



An  
Bord  
Pleanála

## Inspector's Report ABP-311314-21

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<b>Development</b>	Development of a residential care home (nursing home); development will consist of a two-storey building comprising 92 no. bedrooms
<b>Location</b>	Rogerstown Lane, Effelstown, Lusk, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F21A/0341
<b>Applicant(s)</b>	Ian McGuinness
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Ian McGuinness
<b>Observer(s)</b>	(1) Cllr Robert O' Donoghue (2) Patrick Boylan (3) Cllr Brian Dennehy (4) Hughes Planning & Development Consultants

**Date of Site Inspection**

19<sup>th</sup> February 2022

**Inspector**

Colin McBride

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 2.2 hectares, is located a short distance to the south east of Lusk and on the eastern side of Rogerstown Lane. The appeal site is agricultural lands, part of a flat large irregular shaped field area with boundary hedgerow. The site is approximately 1.6km from Lusk town centre by road and c.250m from Lusk rail station (as crow flies). Rogerstown lane is approximately 5m wide. Adjoining lands are similar in nature with the nearest development being existing rural dwellings on the opposite side of Rogerstown Lane to the east.

## 2.0 Proposed Development

- 2.1. Permission is sought for the development of a residential care home (nursing home) on lands at Rogerstown Lane, Effelstown, Lusk, Co. Dublin. The development will consist of a two-storey building comprising 92 no. bedrooms with associated ancillary/common facilities and office/administration areas; 35 no. car parking spaces, 32 no. bicycle parking spaces, and associated vehicular service areas; a new vehicular and pedestrian access onto Rogerstown Lane; 1 no. ESB substation and plant room; 1 no. bin store; connection to and utilisation of services along Rogerstown Lane; new pedestrian connection from site along Rogerstown Lane to Station Road (R128); landscaping; boundary treatment; and all associated site and engineering works necessary to facilitate development.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission refused based on 6 reasons...

1. The proposed development providing for a residential care home is permitted only on lands zoned Rural 'RU' under the Fingal Development Plan 2017-2023 where it can be clearly demonstrated by the applicant that there is a demonstrable need to locate in a rural environment because of the nature of the care required or where it is immediately contiguous to a zoning where the use is permitted in principle and meets Development Plan standards in relation to access and infrastructure. The

applicant has failed to demonstrate to the satisfaction of the Planning Authority that the development as proposed meets the foregoing requirements in relation to the need to locate in a rural environment. The development as proposed would materially contravene the 'RU' zoning objective of the Fingal Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development located outside of any settlement development boundary would contravene materially Objective PM48 of the Fingal Development plan 2017-2023 which requires that residential care homes be located in towns and village for reason of sustainability, accessibility, social inclusion and proximity of the availability of services except where a demonstrated need to locate in a rural environment because of the nature of the care required can be clearly established. The applicant failed to establish to the satisfaction of the Planning Authority that the proposal by reason of the nature of the care proposed requires to be sited in a rural environment and accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.

3. In absence of an adequately detailed and commensurate flood risk assessment in line with the requirements of Planning Systems and Flood Risk Management- Guidelines for Planning Authorities 2009 and which addresses all potential sources of flood risk in respect of the proposal which is considered highly vulnerable development, the proposed development would materially contravene objective SW07 of the Fingal Development Plan 2017-2023, would contravene the requirements of the Flood Risk Management Guidelines (2009) issues under Section 28 of the Planning and Development Act 2000 (as amended) and would therefore be contrary to the proper planning and sustainable development of the area.

4. Objective DMS171 of the Fingal Development Plan 2017-2023 requires that no development takes place within 10 to 15 metres as a minimum, measured from each bank of any river, stream or watercourse. The development as proposed materially

contravene Objective DMS171 and as such would be contrary to the proposed planning and sustainable development of the area.

5. Having regard to case law of the Irish High Court and CJEU (e.g. Case-258/11, Sweetman and others) which established that determination cannot have lacunae and must contain complete, precise and definitive findings capable of removing all reasonable scientific doubt as to the effects of a project on a European site, it is not certain that, due to the absence of adequate consideration of the stream/discharge ditches along the northern, southern and western boundaries of the subject site that the proposed development would not result in adverse impacts on European sites. In such circumstances the Planning Authority are precluded from granting planning permission.

