



Development

The proposed development consists of: (i) demolition of existing 2 no. dwellings; (ii) construction of 12 no. three-bedroom, three storey, terraced dwellings (House Types A,B,C &D), each dwelling is provided with private amenity space to the rear and 1 no. car parking space (12 no. car parking spaces in total); (iii) widening of existing vehicular entrance to provide a new pedestrian footpath and two-way vehicular access road (accessed via Yellow Walls Road); (iv) a new 445sq.m public open space to be provided, including a detailed landscape proposal and new boundary treatments; and, (v) new SuDs and foul drainage together with all associated works necessary to facilitate the development.

Location

Lands at 'Levanda' & 'Elsfield', No. 14 & 14a Yellow Walls Road, Malahide, Dublin.

Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F21A/0442.
Applicant(s)	Calabash Investments Limited.
Type of Application	Planning Permission.
Planning Authority Decision	Refused.
Type of Appeal	First Party
Appellant(s)	Calabash Investments Limited.
Observer(s)	<ol style="list-style-type: none"> 1. Tony O'Connor. 2. Lisa Shanks & Ryan Shanks. 3. Evelyn Ryan. 4. Gerard McMahon. 5. John Mahon & Dr. Bernie Lannon. 6. Roisin O'Neill. 7. Lorraine Taylor & Frank Burke. 8. Michael McCabe. 9. Clare O'Neill and Colum O'Neill. 10. Jeffrey Lever.
Date of Site Inspection	11 th day of February, 2022.
Inspector	Patricia-Marie Young

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1.0 Site Location and Description

- 1.1. No.s 14 and 14A Yellow Walls Road, the appeal site, has a stated 0.366ha and is located on the southern side of Yellow Walls Road, c240m to the north west of its junction with the Dublin Road and c442m to the south east of its junction with Millview Road, in Malahide, north County Dublin.
- 1.2. The site which has an irregular shape comprises of a restricted roadside boundary which contains the entrance serving the two properties ('Levanda' and 'Elsfield') for which demolition is proposed under this application. To the immediate east of the existing entrance there is a yellow hatched box that extends the entire width of Yellow Walls Road. In addition, to the immediate east the roadside edge contains double yellow lines. These double yellow lines appear to run across the roadside edge of the entrance but appear to have been partially tarmacked over. Double yellow lines are also present to the west of the entrance and extend in a westerly direction along Yellow Walls Road. On the opposite side of the road from these entrances is Texas Lane. 'Levanda' is a two-storey dormer dwelling that is located in the northern portion of the site. 'Elsfield' is a single storey dwelling located towards the southern portion of the site.
- 1.3. 'Levanda' and 'Elsfield' properties occupy a backland location behind the rear garden areas of No.s 16, 16a and No. 18 Yellow Walls Road. At the time of inspection both properties were unoccupied with evidence of vandalism to the buildings and with the once mature gardens unkempt.
- 1.4. The eastern boundary of the site running along the boundary of No. 12 Yellow Walls Road, the southern boundary of the site which appears to back on to c6 three storey in built form properties that are located at the end of McCreadies Lane and the western boundary backing on to No.s 151 and 152 Ard Na Mara as well as No.s 16 to 20 Yellow Wall's Road.
- 1.5. The site has a strong sylvan character containing a significant number of trees, mature hedged boundaries, and perennial planting. There are also significant mature trees at the vicinity of the entrance onto Yellow Walls Road and along the c5m in length driveway serving the site.

1.6. The predominant character of the surrounding area is residential in nature with the site located to the west of Main Street and Malahide Railway Station which are c750m by road from the site.

2.0 Proposed Development

2.1. By way of this application planning permission is sought for:

- Demolition of existing 2 no. dwellings, which include two-storey dormer dwelling 'Levanda' (with single storey out-house structure) and 'Elsfield'; a single storey dwelling. The gross floor space of existing buildings to be demolished is given as 250m².
- Construction of 12 no. three-bedroom, three storey, terraced dwellings (House Types A,B,C & D), each dwelling is provided with private amenity space to the rear and 1 no. car parking space (12 no. car parking spaces in total). The gross floor space of proposed works is given as 2,139m².
- Widening of existing vehicular entrance to provide a new pedestrian footpath and two-way vehicular access road (accessed via Yellow Walls Road).
- Provision of a new 445sq.m public open space to be provided, including a detailed landscape proposal and new boundary treatments.
- Provision of a new SuDs and foul drainage scheme to serve and facilitate the proposed development.
- All associated works and services.

2.2. In relation to the four housing types of the scheme as proposed is comprised of:

House Type A: 8 No. 3-storey 3-bedroom Mid Terrace Dwelling Units with a given 177m² floor area with each served with 1 car parking space to the front and 65m² private amenity space to the rear at ground level, 1st, and 2nd floor terraces.

House Type B: 2 No. 3-storey 3-bedroom End of Terrace Dwelling Units with a given 177m² floor area with each served with 1 car parking space to the front and 116m² private amenity space to the rear at ground level, 1st, and 2nd floor terraces.

House Type C: 1 No. 3-storey 3-bedroom Dwelling Unit located on the eastern end of the terrace with a given 184m² floor area with each served with 1 car parking space to the front and 135m² private amenity space to the rear at ground level, 1st, and 2nd floor terraces.

House Type D: 1 No. 3-storey 3-bedroom Dwelling unit located on the western end of the terrace with 1 car parking space to the front and 135m² private amenity space to the rear at ground level, 1st, and 2nd floor terraces.

The proposed density is given as 32.7 units per hectare; the 12 dwelling units proposed would be arranged in two terrace groups of six dwellings and it is indicated that there is an existing connection to public mains water and drainage with surface water to be disposed of via a soak pit.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 5th day of October, 2021, the Planning Authority (Fingal County Council) decided to **refuse** planning permission for the development set out under Section 2.1 of this report above for the following stated reasons:

“1. *The access to the site from the Yellow Walls Road suffers from inadequate sightlines. The proposed development would represent an intensification of the use of this substandard access/egress. The applicants would have to undertake a significant level of amendment to lands which are outside their ownership to ensure the intensified use of the access/egress point could be carried out safely. As such the proposed development would endanger public safety by reason of a traffic hazard and the development is not in accordance with the proper planning and sustainable development of the area.*

2. *The applicant is proposing to remove an excessive number of mature trees from the subject site in order to facilitate the proposed development which would not be in accordance with Objective DMS77 of the Fingal Development Plan 2017-2023. To permit the proposed development in its current form would not be in accordance with the proper planning and sustainable development of the area.*

3. *The Planning Authority are not satisfied that the development in its proposed form would integrate appropriately within the surrounding context without undue negative impact to the surrounding amenities by virtue of the proposed scale and massing and would not be in accordance with the proper planning and sustainable development of the area.”*

3.2. Planning Authority Reports

3.3. Planning Reports

3.3.1. The Planning Officer's report is the basis of the Planning Authority's decision. It includes the following comments:

- Given the location and proximity to public transport the increased density is considered to be acceptable as it accords with planning policy provisions and guidance.
- The dwellings which demolition are proposed are not afforded any protection and are not considered of any vernacular merit.
- This proposal fails to overcome the loss of sylvan character.
- The proposed development would adversely impact on residential properties by way of overlooking and visual overbearance.
- The top floor element of each of the terrace dwelling units should be omitted.
- Limited information has been provided on the retaining wall proposed along the western boundary.
- The provision of bin storage in the front gardens is considered acceptable.
- The layout of this scheme should be revisited so that each unit is provided with appropriate private open space amenity.
- The proposed balconies would result in undue overlooking to the rear of the adjoining McCreadies Lane properties. These first-floor level balconies to the rear should be omitted with this space incorporated into the rear ground level private amenity space.

