to make the planning application. I note also that the

Planning Authority is satisfied that the subject site is in the ownership of the Applicant and that they did not raise any concerns in this regard.

- 7.4.7. Having regard to the above, it is clear to me that there is some form of ongoing dispute in relation to ownership of the property. However, regardless of the true legal status of the lands in question, I would note the provisions of Section 34(13) of *Planning and Development Act, 2000 (as amended)* relating to 'Permission for Development', which states that "*a person shall not be entitled solely by reason of a permission under this section to carry out any development*". Therefore, in the event permission is granted, there may be other legal considerations that apply, and which the Applicant may need to address outside of the planning system.

Drainage and Foul Water

- 7.4.8. The Appellant from The Bungalow states that the proposed development would be too close to their septic tank and positioned over an existing water main serving their property, which would be prejudicial to public health and could affect their water supply.
- 7.4.9. There is no clear information or evidence on file, submitted by the Appellant, or otherwise, showing how the proposed development would negatively affect an existing domestic wastewater treatment system (DWWTS). I also note that no such concerns have been raised by the Council's Water Services Department and that no objection regarding this matter was recommended by any of the Council's internal departments.
- 7.4.10. I acknowledge that the EPA Code of Practice for Domestic Wastewater Treatment Systems (2021) specifies minimum setback distances from various sensitive receptors and key features, so that a new effluent treatment system can safely discharge to ground. This includes separation distances from private groundwater sources, surface water soakaways, watercourses, drains, dwellings, roads, site boundaries, etc.
- 7.4.11. The guidelines also state that the location of any existing DWWTS on adjacent sites should be identified and I accept the points raised by the Appellant in relation to separation distances. However, I consider these to be minor points of detail that can be agreed with the Council's Water Services Section, and which are unlikely to

impact the proposed development, or its surrounding vicinity, and I note that all proposed works will be fully contained within the subject site.

7.4.12. I am not aware of any past flooding of the property. The site is within Flood Zone C (i.e., at low risk of flooding), and I note that the Flood Risk Assessment submitted as part of further information indicates that there would be no increase in flood risk to neighbouring sites on foot of the development proposed, which was accepted by the Planning Authority.

7.4.13. The topography slopes gently towards the north and northeast. However, I do not consider that there is anything unique or particularly challenging about the proposed development, either at construction phase or operational phase, that would likely cause significant risk of dysfunction of the wastewater treatment system on the adjacent property.

7.4.14. In relation to the potential crossing over of a water main, I note that Irish Water did not raise any concerns of this nature. The Applicant is required to sign a connection agreement with Irish Water prior to the commencement of the development and adhere to the standards and conditions set out in that agreement. I consider this issue could be agreed with Irish Water as part of future discussions.

7.5. **Appropriate Assessment**

Having regard to the nature and relatively small scale of the proposed development; which is for a dwelling, 9 no. apartments and ancillary works on an infill site, which is within a serviced area, and the distance from the nearest European site; no Appropriate Assessment issues arise. Therefore, it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

8.0 **Recommendation**

8.1. I recommend that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Fingal County Development Plan 2017-2023, including the zoning objective for the site ('RS – Residential'), which seeks to provide for residential development and protect and improve residential amenity; it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, or of property in the vicinity, would provide an acceptable standard of amenity for future residents, and be acceptable in terms of traffic safety. 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 as amended by the further plans and particulars submitted on the 12th April 2021 and, subsequently, on the 6th May 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>
2.	<p>Details of the materials, colours and textures of all the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>Details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.</p> <p>Reason: In the interest of public safety and visual amenity.</p>

4.	<p>All bathroom and ensuite windows shall be fitted with and permanently maintained with obscure glass.</p> <p>Reason: In the interest of residential amenity.</p>
5.	<p>Each residential unit shall be provided with noise insulation to an appropriate standard having regard to the location of the site within Dublin Airport - Zone C.</p> <p>Reason: In the interest of residential amenity.</p>
6.	<p>a) Prior to commencement of development, the Applicant shall agree in writing with the Planning Authority, the spacing of the vertical members of the proposed fencing to ensure that an adequate level of visibility between vehicles and pedestrians is achieved at the proposed entrance.</p> <p>b) No objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding a height of 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes.</p> <p>c) All underground or overhead services and poles shall be relocated, as may be necessary, to a suitable location adjacent to the new boundary at the developer's expense.</p> <p>Reason: In the interest of traffic safety and convenience, and to protect the amenities of the area.</p>
7.	<p>Water supply and drainage arrangements, including the attenuation, disposal of surface water, and foul drainage, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
8.	<p>Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
9.	<p>The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan (CEMP), 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 hours of working, noise</p>

	<p>and traffic management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
10.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
11.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
12.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 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>

13.	<p>The Applicant shall pay a financial contribution in lieu of public open space provision within the development 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. The application of any indexation required by this condition 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. 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.</p> <p>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.</p>
14.	<p>The developer shall pay to the planning authority a financial contribution of 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. The application of any indexation required by this condition 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.</p> <p>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.</p>

15. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of roads, sewers, watermains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The security to be lodged shall be as follows -
- a) an approved insurance company bond in the sum of €40,000, or
 - b) a cash sum of €25,000 to be applied by the planning authority at its absolute discretion if such services are not provided to its satisfaction, or
 - c) such other security as may be accepted in writing by the planning authority.
- Reason:** To ensure the satisfactory completion of the development

Ian Boyle
Planning Inspector

25th August 2022