6. Insufficient information has been submitted to enable the Planning Authority to fully assess the transportation aspects of the proposed development. In absence of such information the proposal would be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planning report (09/08/21): Issues were raised regarding compliance with land use planning policy and justification for location in a rural area, lack of adequate flood risk assessment, compliance with development plan policies, traffic impact and Appropriate Assessment issues. Refusal was recommended based on the reasons outlined above.

### **3.2.2. Other Technical Reports**

Water Services (05/07/21): Further information including surface water drainage details and a more detailed flood risk assessment.

EHO (13/07/21): Further information including submission of an acoustic assessment due to proximity to railway infrastructure.

Archaeological (19/07/21): Archaeological Impact Assessment required.

Transportation Planning (20/07/21): Additional information required including further justification for parking level, details of upgrade works to Rogerstown Lane, details of access sightlines and a traffic and transport assessment.

Parks and Green Infrastructure (21/07/21): Failure to comply with DMS171, lack of tree survey and requirement for a landscape plan.

### **3.3. Prescribed Bodies**

Irish Water (09/07/21): No objection.

Department of Housing, Local Government and Heritage (22/07/22): The site is an area of high archaeological potential, condition recommended for pre-development testing.

### **3.4. Third Party Observations**

11 submission were received. The issues raised can be summarised as follows...

- The increased traffic on a rural road, traffic safety concerns, non-compliance with zoning, inappropriate development in a rural area, privacy/overlooking concerns, light and noise pollution, impact on wildlife, devaluation of property, construction impact, existing flooding along Rogerstown Lane.

## **4.0 Planning History**

No Planning History

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant development plan is the Fingal Development Plan 2017-2023.

The appeal site is zoned Rural 'RU' with a stated objective to 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage'.

Residential care home/retirement home is noted as being 'not permitted', 'except where a demonstrated need to locate in a rural environment because of the nature of the care required is established or where immediately contiguous to a zoning where the use is permitted in principle and meets Development Plan standards in relation to access and infrastructure'.

Objective PM48 Require that residential care homes, retirement homes, nursing homes, retirement villages and sheltered accommodation be located in towns and villages for reasons of sustainability, accessibility, social inclusion, and proximity to the availability of services, except where a demonstrated need to locate in a rural environment because of the nature of the care required can be clearly established.

The site is located in an area designated as Highly Sensitive Landscape.

Objective NH33 Ensure the preservation of the uniqueness of a landscape character type by having regard to the character, value and sensitivity of a landscape when determining a planning application.

Objective NH34 Ensure development reflects and, where possible, reinforces the distinctiveness and sense of place of the landscape character types, including the retention of important features or characteristics, taking into account the various elements which contribute to their distinctiveness such as geology and landform, habitats, scenic quality, settlement pattern, historic heritage, local vernacular heritage, land-use and tranquillity.

Objective NH35 Resist development such as houses, forestry, masts, extractive operations, landfills, caravan parks and large agricultural/horticulture units which would interfere with the character of highly sensitive areas or with a view or prospect of special amenity value, which it is necessary to preserve.

Objective NH36 Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly sensitive areas shall not be permitted if it:

- Causes unacceptable visual harm
- Introduces incongruous landscape elements
- Causes the disturbance or loss of (i) landscape elements that contribute to local distinctiveness, (ii) historic elements that contribute significantly to landscape character and quality such as field or road patterns, (iii) vegetation which is a characteristic of that landscape type and (iv) the visual condition of landscape elements.

Objective NH39 Require any necessary assessments, including visual impact assessments, to be prepared prior to approving development in highly sensitive areas.

Objective NH40 Protect views and prospects that contribute to the character of the landscape, particularly those identified in the Development Plan, from inappropriate development.

Objective DMS46 Require that residential care homes, retirement homes, nursing homes, retirement villages and sheltered accommodation be located in towns and villages for reasons of sustainability, accessibility, social inclusion, and proximity to the availability of services, except where a demonstrated need to locate in a rural environment because of the nature of the care required can be clearly established.