- The western elevation of House Type D is blank and overbearing with a close proximity to No. 151 Ard Na Mara. In addition, this proposed dwelling is also served with a third-floor level balcony which would be overbearing upon the rear amenity space of units located in Ard Na Mara. The same concern arises for House Type C1 in relation to No. 12 Yellow Walls Road.
- Having regard to the orientation of the site no undue overshadowing impacts are anticipated.
- A road safety audit should be carried out.
- No topographical survey of the entrance and the adjoining public road has been carried out.
- There is on-street car parking along this section of Yellow Walls Road which restricts the width of the road.
- The proposed entrance serving the proposed development is substandard.
- Some level of visitor parking should be provided.
- Given the reduced level of car parking bicycle parking should be provided particularly in a design where 8 of the proposed properties would have no direct external access to their rear private amenity space.
- The public open space provision is inadequate. A condition should be included for a financial contribution levy for the upgrading of open space in the Malahide area.
- The landscaping needs reconsidering.
- The 500m² of open spaces will not be taken in charge for maintenance purposes.
- Part V proposal is acceptable.
- It is considered that the proposed development would give rise to a traffic hazard.
- Concludes with a recommendation to refuse permission.

3.4. Other Technical Reports

3.4.1. **Transportation Planning Section:** This report is of particular relevance to the subject matter of this appeal, and it can be summarised as follows:

- The proposed development is located in a 50km/h speed limit.

- The Development Plan standards for residential development parking are norms.
- The minimum practical parking demand to be one space for units with two bedrooms or less and two spaces for units with three or more bedrooms.
- Club cars/shared cars are not counted as dedicated residential parking provision.
- Concerns are raised in relation to the minimal car parking provision.
- There is no on-street parking to facilitate *ad hoc* visitor parking in this area.
- *Ad hoc* visitor parking within the scheme or within its immediate context could compromise access for emergency and service vehicles.
- For developments that do not have side entrances for all units it is appropriate to have provided secure bicycle parking to the front of the units.
- All residential parking spaces should include EV charging points.
- A swept path analysis has been provided but this does not include the site entrance. It is considered that the manoeuvres to gain access may be difficult to achieve and the restricted access may result in bin lorries requiring to reverse into the site.
- Given the proximity of the entrance to the junction with Texas Lane and local schools as well as limited on-street parking spaces a wider entrance facilitating service vehicle entry would be required to allow entry to the site in a forward gear should be incorporated into the design.
- Road safety audits should be carried out as outlined in the current edition of Transportation Infrastructure Ireland Guidelines GE-STY-1027.
- Significant works would be required to achieve sightlines onto the Yellow Walls Road to serve this development with this requiring boundary walls and landscaping on either side to be setback. The required works would impact adjoining properties on either side and would reduce their parking areas. It is unlikely adjoining property owners would provide consent for the required works.
- Concludes with a recommendation of refusal on the basis of traffic hazard and failure to provide required sightlines.

3.4.2. **Archaeology:** No objection.

3.4.3. **Parks and Green Infrastructure:** This report is of particular relevance to the subject matter of this appeal, and it includes the following comments:

- This proposal seeks the removal of 43 no. trees and 10 no. tree groups/hedges with only 18 replacement trees. This is considered to be an imbalance and an excessive loss of trees and groups of trees/hedgerows.
- Removal includes boundaries where ownership and right to remove natural features are unclear.
- A tree bond should be calculated based on a revised tree retention proposal and updated tree protection plan.
- Recommendations of the bat survey should be implemented.
- Contribution to public open space should be imposed given the inadequate provision of public open space on site.

3.4.4. **Water Services Department:** No objection.

3.5. **Prescribed Bodies**

3.5.1. **Irish Water:** No objection.

3.5.2. **IAA:** No observations to make.

3.6. **Third Party Observations**

3.6.1. Several Third-Party observations were received during the course of the Planning Authority's determination of this application. They are attached to file, and I have noted the comments contained therein. I consider that the substantive planning issues raised correlate with the observer's submissions to the Board which I have summaries under Section 6.3 below.

4.0 **Planning History**

4.1. **Site and Setting**

4.1.1. There are no recent and/or relevant appeal cases relating to the site or within its setting.

5.0 Policy & Context

5.1. National

- **National Planning Framework**

Chapter 4 of the Framework addresses the topic of ‘making stronger urban places’ and sets out a range of objectives which it is considered will assist in achieving same. National Policy Objective 13 provides that in urban areas, planning and related standards, including in particular building height and car parking, will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected. It includes a number of national policy objects that are of direct relevance:

- Objective 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints.
- Objective 4 promotes attractive, well-designed liveable communities.
- Objective 33 seeks to: *“prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”*.
- Objective 35 seeks to: *“increase residential densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”*.

- **Climate Action Plan, 2019.**

- **National Development Plan, 2021 to 2030.**

- **Housing for All – A New Housing Plan for Ireland to 2030, 2021.** Like other national policy provisions this targets settlement centre growth first and seeks regeneration of cities, towns, and villages.

- **Section 28 Ministerial Guidelines:** The following Section 28 Ministerial Guidelines are relevant:

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (including the associated 'Urban Design Manual').
- Design Manual for Urban Roads and Streets.
- Urban Development and Building Heights – Guidelines for Planning Authorities 2018.

5.2. Regional

5.2.1. The **Eastern and Midland Regional and Spatial Economic Strategy**, which came into effect on June 28th, 2019, builds on the foundations of Government policy in Project Ireland 2040, which combines spatial planning with capital investment. Chapter 4 (People & Place) sets out a settlement hierarchy for the Region and identifies the key locations for population and employment growth. It includes Dublin City at the top of the settlement hierarchy. This strategic plan seeks to determine at a regional scale how best to achieve the shared goals set out in the National Strategic Outcomes of the NPF and sets out 16 Regional Strategic Outcomes (RSO's) which set the framework for city and county development plans. These include:

- RSO 2 Compact Growth and Urban Regeneration - Which seeks to promote the regeneration of our cities, towns, and villages by making better use of under-used land and buildings within the existing built-up urban footprint and to drive the delivery of quality housing and employment choice for the Region's citizens.

5.3. Local

5.3.1. The Fingal Development Plan 2017-2023 is the applicable Development Plan for the site and its wider setting. The site is zoned '*RS – Residential Area*', the objective of which is to: "*provide for residential development and protect and improve residential amenity*". Section 11.8 of the Development Plan sets out that residential use is 'permitted in principle' on '*RS*' zoned land.