Objective DMS47 Require that applications for residential care homes, retirement homes, nursing homes, retirement villages and sheltered accommodation consider and demonstrate the following:

- The potential impact on residential amenities of adjoining properties.
- Adequate provision of open space.
- Provision of adequate parking facilities.
- The design and proposed materials.
- The size and scale of the proposal must be appropriate to the area.
- A location within close proximity of high quality public transport links and the site should be well served by good footpath links.

Objective DMS171 Ensure that no development, including clearance and storage of materials, takes place within 10m – 15m as a minimum, measured from each bank of any river, stream or watercourse in the County.

Objective DMS80 Ensure trees, hedgerows and other features which demarcate townland boundaries are preserved and incorporated where appropriate into the design of developments.

Objective SW07 Implement the Planning System and Flood Risk Management-Guidelines for Planning Authorities (DoEHLG/OPW 2009) or any updated version of these guidelines. A site-specific Flood Risk Assessment to an appropriate level of detail, addressing all potential sources of flood risk, is required for lands identified in the SFRA, located in the following areas: Courtlough; Ballymadun; Rowlestown; Ballyboghil; Coolatrath; Milverton, Skerries; Channell Road, Rush; Blakescross; Lanestown/Turvey; Lissenhall, Swords; Balheary, Swords; Village/Marina Area, Malahide; Streamstown, Malahide; Balgriffin; Damastown, Macetown and Clonee, Blanchardstown; Mulhuddart, Blanchardstown; Portrane; Sutton; and Howth, demonstrating compliance with the aforementioned Guidelines or any updated

version of these guidelines, paying particular attention to residual flood risks and any proposed site specific flood management measures.

## 5.2. **Natural Heritage Designations**

Rogerstown Estuary SAC/SPA 1.2km south.

Rockabil to Dalkey SAC 7km east.

## 5.3. **EIA Screening**

The proposed development is not of a class (Schedule 5, Part 2(10) of the Planning and Development Regulations, 2001 (as amended)). No EIAR is required.

## 6.0 **The Appeal**

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

6.1.1 A first party appeal has been lodged by Downey Planning on behalf of the applicant Ian McGuinness. The grounds of appeal are as follows...

- The applicant points out the unique siting of the development, which despite being outside of a settlement is in close proximity to Lusk rail station, which makes it accessible. The applicant outlines the need for such facilities with reference to the National Planning Framework. The proposal is consistent with both Objectives DMS46 and DMS47 of the Development Plan.
- In relation to refusal reason no. one the appellant highlights the accessibility of the site to public transport (rail infrastructure) with such an appropriate location for the development and other future development.
- The appellant outlines the requirement for a nursing home in the area with reference to population characteristics for the area and the NPF, which identifies the requirement for such facilities to cater for an aging population.
- In relation to material contravention the appellant identifies precedent cases in the context of Section 37(2)9b)(v).

- In relation to refusal reason no. 2 and Objective PM48. The appellant argues the need to locate in a rural area to provide a high quality environment for residential care including outdoor space, in relation to Covid-19 and physical distancing requirements and the fact there is a lack of available sites within the town.
- In response to refusal reason no. 3 a more detailed site-specific flood risk assessment has been submitted that demonstrates that the site is not at risk of flooding.
- In response to refusal reason no. 4 it is noted that it not proposed to build any closer to the ditch on the southern boundary than 12m and the separation distance required under Objective DMS171 is complied with. It is also noted that the ditch in question is not a river, stream or watercourse and is a man-made dry ditch.
- In response to reason no. 5 an Appropriate Assessment screening report and Ecological Impact Assessment were submitted with the application and such demonstrated that the proposal would have no significant effects on any Natura 2000 sites.
- In relation to refusal reason no, 6 and insufficient information regarding transportation issues the proposal provides for in excess of the development Plan requirement for parking, the applicant noted there is appropriate space to widen the road within the applicants landholding and he has consent form the landowner to north . Appropriate sightlines can be achieved. A Road Safety Audit and Construction Management Plan can be submitted and provision can be made for bicycle parking (included) and EV charging.
- In relation to water services issues raised in the application but not a reason for refusal an engineering report has been submitted to deal with such.
- The appellant has submitted photomontages to illustrate the visual impact of the proposal with such considered to be acceptable due to design and landscaping proposed.