5.3.2. The site is also within an area designated as 'Highly Sensitive Landscape' as per the 'Green Infrastructure 1' map.

- 5.3.3. Strategic Policy 6 in relation to Moderate Sustainable Growth Towns is to: “*consolidate development and protect the unique identities of the settlements of Howth, Sutton, Baldoye, Portmarnock, Malahide, Donabate, Lusk, Rush and Skerries*”.
- 5.3.4. Chapter 2 Core Strategy: Table 2.8 states that Malahide has land supply of 88 hectares and capacity for 1114 no. residential units.
- 5.3.5. Objective SS17 in relation to Moderate Sustainable Growth Towns in the Metropolitan Area is to ‘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’.
- 5.3.6. Chapter 3 sets out Design Criteria for Residential Development including mix of dwellings, density, and open space provision.
- 5.3.7. Chapter 4 Urban Fingal sets out objectives for urban settlements including Malahide.
- 5.3.8. Chapter 12 Development Management Standards sets out standards for residential development including design criteria and quantitative standards relating to houses, apartments, privacy standards, public and private open space provision, car parking, etc.

5.4. Natural Heritage Designations

- 5.4.1. The site is not located with a designated Natura 2000 site, nor does it adjoin such a site. The nearest Natura sites are Malahide Estuary SPA (Site Code: 004025) which is located c0.5km to the north of the site and Malahide Estuary SAC which is located c0.6km to the north of the site at their nearest points.

5.5. EIA Screening

- 5.5.1. Class (10)(b) of Schedule 5 Part 2 of the Planning & Development Regulations, 2001, as amended, provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units.

- Urban development which would involve an area greater than 2 ha in the case of a business district, 10ha in the case of other parts of a built-up area and 2ha elsewhere. (In this paragraph, 'business district' means a district within a city or town in which the predominant land use is retail or commercial use.)

5.5.2. Under this application it is proposed to construct 12 dwelling units. This number of residential units falls significantly below the threshold of the 500 dwelling units noted above. The site has a given 0.366ha site area. It is a brownfield backland site containing two existing vacant dwelling units served by public mains water and foul drainage. The land between the site and the nearest Natura site consists of developed suburban serviced land. The introduction of the proposed 12 residential units would not have an adverse impact in environmental terms on surrounding land uses, which are predominantly residential in their nature, nor would it have an adverse impact in environmental terms on adjoining and neighbouring zoned land which is serviced as well as extensively developed.

5.5.3. The site and its setting are not designated for any cultural and/or built heritage merit.

5.5.4. The proposed development is not likely to have a significant effect on any Natura 2000 site, including those indicated in Section 5.5.1 above as there is no hydrological connection between the site and these Natura sites or any other such sites. The proposed development would not give rise to waste, pollution or nuisance that differ significantly from that arising from other developments in this urbanscape context. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Fingal County Council, with no objections or capacity issues raised as a concern. Therefore, its effects on water and drainage would not be significant or such that would raise any substantive concern.

5.5.5. Having regard to:

- The nature, scale and extent of the proposed development sought under this application which is under the mandatory threshold in respect of Class 10 – Infrastructure Projects of the Planning & Development Regulations, 2001, as amended.
- The location of the site on lands that are zoned 'RS' with the land use objective of providing *for residential development and protecting as well as improving residential*

amenity, and a land use zoning objective where ‘residential’ development is deemed to be permitted in principle under the provisions of the Fingal Development Plan, 2017-2023, which is unchanged from the previous Development Plan.

- The planning history of the site and its setting.
- The suburban location of the site and setting that is served by public infrastructure.
- The pattern of development that characterises the immediate and wider vicinity of the site.
- The location of the site remote from any sensitive locations specified under Article 109 of the Planning & Development Regulations, 2001, as amended, the built-up nature of the landscape in between.
- The guidance set out in the ‘Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development’ issued by the DoEHLG, 2003.

I have concluded that by reason of the nature, scale, extent, location, and site context of the subject site that the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not deemed necessary in this case.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of this First Party Appeal can be summarised as follows:

- It is requested that the Board consider the initial proposal submitted to the Planning Authority on its merits and in the event that the Board agree with the Planning Authority’s concerns it is requested that the Board assess the revisions made to the proposal as part of this appeal submission and grant permission subject to these amendments.
- The revisions put forward with this appeal include alterations to mass and scale of the development which have been reduced in order to mitigate against the potential

overlooking impacts on surrounding dwellings outside of the site. In this regard it consists of the second floor levels of houses No.s 1 and 12 been omitted in order to reduce the scale and overlooking potentially caused by the proposed development. These amendments are considered to address the Planning Authority's third reason for refusal.

- The site is centrally located in close proximity to frequent public transport services including Malahide Bus Station which provides services to Dublin's city centre, Drogheda, Dundalk, Newry, Bray, Greystones, and surrounding suburbs. In addition, the site is located within a short walking distance to a number of bus stops and there are four GoCar sharing spaces within 1km of the site.
- A number of appeal cases for infill type developments are referenced.
- The applicant is seeking to provide a development that suits the needs of those looking to downsize from larger dwellings within the surrounding area of Malahide. Each dwelling has the option for a lift core in order to allow for ease of movement within the dwelling and a designated study/office area.
- In relation to the first reason for refusal the site line of 49m is consistent with DMURS for roads with a speed limit of 50km/h.
- This appeal response includes a proposal for the widening of the proposed vehicular entrance and the provision of a 1.8m wide pedestrian footpath to the east of this access road. The access road of 5 meters in width is appropriate to access the 12 no. dwellings, it will promote traffic calming and ensure pedestrian safety.
- In relation to the second reason for refusal and the removal of trees, a number of the trees along the entrance to the development have been retained with a number left to the left of the entrance. The design and layout have been prepared to retain the leafy presentation of the site to the streetscape of Yellow Walls Road.
- The revised design seeks to maintain the two hedgerows identified by the Parks and Greens Department, i.e., H965 and H966 along the southern boundary and also H968 along the eastern boundary.
- The layout has been designed around the retention of the good quality trees on site that provide amenity and minimise impact on the surrounding areas as well as biodiversity. In addition, the entrance has been orientated to maintain trees.

- The trees to be removed are of varying quality and provide limited amenity value.
- The trees to be felled do not require tree felling licences.
- In relation to the western boundary, it is noted that there are two walls along it and these trees are self-seeded.
- The proposal includes pruning works to improve the occupier-tree conflict between the proposed dwellings and the southern boundary trees.
- This development is setback 50m from Yellow Walls Road and the proposed built form in terms of height is consistent with neighbouring properties.
- The separation distance between the Ard na Mara properties exceeds Development Plan standards, i.e., Objective DMS28.
- This site offers a unique opportunity for backland development with availability and access to a variety of transport, amenities, and services.
- This development would give rise to minimal impacts on properties in its vicinity.
- This development is consistent with local through to national planning policy provisions and guidance.
- The 12 no. car parking spaces is sufficient to serve a development in the vicinity of transport connectivity.
- The 445m² of public open space is provided. The site is located within an area of high quality public outdoor spaces such as Malahide Castle & Gardens, Malahide Beach and Bridgefoot GAA pitches. Should the Board consider this provision insufficient it is noted that Objective PM53 provides for contribution in lieu of open space provision in smaller developments where open space is not viable.
- The proposed development has been designed and scaled to avoid appearing visually obtrusive.
- The rationale behind the demolition of the two dwellings is based on energy performance, standard of accommodation and by association the cost of refurbishing the houses to a higher energy rating. In addition, intensification of the site is justified under planning provisions at easily accessible locations.

- The proposed development is in accordance with the proper planning and sustainable development of the area. The Board is therefore requested to overturn the decision to refuse planning permission.

6.2. Planning Authority Response

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

- The applicant has submitted as part of their appeal submission a sightline drawing prepared by Cora Engineering. It is noted that there are no levels upon this drawing and as such it is unclear if this drawing is based upon a topographical survey.
- None of the developments described as precedent relate to the site's surrounding area.
- The proposed dwellings are not in keeping with the pattern of development and does not respect the character of the existing dwellings.
- To permit this development would be detrimental to the amenities of the area.
- The Board is requested to uphold its decision but in the event that the appeal is successful it is requested that Section 48 financial contributions be included.

6.3. Observations

6.3.1. The Board received the observations from the following Third Parties:

- Tony O'Connor
- Lisa Shanks & Ryan Shanks.
- Evelyn Ryan.
- Gerard McMahon.
- John Mahon & Dr. Bernie Lannon.
- Roisin O'Neill.
- Lorraine Taylor & Frank Burke.
- Michael McCabe.
- Clare O'Neill and Colum O'Neill.

- Jeffrey Lever

Having read the observations made by the above parties I consider that a number of the substantive issues raise overlap. I note that all observers object to the proposed development and seek that the Board in their determination of this appeal case do not overturn the decision of the Planning Authority. To avoid repetition and for clarity purposes I therefore propose to summarise the key concerns raised collectively under the following broad headings:

Access and Road Safety

- The proposed access is unsuitable to cater for the volume of traffic this development would generate onto an already heavily trafficked T-junction.
- Even if accepted that 49m sightlines in compliance with DMURS would be acceptable the drawings submitted with the original documentation shown that the required 2.4m setback that 45m is achievable. Therefore, the sightlines still do not meet this reduced standard and there is no clarity provided as to how the revised drawings show an improved 49m sightline being achievable.
- This development endangers public safety, in particular students attending St. Sylvester's Infant School and Pope John Paul II primary school due to the inadequate sightlines proposed to serve this development. Many parents' avail of parking on Texas Lane and these schools have 1,127 pupils with many accessing them on foot and by bicycle.
- Exiting onto Yellow Walls Road from Texas Lane requires extreme caution.
- The traffic situation at this location has been exacerbated by the Council erecting bollards which restrict parents from parking at the Dublin Road when dropping their children at St. Sylvester's National School. As such the dropping off point has been transferred onto the Yellow Walls Road and with use of Texas Lane junction.
- No safety audit has been submitted by the appellant.
- No swept path analysis for emergency and service vehicles at the site entrance has been provided.
- To create a new spur road at this location is ill-conceived, is dangerous and would give rise to additional traffic safety issues at an already congested

junction. The Planning Authority identified this as an unsurmountable concern when refusing planning permission.

- The adjoining stretch of public road is extremely busy. Particularly at peak hour and school opening and closing times.

Design and Layout

- The modifications proposed include only the reduction of the two of the three storey dwellings proposed with the remaining ten remaining as two-storey.
- The provision of one car parking space per dwelling unit and no provision of visitor parking is not acceptable. It would give rise to an overspill of car parking outside of the site.
- The 3-storey dwellings are out of character with the 2-storey nature of dwellings in the vicinity of the site and with the dormer dwellings of adjoining and neighbouring Ard Na Mara properties.
- The flat roof over the proposed dwellings would be a discordant feature.
- A 30cm reduction in height when compared to existing 2-storey dwellings in its proximity cannot be considered to be subservient and also fails to recognise the single storey nature of the Ard Na Mara properties adjoining it.
- The lack of adequate private and public open space adds to the density of building proposed and in turn reduces privacy of adjoining properties back garden areas.
- The study/office proposed for each of the dwelling's units could easily be used as a fourth bedroom. In such an event this would potentially add to the number of residents and also adding to the issue with the substandard provision of car parking.
- The proposed study room is above the size and dimensions of a single bedroom. Its use of as a single bedroom would effectively mean that it would be a four-bedroom dwelling unit as opposed to three-bedroom dwelling units described. A four-bedroom dwelling unit has a requirement under the Development Plan for a minimum of 75m² of private open space.

- The private open space amenity is substandard in its design, quality, and quantity at ground floor level. There should not be a reliance on private amenity space above ground level.
- The proposed development is too dense and too imposing in its appearance.
- The revised the levels of the site proposed, would, if permitted, add to the adverse impacts that would arise for adjoining properties.
- Backland development is subject to the design respecting the character and protection of the environment.
- The public open space proposed is deficient including tree retention areas and narrow strips with a poor configuration.
- There was no explicit direction from the Council to reduce the car parking spaces by 16 spaces from the original draft plan presented at the pre-planning consultation.
- The lack of parking is indicative of the scheme being one which proposes overdevelopment of the site.
- The lack of car parking within the site to meet the developments needs could also impact on access for emergency and service vehicles.
- Public car parking provision in this area is restricted and double yellow lines predominate.
- All of the precedent cases dealt with by the Board referred to by the appellant all had greater car parking provision than that proposed under this application.

Procedural

- The public notices made no reference to the provision of first and second floor balconies.
- No topographical survey of the site and its access onto the public road has been carried out. Yet the site is located at a location where there is significant change in ground levels between the site and its immediate vicinity.
- The drawings are misleading in terms of the height of the buildings relative to buildings in their immediate context.

- It is disputed that the proposed dwellings are in actuality three bedroom.

Revisions sought under this application

- The drawings provided are not reflective of the existing situation.
- The photographs accompanying this application are misleading and are not up to date.
- The Board is requested to reject the misrepresented ability of the applicant's contention of being able to achieve 49m sightlines from the entrance.
- The revisions proposed are not sufficient to integrate the proposed development successfully into its setting.
- The revisions do not address the negative impact to the surrounding amenities by virtue of its visual overbearance, overlooking and loss of privacy.
- The issue with public open space has not been addressed.
- The property owner of No. 12 Yellow Walls Road seeks that the property nearest to their boundary be omitted due to the injurious impacts it would have on their residential amenities. In particular by way of overlooking from the second floor level balcony and the visual oppressiveness of this dwelling unit as viewed from this property.
- Further improvements to the layout should be considered for any residential development at this location with more appropriate regard given to safeguarding the trees on this site.
- The prospect of the hedgerows surviving to the rear of the proposed dwellings is questionable given the limited private amenity spaces proposed.
- There are five trees of bat roosting potential to be felled. The bats at this location help abate the mosquito issue in this locality during the summer months.
- Any grant of permission should restrict the use of the balconies and the terraces. There should also be no ambiguity in terms of not permitting the use of the flat roof over House No. 1 and 12 for private amenity space.