## 6.2. **Planning Authority Response**

Response by Fingal County Council.

- The PA request that the Board uphold the decision to refuse permission.

## 6.3. **Observations**

### 6.3.1 Observation have been received from...

Cllr Robert O'Donoghue.

Patrick Boylan, 5 Rose Cottage, Rogerstown Lane, Lusk, Co. Dublin.

Cllr Brian Dennehy

Hughes Planning & Development Consultants

The issues raised can be summarised as follows...

- Proposed land use is contrary to the RU zoning objective and Objective PM48.
- Traffic safety concerns due to location on a narrow public road. Lack of adequate pedestrian and cycling facilities along Rogerstown Lane.
- Contrary future development plan policy in relation greenbelt land.
- Adverse impact on wildlife.
- Impact on privacy of residential along Rogerstown Lane.
- The reason for refusal have not been adequate addressed in the first party appeal.

## 7.0 **Assessment**

7.1. Having inspected the site and the associated documents the main issues can be assessed under the following headings.

Principle of the proposed development/land use policy/settlement strategy

Design, scale, landscape character

Traffic

Flood Risk

Appropriate Assessment

7.2. Principle of the proposed development/land use policy/settlement strategy:

7.2.1 The appeal site is on lands zoned Rural 'RU' with a stated objective to 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage'. Under this zoning it is noted that 'residential care home/retirement home' is not permitted within this zoning objective however there is proviso indicating that 'except where a demonstrated need to locate in a rural environment because of the nature of the care required is established or where immediately contiguous to a zoning where the use is permitted in principle and meets Development Plan standards in relation to access and infrastructure'.

7.2.2 Objective PM48 "require that residential care homes, retirement homes, nursing homes, retirement villages and sheltered accommodation be located in towns and villages for reasons of sustainability, accessibility, social inclusion, and proximity to the availability of services, except where a demonstrated need to locate in a rural environment because of the nature of the care required can be clearly established". The proposal was refused on the basis that the proposal constitutes a material contravention of both land use zoning policy and Objective PM48.

7.2.3 The appellants argument in favour of the proposal is the need for such facilities to cater for aging population with reference to the NPF, the fact that the site is located in close proximity to Lusk Rail Station/accessibility to public transport, the need for quality outdoor space/tranquillity, Covid-19 requirements and the lack of available sites within Lusk to facilitate it. I would be of the view that the proposal is for residential care home (nursing home) and that the applicant has presented no case to demonstrate "a need to locate in a rural environment because of the nature of the

care required”. The lack of available sites in the urban area is not a sufficient demonstration of this requirement as it is clear that there is no reason why the nature and type of facility proposed cannot be located in an urban area.

7.2.4 The applicant/appellant focuses on the accessibility of the site due to its proximity to Lusk Rail Station. I would acknowledge the site is in walking distance of the station, but would consider that this is not a sufficient factor to override land use zoning policy and does not account for the requirement to demonstrate a “need to locate in a rural environment because of the nature of the care required” as required under land use zoning policy and Objective PM48. In relation to the other arguments raised, I would note there is no reason a facility located in an urban area cannot have an adequate outdoor space/landscaping or management protocols to cater for care need and Covid-19 precautions.

7.2.5 I would consider that the proposed development would constitute a material contravention of land use zoning policy and the ‘RU’ zoning objective. In relation to such I would refer to the fact that Council have refused permission on the basis of material contravention of a land use zoning objective and Objective PM48.

Under Section 37(2)...

(2) (a) Subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

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

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with *paragraph (b)*, the Board shall, in addition to the requirements of section 34 (10), indicate in its decision the main reasons and considerations for contravening materially the development plan.