Suitability of the Site

- The site is not suitable for the scale and density of residential development proposed.
- The 12 dwelling units as proposed are out of character with the pattern of development in the area.

Biodiversity/Trees

- The development site is currently a sylvan oasis containing numerous trees and hedgerows.
- The appellant is unable due to the confined nature of the site to replace the trees that would be lost to facilitate this development.
- Deforestation is a global problem and Ireland is one of the least forested countries in Europe. Therefore, the cutting down of 40 trees would have huge adverse consequences on biodiversity as well as would impact adversely the amenities of the area.
- The removal of mature trees is objected too. These trees add to the visual character of this area.
- The pre-planning advised that there should be a deliberate focus on the minimisation of the loss of trees.
- The site is located in a Highly Sensitive Landscape on Green Infrastructure 1 Sheet No. 14 of the Development Plan.
- Many of the trees identified for protection in the Tree Survey were outside of the site boundaries and outside of the applicant's ownership.

Residential Amenity Impact on Properties in the Vicinity

- The top floor of the dwellings being designed as residential is incompatible as is the provision of balconies that will add to the level of undue overlooking the proposed development would give rise too.
- It is requested that any windows at the gable ends are frosted to protect privacy.
- The proposed development would give rise to visual overbearance.
- The proposed development would give rise to noise nuisance.

Civil

- Boundary hedges and trees are proposed to be removed even though the ownership of these hedges is disputed.

6.4. Referrals

6.4.1. The Board referred this appeal case to the Development Applications Unit, The Heritage Council, and An Taisce. No responses were received.

7.0 Assessment

7.1. *Preliminary Comment:*

7.1.1. I consider that the main issues in this appeal case are those raised by the First Party in their grounds of appeal submission and those raised by the Third-Party Observers in their observation submissions to the Board. In my view these largely correlate with the three given reasons of the Planning Authority to refuse planning permission for a development that in summary consists of the demolition of two detached dwellings that occupy a backland position with sole access onto Yellow Walls Road and in their place the construction of 12 no. 3-storey 3-bedroom dwelling units in two groups of 6 no. terrace dwelling units located towards the southern portion of the site.

7.1.2. I am satisfied that no other substantive issues arise including in terms of the general internal quality of the residential amenity for future occupiers of the dwelling units proposed, the density of the proposed development at 32.7 dwelling units per hectare accords with local through to national planning provisions at such an accessible location to public transport through to amenities as well as the choice of a contemporary design approach which is reflective of its time whilst including measures to ensure an energy efficient buildings.

7.1.3. Based on the above considerations I therefore proposed to assess this appeal case under the following broad headings:

- Principle of Development
- Access and Road Safety
- Visual Amenity Impact
- Impact on Residential Amenities

- 7.1.4. In addition, the matter of 'Appropriate Assessment' also requires examination.
- 7.1.5. Prior to commencing my main assessment, I firstly note, that the proposed development sought under this application was refused for three stated reasons by the Planning Authority on the 5th day of October, 2021.
- 7.1.6. The first reason of refusal related to the modified access onto Yellow Walls Road to serve the proposed twelve dwelling units. In this regard, the Planning Authority considered this access to be substandard and that it would endanger public safety by reason of a traffic hazard, if it were permitted, due to its inadequate sightlines in both directions.
- 7.1.7. The second reason of refusal related to what was considered to be the excessive removal of mature trees from the site in order to facilitate the proposed development sought under this application. On this matter the Planning Authority considered that to permit the level of trees to be removed would contravene Objective DMS 77 of the Development Plan.
- 7.1.8. The third reason for refusal related to the Planning Authority considering that the proposed development would not integrate appropriately into the surrounding context due to its scale and massing. Alongside this the Planning Authority considered that it would give rise to undue negative impact on the surrounding amenities.
- 7.1.9. I also note that the decision order included a note to the applicant which indicated that the Planning Authority did not oppose some form of development on the subject site which addressed the concerns raised in their notification to refuse planning permission for the development sought under this application.
- 7.1.10. The appellant though asking the Board firstly to consider the proposed development as submitted to the Planning Authority on the 20th day of August, 2021. I note that during the course of the Planning Authority's determination of this application that it was not subject to any request for additional information. In the event that the Board have similar concerns to the Planning Authority which gave ultimately gave rise to the refusal of the proposed development the appellant seeks that the Board then have regard to what they describe as minor amendments which in their view address the reasons for refusal that they have provided with their appeal submission.

- 7.1.11. In relation to the proposed development as submitted to the Planning Authority on the 20th day of August, 2021, I concur with the reasons given by the Planning Authority in relation to all three reasons cited for the refusal of permission for the proposed development as set out in the notification of decision.
- 7.1.12. In relation to this conclusion, I consider that the first reason for refusal in its own right does not appear to be one that could be overcome by way of condition alone. Given the limited public roadside boundary of the site onto Yellow Walls Road. I also consider that the other concerns raised, in particular by the Planning Authority's Transportation Planning Section who concluded with a recommendation of refusal, are also of merit. On this point and as discussed in my assessment below the minimal provision of car parking spaces to serve the quantum and size of dwelling units proposed in this residential scheme for which planning permission is sought.
- 7.1.13. Further, in relation to second reason for refusal having visited the site and walked its setting I share the concerns that the design resolution put forward represents an imbalance between the proposed development and what natural features would be lost to facilitate it. In particular, to facilitate this development 43 no. trees and no. tree/hedge groups would be lost. With this loss there would be a loss of old apple tree species and despite the overgrown nature of the site I observed that it contained an abundance of perennial planting and bulbs.
- 7.1.14. The cumulative loss of natural features from this mature settled residential site without any real consideration in carrying forward a better balance of protecting trees with any new development, in my view, would result in detrimental impact on the visual amenities of what is sylvan in character site. It would also result in the proposed twelve dwelling units being more visible in their albeit backland but a setting that is nonetheless modest to contain the quantum and size of dwelling units proposed under this application.
- 7.1.15. This imbalance in my view is added to by the lack of meaningful recreational and passive communal open space. The minimal trees and the tree/hedgerow groups that are to be retained are at locations where their bases fall outside of the red line area of the site or are located at the roadside entrance/driveway where the shape of this linear strip of land is such that it is more convenient than not to maintain them.

- 7.1.16. I also note from inspecting the site that the level of maturity of the trees and tree/hedgerow groups provide an important element of screening and privacy for the site as well as adjoining properties. They also link with other mature natural features in this area, in particular the public park of Malahide Castle which lies in close proximity to the south and east.
- 7.1.17. I therefore concur with the Planning Authority's Planning Officer that a more considered and balanced approach should be had between development and natural features existing on this site than that put forward under this application. As such I consider that the Planning Authority's second reason for refusal is of merit in that the design and layout of the proposed development, if permitted, would be contrary to Development Plan objective DMS77 which seeks to protect and ensure the effective management of trees and groups of trees.
- 7.1.18. In relation to the third reason for refusal, I share the Planning Authority's concerns that the proposed development, if permitted, in the form proposed would as a result of its design, mass, scale through to design, give rise to undue residential disamenity for existing residential developments in its immediate vicinity.
- 7.1.19. In particular for the number of residential properties that bound the western, eastern and southern boundaries of the site, by way of a diminishment of residential amenity by way of overlooking and visual overbearance from the positioning of the two three storey groups of terraces alongside the positioning part of individual dwelling units private open space amenities above ground level, the solid to void treatment of the three storey terrace groups relative to adjoining properties through to the overbearing nature of the eastern and western elevations of the terrace units addressing boundaries of adjoining residential property in terms of their treatment and three storey built form.
- 7.1.20. I also consider that the residential amenity of properties on either side of the entrance onto Yellow Walls Road would be further diminished by the lack of adequate sightlines with the quantum of traffic the proposed development would give rise to having the potential to hamper the safe access and egress from their properties by way of the intensification of this entrance use.
- 7.1.21. Given the 'RS' land use zoning of the site and its setting, which the objective for such zoned land being given as to provide a measure of protection of residential amenity,

together with other Development Plan provisions including but not limited to Objective PM44 which sets out that in the case of backland development applicants that existing residential areas be protected, I therefore concur with the Planning Authority, to permit, the proposed development as proposed would be contrary to proper planning and sustainable development of the area.

7.1.22. Based on the above considerations I consider it is reasonable that the Board in this case have regard to the minor revisions put forward by the appellant as part of their appeal submission to the Board. These revisions in my view provide some abatement to the residential amenity impact for properties adjoining House No. 1 and 12 within the scheme. Moreover, the layout has been amended to include a modest improvement to the loss of natural features from the site. In relation to the scope of the revisions proposed the appellant in their appeal submission sets out that they are amenable to address the side elevations of the terrace groups addressing the rear of Ard Na Mara and 12 Yellow Walls adjoining properties by way of improving their articulation in order to reduce their visual impact by way of condition.

7.1.23. My assessment below, is therefore based on, the proposed development as revised by the appellants appeal submission to the Board.

7.1.24. For clarity I also consider that the revisions are minor in their nature, scale, extent, and scope. Therefore, new public notices are not required by the Board in order to assess them as part of their *de novo* assessment this appeal case.

7.1.25. I also note that the observers raise concern with regards to the accurateness through to the adequacy of the drawings submitted with both the application and on appeal to the Board.

7.1.26. On this concern I consider that there is some merit to them. Particularly in terms of the roadside boundary through to the lack of accurate topographical information in relation to the site and its immediate setting.

7.1.27. Notwithstanding, I consider that taken with the inspection of the site that there is sufficient information provided on file for the Board to make a determination on this appeal case and as such a request for clarification on these matters by way of additional information is not required. Such a request would also give rise to additional expense and delay for the applicant when having considered the revisions put forward by way of the appellants there is still substantive issues that the design and layout of

the proposed development cannot positively overcome in a manner consistent with the proper planning and sustainable development of the area.

7.1.28. On the other concerns relating to landownership, it is quite clear in my view, that the applicant does not have the legal right or consent to carry out any modifications outside of their roadside boundary to facilitate access and egress onto Yellow Walls Road. There also appears to be a lack of clarity in relation to works in proximity to and on the redline area of the site that the appellant has the consent and/or legal interest to carry out.

7.1.29. Notwithstanding, it is my opinion that any instances of damage to, or interference with, encroachment of, through to oversailing of Third-Party property would essentially be a civil matter for resolution between the parties concerned. Thus, not a matter for the Board to adjudicate upon. In this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that: *'a person shall not be entitled solely by reason of a permission under this section to carry out any development'* and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property. Thus, should the Board be minded to grant permission for the proposed development I recommend that it include Section 34(13) as an advisory note. It may also consider a separate advisory note on the matter of oversailing and/or encroachment prudent.

7.2. Principle of the Proposed Development

7.2.1. By way of this application, planning permission is sought to demolish two existing detached dwellings and to construct in their place 12 dwelling units in the form of two terrace groups of six three storey dwellings together with all associated site works. The site and its setting are zoned *'RS – Residential Area'* under the Fingal Development Plan, 2017-2023, under which *'residential'* land uses are *'permitted in principle'*, subject to standard safeguards and where the policies of the said plan are consistent with regional and national planning provisions and guidance that support intensification of residential development in appropriate locations. Particularly on serviced lands with proximity to public transport and other synergistic land uses. I therefore concur with the Planning Authority in this case that the general principle of the proposed development is acceptable, subject to safeguards.

7.3. **Access and Road Safety**

- 7.3.1. The first given reason for refusal considers that the sightlines from the modified entrance onto the Yellow Walls Road to serve the proposed development is inadequate and that the proposed development would represent an intensification of the use of what is considered to be a substandard access/egress. It also considers that the applicants would have to undertake a significant level of amendment to lands which are outside of their ownership to ensure its safe intensified use. This reason for refusal concluded that the proposed development would endanger public safety by reason of a traffic hazard and therefore the proposed development is not in accordance with the proper planning and sustainable development of the area.
- 7.3.2. The appellant as part of their appeal submission to the Board include minor modifications to the roadside boundary, with this road boundary measuring c9.8m and currently serving the two detached dwellings for which demolition is sought.
- 7.3.3. The modifications include the demolition of entrance piers, the removal of the existing hedge on either side and as said the repositioning of the entrance with the new entrance having a measured width of 5m and with a separate pedestrian access of 1.2m that provides connection from a proposed pedestrian pathway that runs along the c5m in length driveway and connects to the pedestrian footpath of Yellow Walls Road at a point where the public footpath is proposed to be dished.
- 7.3.4. It is contended that these amendments achieve the 49m sightlines in both directions in compliance with Section 4.4.5 of DMURS.
- 7.3.5. Of concern the revisions now proposed include photographs that shown an outdated arrangement of the immediate public road which include a yellow hatched box to the immediate east of the existing entrance. It also appears to show that the level of visual obstruction from the roadside boundary to the east and west are such that they would not overly obstruct views. Whereas on-site inspection there is obstruction of views in either direction by natural and man-made features.
- 7.3.6. Moreover, no road safety audit has been prepared to accompany this application or with this appeal with the Planning Authority having considered that such a document prepared in compliance with the current edition of Transportation Infrastructure Ireland Guidelines GE-STY-1027 would be required as part of assessing the impact of the proposed development.