7.2.6 The applicant/appellant has argued that permission could be granted in the context of section 37(2)(b)(iv) on the basis of permission previously granted. The examples provided are not relevant with one being a permission that was granted by the local authority but refused on appeal and the other being one granted under the previous development plan. Having regard to the provisions under Section 37 Subsection 2 (a) & (b) of the Planning and Development Act 2000 (as amended), where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, I do not consider the proposed development should be granted permission. The proposed development is not of strategic or national importance and there are no conflicting or unclear objectives in the Fingal County Development Plan. There is no evidence before me to demonstrate that permission has been granted for similar development in the surrounding area. There are no provisions for granting such development, having regard to the regional spatial and economic strategy for the area, guidelines under Section 28 or policy directives under section 29 of the Act, the statutory obligations of the local authority, or any relevant policy of the Government.

7.3 Design, scale, landscape character:

7.3.1 The appeal site is located in the rural area of the county and in an area classified as Highly Sensitive Landscape for the purpose of landscape character. Objective NH33 Ensure the preservation of the uniqueness of a landscape character type by having regard to the character, value and sensitivity of a landscape when determining a planning application.

7.3.2 The proposal is for a two-storey structure with a ridge height of 9.548m and a floor area of 6,235sqm. The proposal is for a structure of large scale and bulk located in a rural area. The applicant has attempted to retain as much vegetation on site and proposed additional landscaping. I would be of the view that the proposal would have a significant and adverse visual impact at this location, which is classified as a highly sensitive landscape and would diminish the rural character of the area. The overall design and architectural character of the design is quite generic in design and lacking in any significant attempt to provide for a design that takes into account its rural location. I would be of the view that proposed development would be detrimental to the visual amenities of the area and be contrary Objective NH36 of the Fingal Development plan.

7.4 Traffic:

7.4.1 The proposal was refused on the basis that insufficient information has been submitted to enable the Planning Authority to fully assess the transportation aspects of the proposed development. The proposal entails a new vehicular access off Rogerstown Lane, which is approximately 5m wide and currently is a rural road with no pedestrian facilities. The applicant has control over the entire road frontage for the southern boundary up to the junction of Rogerstown Lane and Station Road. Station Road has existing footpath and it is proposed to construct a new footpath set back from the public road and behind a hedgerow that will link into existing footpaths on Station Road. The applicant/appellant has indicated that they are willing to carry out widening of the public road within their landownership/control if necessary.



7.4.2 The alignment of the road is such that sufficient sightlines would be available at the proposed vehicular entrance. I would be of the view that the road subject to the improvements proposed including pedestrian facilities, is adequate in alignment and condition to cater for the proposed development. In addition the site is in walking distance of Lusk Train Station and bus stops along the R128. The proposed development is accessible in terms of public transport. The proposed pedestrian facilities will link into existing footpaths along the R128, which do run all the way to Lusk. I am satisfied that the existing road network would have adequate capacity for the proposed development.

## 7.5 Flood Risk:

7.5.1 Permission was refused on the basis that in absence of an adequately detailed and commensurate flood risk assessment in line with the requirements of Planning Systems and Flood Risk Management-Guidelines for Planning Authorities 2009 and which addresses all potential sources of flood risk in respect of the proposal which is considered highly vulnerable development, the proposed development would materially contravene objective SW07 of the Fingal Development plan 2017-2023, would contravene the requirements of the Flood Risk Management Guidelines (2009) issued under Section 28 of the Planning and Development Act 2000 (as amended) and would therefore be contrary to the proper planning and sustainable development of the area.

7.5.2 In response a Flood Risk Assessment was submitted. A Flood Risk Assessment was submitted originally, however this was considered to be insufficient in detail by the PA. The applicant/appellant has submitted a Flood Risk Assessment with the appeal submission with it stated that such is prepared in accordance with The Planning System and Flood Risk Management Guidelines, 2009. The assessment includes a staged approach consisting of a Level 1 Flood Risk identification, a Level 2 Initial Flood Risk Assessment and a Level 3 detailed Flood Risk Assessment as per the recommendation of the guidelines.