- 7.3.7. Of further concern the revised drawings are not accompanied by swept analysis for the modified entrance or a revised site plan that sets out how these modifications sit in the overall layout of the proposed scheme. This concern is added to by the limited width of the internal access road, the turning area and its overall layout. There is a likelihood when taken together with the minimal car parking provision that larger service and emergency vehicles may have to access the site via reversing into it from Yellow Walls Road. In such an event this would cause additional conflict for road users.
- 7.3.8. I also raise a concern that the design and layout of the proposed modified entrance is such that it does not include a safe dwell space for two vehicles at the entrance accessing and egressing. The lack of a safe dwell space to accommodate access and egress to a residential scheme of 12 dwelling substantial in size dwelling units at what is a busy junction with Texas Lane and a busy stretch of road providing connection to the Dublin Road to the east of the site given the modest width of Yellow Walls Road at this point.
- 7.3.9. In addition, along the internal access road there is no provision made for when vehicles accessing and egressing whereby one vehicle may be a service/emergency vehicle to allow for passing without mounting the pedestrian pathway.
- 7.3.10. Alongside these concerns, I note that Yellow Walls Road though limited in its width accommodates pockets of on-street parking, bus stops and at the time of my inspection there was a steady stream of traffic along it as well as using the junction with Texas Lane. The intensification of use of this site, despite the compatibility of providing a residential development that seeks a more efficient use of serviced suburban lands, in the absence of adequate sightlines and taken together with the substandard design as well as layout of the entrance to accommodate the likely access and egress volume of traffic and traffic types, if permitted as proposed, would have the potential to give rise to additional road and safety hazards for those using the public domain of Yellow Walls Road and its junction with Texas Lane as well as for its vulnerable road-users.
- 7.3.11. Moreover, I raise a significant concern that the proposed development is poorly served by off-street parking within the scheme to meet the needs of what are substantial in size dwellings. The proposed development seeks to provide each of the 12 dwelling

units with one car parking space. Though 12 dwellings are proposed no provision has been made for visitor parking within the layout.

- 7.3.12. In this regard, I note that the two existing dwellings for which demolition is sought are modest in their size and in poor condition. It is also unclear when they were last occupied. The submitted drawings indicate that in total they contained 6 modest in area bedrooms. The proposed development contains twelve number dwelling units with 10 of these consisting of three-storey three-bedroom dwellings units. With the revisions amending the eastern and western most dwelling unit within this scheme of 12 dwelling units to two storey two-bedroom dwelling units.
- 7.3.13. Table 12.8 of the Development Plan sets out that the Council will require a house in an urban/suburban setting with 3 or more bedrooms to be provided with 2 within curtilage parking spaces. It also indicates a proposed 1 to 2 car parking spaces for dwelling units within urban/suburban contexts with 1 or 2 bedrooms with this being the norm or max. This table also sets out for townhouses with 3 plus bedrooms an additional 1 visitor space per 5 units. Again, this criterion is indicated as the norm.
- 7.3.14. In relation to the standards set out in the Development Plan it indicates that the standards provide a guide as to the number of required off-street parking spaces acceptable for new developments with the principle objective of the application of car parking standards to ensure that consideration is given to the accommodation of vehicles attracted to the site within the context of existing Government policy which is aimed at promoting a modal shift to more sustainable forms of transport.
- 7.3.15. Of further note Table 12.8 also sets out a provision of 1.5 car parking spaces for townhouse dwelling units with 2 bedrooms and 1 plus visitor space per 5 units and in relation to townhouse dwelling units with 3 or more bedrooms 2 car parking spaces plus similarly 1 visitor space per 5 units. Again, these car parking requirements are set out as the norm.
- 7.3.16. Based on Table 12.8 of the Development Plan taking the minimal car parking requirement standard there is a car parking demand of 24 car parking spaces based on the minimum of 1 car parking space for the two revised end dwelling bedroom units within the scheme and based on this criterion there is a shortfall of 12 car parking spaces to meet the minimal Development Plan standard for occupants and visitors of the proposed residential scheme. Alternatively based on the provision 2 car parking

spaces under Table 12.8 for the two revised end dwelling units there is a shortfall of 14 car parking spaces for occupants and visitors of the proposed scheme.

- 7.3.17. A case is made by the applicant for this minimum provision of one car parking space for each dwelling unit to be provided within the curtilage and no visitor car parking space provision based on the site's urban accessible location. With this location being close to public and private transport options for future occupiers and visitors. Together with the site being within easy reach of services, amenities, and other land uses synergistic to residential occupants.
- 7.3.18. The design of the internal access road, which does not include parking spaces within it, is unsuitable in width and layout to accommodate safe movement of vehicles should *ad hoc* vehicle parking occur.
- 7.3.19. Moreover, its design and layout are such that should *ad hoc* parking occur along it could adversely impact this residential scheme's accessibility for emergency and service vehicles as well as could impact on the safe movement of other vulnerable users.
- 7.3.20. As such this proposal therefore has a real potential to give rise to an overspill of car parking in an area that has a limited provision of on-street parking and an area that appears to suffer from issues with cars parking outside of the limited provision resulting in real potential for additional conflicts for the safe movement of all types of vehicles and vulnerable users in the public domain of Yellow Walls Road and Texas Lane.
- 7.3.21. There is no evidence provided with this application or with the appeal submission that the surrounding public domain could absorb the overspill of car parking arising from the proposed development.
- 7.3.22. Further the Planning Authority Transportation Planning Section indicate that 24 car parking spaces from the perspective of the minimum practical provision would be required to serve this proposed development, that two spaces are required for units with three or more bedrooms and that club cars/shared cars do not count as dedicated residential parking provision.
- 7.3.23. Based on the above considerations together with having inspected the site context, whilst I consider that the site is an accessible location within close proximity particularly to public bus and rails transport options, alongside there are a multitude of services,

amenities and other land uses synergistic to residential development in walking and cycling distance including the centre of Malahide.

- 7.3.24. Notwithstanding, I am not convinced that adequate sightlines can be provided in either direction from the modified entrance to safely accommodate the significant intensification of residential use proposed from the site onto Yellow Walls Road. This is due to the restricted stretch of roadside boundary the applicant has legal interest. Together with the lack of consent to make required modifications to land outside of their ownership to the east and west in order to ensure safe access and egress from the site together with ensuring that no additional traffic hazards or other road safety issues arise that would endanger public safety.
- 7.3.25. I am also not convinced that the scheme has not forward a reasonable balance to accommodate the parking needs of future occupants and visitors without giving rise to traffic hazard and public safety issues within the scheme itself or on its immediate public domain setting.
- 7.3.26. Of further concern whilst the appellant contends that the site is highly accessible for more sustainable and climate resilient movements by future occupants as well as visitors most dwelling units within this scheme have no independent external access to the rear private space amenity for the safe storage of bicycles etc.
- 7.3.27. In addition, there is no provision within the semi-private and communal areas within the proposed residential scheme for bicycle storage.
- 7.3.28. I therefore consider that the proposed development, if permitted, as proposed despite the modest improvements set out by the appellant in their appeal submission would give rise to material traffic generation, traffic safety concerns, public safety concerns through to would place an unreasonable additional demand on the modest provision of on-street parking spaces in the vicinity. In particular on Yellow Walls Road and Texas Lane.
- 7.3.29. In conclusion, I generally concur with the Planning Authority's first reason for refusal alongside I consider that the inadequate provision of car parking conflicts with the Development Plan provisions and would further give rise to traffic safety, uneconomic demands on publicly provided on-street car parking through to public safety concerns in this case. The proximity of the site to public transportation is not a sufficient basis alone to warrant the minimal provision of car parking for dwelling units of the size

proposed and the lack of provision for visitor car parking. Further, there is an absence of public on-street parking in its vicinity and there is a lack of assurance that the scheme as proposed would allow for safe access and egress for service and emergency vehicles.