7.5.3 The OPW Preliminary Draft Flood Risk Assessment (PDFRA) map identified that the site is not within an area impacted by pluvial, fluvial, coastal or groundwater flooding, however is in close proximity to an area effected by pluvial flooding (to the south). The nearest fluvial source is the Rathmooney River 400m to the north. There is an existing stream along the western boundary of the site that drains towards Rogerstown Estuary. The site is located over 3km from the coastline. On this basis a Level 2 Initial Flood Risk Assessment is carried out. In terms of historical flood incidences (OPW records) there are no records of flooding on the site with the nearest recorded incident 1.1km to the south of the site. Flood mapping for the area shows the site is located in Flood Zone C outside the predicted 0.1% AEP fluvial and tidal events.

7.5.4 A Level 3 detailed Flood Risk Assessment was carried out. In relation to site drainage, foul water is discharged to the public foul water main and surface water will be through filtration trenches/attenuation and discharge to the existing drainage ditch along the southern boundary with all drainage infrastructure in Flood Zone C. Access routes within the site are within Flood Zone C. The finished floor level of development will be 210.50mAOD, which is adequate to protect the development and account for climate change. As the site is located entirely within Flood Zone C there will be no displacement of flood water or exacerbation of flooding elsewhere. In the context of a justification test the development is classified as a highly vulnerable development under the guidelines but considered appropriate within Flood Zone C with no requirement for a justification test. It is concluded that the proposal and appeal site is not at risk of flooding and is an appropriate development at this location.

7.5.5 Having inspected the site and examined all documents including the appeal submissions and third party submissions, I am satisfied based on the information available and on which we rely on to evaluate flood risk that the appeal site is located wholly in an area classified as Flood Zone C. The proposed uses of this site based on such classification is appropriate in the context of The Planning System and Flood Risk Management Guidelines, 2009 and that a justification test is not

required. I am satisfied that sufficient information has been provided to reach this conclusion and the proposal would not be subject to flood risk or exacerbate flood risk elsewhere. In this regard I do not agree that the proposal is contrary to Objective SW07 of the County Development.

## 7.6 Appropriate Assessment:

7.6.1 This section of the report considers the likely significant effects of the proposal on European sites with each of the potential significant effects assessed in respect of each of the Natura 2000 sites considered to be at risk and the significance of same. The assessment is based on the submitted Appropriate Assessment Screening submitted with the application.

I have had regard to the submissions of prescribed bodies in relation to the potential impacts on Natura 2000 sites.

### The Project and Its Characteristics

7.6.2 See the detailed description of the proposed development in section 3.0 above.

### The European Sites Likely to be Affected (Stage I Screening)

7.6.3 The development site is not within or directly adjacent to any Natura 2000 site. The site is located in rural area a short distance to the south east of Lusk. The predominant habitat on the site itself is made up of arable crops (BC1). Along the boundary are also hedgerows (WL1) habitat with various tree species. On all sides apart from the roadside boundary the hedgerows are accompanied by a drainage ditch (FW4). The submitted screening report and Ecological Impact Assessment confirms that the majority of habitats identified on the site are generally considered to be modified and of low conservation value with the boundary hedgerow considered to be of high local ecological value. No plant species of conservation significance or high impact invasive plant species are noted.

7.6.4 I have had regard to the submitted Appropriate Assessment screening, which identifies that while the site is not located within or directly adjacent to any Natura

2000 areas, there are a number Natura 2000 sites sufficiently proximate or linked to the site to require consideration of potential effects. These are listed below with approximate distance to the application site indicated:

- Rogerstown Estuary SAC (site code 0208);
- Rogerstown Estuary SPA (site code 4015);
- Rockabil to Dalkey SAC (site code 0300).

7.6.5 The specific qualifying interests and conservation objectives of the above sites are described below. In carrying out my assessment I have had regard to the nature and scale of the project, the distance from the site to Natura 2000 sites, and any potential pathways which may exist from the development site to a Natura 2000 site, aided in part by the EPA Appropriate Assessment Tool ([www.epa.ie](http://www.epa.ie)), as well as by the information on file, including observations on the application made by prescribed bodies and I have also visited the site. I concur with the conclusions of the applicant’s screening, in that these are the sites within the potential zone of influence of the project.

7.6.6 Table 13.1: European Sites/Location and Qualifying Interests

<b>Site (site code) and Conservation Objectives</b>	<b>Distance from site (approx.)*</b>	<b>Qualifying Interests/Species of Conservation Interest (Source: EPA / NPWS)</b>
Rogerstown Estuary SAC (0208) To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	1.2km	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritima</i> ) [1330] Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410] Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]

		Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
Rogerstown Estuary SPA (4015) To maintain the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	1.2km	Greylag Goose ( <i>Anser anser</i> ) [A043] Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> ) [A046] Shelduck ( <i>Tadorna tadorna</i> ) [A048] Shoveler ( <i>Anas clypeata</i> ) [A056] Oystercatcher ( <i>Haematopus ostralegus</i> ) [A130] Ringed Plover ( <i>Charadrius hiaticula</i> ) [A137] Grey Plover ( <i>Pluvialis squatarola</i> ) [A141] Knot ( <i>Calidris canutus</i> ) [A143] Dunlin ( <i>Calidris alpina</i> ) [A149] Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156] Redshank ( <i>Tringa totanus</i> ) [A162] Wetland and Waterbirds [A999]

Rockabill to Dalkey Island SAC (0300) To maintain the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	7km	Reefs [1170] Phocoena phocoena (Harbour Porpoise) [1351]
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Table 13.1 above reflects the EPA and National Parks and Wildlife Service (NPWS) list of qualifying interests for the SAC/SPA areas requiring consideration. Potential Effects on Designated Sites. The subject site itself does not support populations of any fauna species linked with the qualifying interests or species of conservation interest populations of any European sites. As a result, and due to the distance of the subject site to the designated sites, there is no significant risk to protected

habitats and species of the Natura 2000 sites listed above as a result of habitat fragmentation or loss, disturbance or reduction in species density. The site is not a suitable habitat for the wetland birds identified as a qualifying interest of the Rogerstown Estuary SPA. There is a potential indirect hydrological connection identified in the form surface water and groundwater pathway flows towards Rogerstown Estuary. Wastewater from the proposed development is to discharge to the Portrane-Donabate wastewater treatment plant. The plant is licensed by the EPA to discharge treated effluent to the Irish Sea and therefore there is an indirect pathway to the Rockabil to Dalkey SAC from this source. The existing plant has a capacity of for 65,000 population equivalent and has still a capacity of 30,941 PE in 2019. It is noted the status of the coastal waters in the SAC is assessed as 'high' (Annual Environmental report 2019). Based on information available the wastewater treatment plant is not having a significant effect on the qualifying interests of the SAC. The proposal to connect to the existing wastewater treatment system means the proposal would have no significant effects on any of designated sites.

7.6.11 There is a potential for environmental water quality to be impacted by surface water run-off. There is a watercourse running along the western boundary that drains towards Rogerstown estuary. The proposal includes a surface water attenuation system including filtration trenches/attenuation and discharge to the existing drainage ditch along the southern boundary. On the basis of the foregoing, I conclude that the proposed development will not impact the overall water quality status of Dublin Bay and that there is no possibility of the proposed development undermining the conservation objectives of any of the qualifying interests or special conservation interests of European sites in or associated with Dublin Bay. In relation to in-combination impacts, given the negligible contribution of the proposed development to the wastewater discharge, I consider that any potential for in-combination effects on water quality in any of the designated sites identified. Furthermore, other projects within the Dublin Area which can influence conditions in Dublin Bay via rivers and other surface water features are also subject to AA. In this way in-combination impacts of plans or projects are avoided.

7.6.12 It is evident from the information before the Board that the proposed development, individually or in combination with other plans or projects, would be not be likely to have a significant effects on the Rogerstown Esturaty SAC (site code 0208), Rogerstown Estuary SPA (site code 4015), to Rockabill to Dalkey SAC (site code 3000) and that Stage II AA is not required.

#### AA Screening Conclusion

7.6.13 It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Rogerstown Esturaty SAC (site code 0208), Rogerstown Estuary SPA (site code 4015), to Rockabill to Dalkey SAC (site code 3000), or any European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is therefore not required.

#### 7.7 Other issues:

7.7.1 The observations and third party submission outlined concern regarding impact on the amenity of existing dwellings along Rogertsown Lane, which are on opposite side of the road to the site. The issues raised include concerns regarding traffic impact and issues concerning privacy/overlooking and construction impact. I have addressed the issue of traffic in a previous section above.

7.7.2 In relation to privacy/overlooking of adjoining properties, the appeal site is separated from existing dwellings by a public road. The proposed structure is set a back a reasonable distance from the roadside boundary and it is proposed to have hedgerow boundary along the road. The appeal site is located to the west of the existing dwellings and the front of the existing dwellings are viewable from a public area (Rogerstown Lane). I would be of the view that adequate separation is provided between the proposed structure and the existing dwelling and that such would have no significant or adverse impact in terms of overlooking or loss of privacy.

7.7.3 In regards to construction impact, such is temporary stage and could be mitigated adequate with appropriate construction management measures.

7.7.4 In relation to ecological impact, the Ecological Impact Assessment demonstrates that the site is not of high conservation value. And the applicant is proposing to mitigate impact by retention of hedgerow trees and additional planting with loss of 19m of hedgerow. I would be of the view that if the development was considered appropriate, ecological impact would not be severe, however as noted above there are inherent issue regarding the location of the proposed development in a rural location such as this.

7.7.5 One of the refusal reasons relates to Objective DMS171 of the Fingal Development Plan 2017-2023 which requires that no development takes place within 10 to 15 metres as a minimum, measured from each bank of any river, stream or watercourse. It was considered that the proposed development materially contravene Objective DMS171 and as the development is within 12m of what the local authority classify as a watercourse to the south of the site. The appellant has argued that this is a dry drainage ditch that is man-made and that Objective DMS171 does not apply. Having inspected the site, this does appear to be the case that such is dry drainage ditch. I would be of the view that this reason does not apply and that there are other inherent issues concerning location and type of the development that override this issue anyway.



## 8.0 Recommendation

8.1. I recommend refusal based on the follow reasons.

## 9.0 Reasons and Considerations

1. The appeal site is located on lands zoned Rural 'RU' on which it is the stated objective to 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage' under the Fingal Development plan 2017-2023. Developments classified as 'Residential Care Home/ Retirement Home is identified as being 'not permitted' within this zoning objective 'except where a demonstrated need to locate in a rural environment because of the nature of the care required is established or where immediately contiguous to a zoning where the use is permitted in principle and meets Development Plan standards in relation to access and infrastructure. The appeal site is neither contiguous to a zoning in which the development is permitted nor the applicant has failed to demonstrate a need to locate in a rural environment because of the nature of the care required. In this regard the proposed development would represent a material contravention of the land use zoning of the appeal site.

2. Objective PM48 of the Fingal Development Plan 2017-2023 'require that residential care homes, retirement homes, nursing homes, retirement villages and sheltered accommodation be located in towns and villages for reasons of sustainability, accessibility, social inclusion, and proximity to the availability of services, except where a demonstrated need to locate in a rural environment because of the nature of the care required can be clearly established'. The proposed development is located in rural area remote from an established settlement with the applicant failing to demonstrate a need to locate in such a rural environment. The proposal is contrary to Objective PM48 and would be contrary to the proper planning and sustainable development of the area.

3. Objective NH36 of the Fingal Development Plan 2017-2023 requires “that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly sensitive areas shall not be permitted if it:

- Causes unacceptable visual harm
- Introduces incongruous landscape elements
- Causes the disturbance or loss of (i) landscape elements that contribute to local distinctiveness, (ii) historic elements that contribute significantly to landscape character and quality such as field or road patterns, (iii) vegetation which is a characteristic of that landscape type and (iv) the visual condition of landscape elements.

The appeal site is in a rural area and a landscape classified as Highly Sensitive Landscape. The proposed development by virtue of its design, bulk and scale would be an incongruous element in this rural landscape, detrimental to the visual amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Colin McBride  
Senior Planning Inspector

22<sup>nd</sup> February 2022