7.4. Visual Amenity Impact

- 7.4.1. This appeal site is a brownfield site of 0.366ha in the mature western fringes of Malahide village, in north County Dublin. The site contains a dormer and bungalow dwelling that are setback behind the No.s 16 and 16a Yellow Walls Road in mature landscaped grounds containing a significant number of trees, hedges, and perennial planting. The backland positioning of the buildings on site behind existing substantial dwellings together with the modest road frontage and the prevalence of mature trees on site, including in the vicinity of the public domain of Yellow Walls Road results in limited localised glimpses of the dormer dwelling on site with the single storey bungalow completely obscured from view.
- 7.4.2. The site is bound by established residential development along all of its boundaries except for its c9m in length roadside boundary. The bounding properties that have frontage onto Yellow Walls Road are generous in built form two storey with habitable attics structures. This is similarly the case in terms of the built form of properties that bound the southern boundary of the site and that front onto the public domain of McCreadies Lane. Whereas the adjoining Ard Na Mara properties to the west have dormer built forms and the adjoining property to the east consists of a modest single storey dwelling (No. 12 Yellow Walls Road).
- 7.4.3. This roadside boundary opens onto the southern side of Yellow Walls Road in proximity to its junction with Texas Lane. Development in the immediate setting of the site is predominantly residential in character with the main buildings being two storey some with attic conversions, dormer, and also single storey. Many are on generous plots despite their suburban location.
- 7.4.4. Under refusal reason two and three of the Planning Authority's notification to refuse planning permission concerns are raised in relation to the visual amenity impact of the proposed development.
- 7.4.5. In relation to these reasons, I note that under the second reason for refusal the Planning Authority raised particular concerns in relation to the removal of trees from

the subject site to facilitate the proposed development. It sets out that the number of trees to be removed is excessive, that the proposed development would not be in accordance with Objective DMS77 of the Development Plan and in turn the current form of the development sought would not be in accordance with the proper planning and sustainable development of the area.

- 7.4.6. I note that Objective DMS77 of the Development Plan states that the Council will seek to: *“protect, preserve and ensure the effective management of trees and groups of trees”*.
- 7.4.7. In relation to the proposed development as submitted to the Planning Authority it includes the loss of 43 no. trees and 10 no. groups of hedge/trees with the landscaping scheme indicating a replacement of 18 trees.
- 7.4.8. Concerns are raised by the observers in this appeal case that the extent of loss of natural features, in particular mature trees, would diminish the visual amenities of a site which has a strong sylvan character that also contributes positively to the character and quality of both the site and its setting. Of further concern is the loss of biodiversity that would arise from such a considerable loss of natural features within a suburban setting with five of the trees to be removed identified as having roosting potential through to the bat species playing an important role in helping to control a local mosquito issue.
- 7.4.9. Additional concerns are raised in terms of the robustness and quality of the private and public open space proposed to serve the proposed residential scheme. With the private open spaces being in the most part at ground level modest in area and with this limited space being encroached by the hedgerows that are to be maintained thus giving rise to concerns over the practicality in future of their retention by future occupiers.
- 7.4.10. In relation to the public open space, it is contended that it is inadequate in qualitative and quantitative provision with its substandard nature added to by its failure to embrace the sylvan character of this site by achieving a better balance between protection of existing natural features and developments.
- 7.4.11. It is further considered that the design and layout is one that seeks overdevelopment of the site. With the layout having little regard to achieving a more appropriate balance

of protecting existing natural features as part of design resolution and the provision of an excessive number of dwellings in a restricted sylvan backland site.

- 7.4.12. As part of the appeal submission there is an accompanying Arboricultural Note which sets out that it is now proposed to retain two southern boundary hedgerows, i.e., H968 and H966 as well as an eastern hedgerow boundary H968. I note that this report appears to in error reference a labelled hedgerow twice. It would appear that there is no southern boundary hedge identified as H968 in the submitted drawings.
- 7.4.13. This report also sets out that the development proposal has been designed to retain good quality trees that are of public amenity value. It is also considered that the location of a number of the trees for which concerns are raised in relation to their removal are not of good quality. It is further contended that their visual amenity value within the wider public area is limited as they are not visible from the public road unlike trees that are adjacent to the site entrance. Moreover, it is contended that there are no Tree Preservation Orders afforded to any of the trees on site and as such no felling licence is required for their removal and it is noted that reference should be had to the occupier-tree conflict improvement pruning proposed as part of the proposed landscaping works.
- 7.4.14. The documentation provided with this appeal does not provide sufficient clarity in relation to the matter of potential landowner conflict in relation to the removal of natural features at the boundaries of the site. Where some natural features are indicated for removal but would appear may require consent of other landowners due to these hedgerows being on what appears to be shared boundaries through to the based and centre points of trees and hedgerows being located outside of the red line site area.
- 7.4.15. Of further concern the majority of trees and hedgerows to be retained are outside of the red line area with the main portion of the site dependent upon the sylvan character being maintained by trees and two hedgerows, one of which is located adjoining the western boundary at its southernmost point and the other is located behind the rear of No. 16 Yellow Walls Road. Outside of the retention of trees along the drive serving the main portion of the site to Yellow Walls which contains a number of mature trees which are mostly proposed to be retained the proposal seeks to remove the majority of trees from the backland site with 18 replacement trees proposed.

- 7.4.16. I consider that there is still missed opportunity for a more robust landscaping scheme including the use of pleated trees along boundaries through to further tree planting in the form of more restrictive in height when mature specimen trees including within the areas identified as public open space.
- 7.4.17. I also consider the landscaping scheme is such that it is highly dependent on natural features outside of the site to maintain a level of sylvan character. In addition, the design as well as layout is such that it limits the opportunity to have retained as well as provided more qualitative replacement trees and boundary hedging.
- 7.4.18. Based on the above considerations I concur with the Planning Authority in that the proposed development in this case does not achieve a respectful balance between safeguarding natural features and providing for residential development in a setting where the sylvan character of the site adds positively to the visual amenities of the area and adds to the limited biodiversity within what is suburban heavily developed setting. I therefore consider that there is merit in the Planning Authority's concerns that the design and layout as proposed is inappropriate and requires reconsideration so that it overcomes its inconsistency with Development Plan Objective DMS77. The level reconsideration required to overcome this concern is not one that can be successfully achieved by way of condition and would require a significant revisiting of the design and layout so that a more respectful to the character of the site and setting balance is achieved in this regard.
- 7.4.19. In relation to the third reason for refusal the Planning Authority raised concerns that the proposed development would not integrate appropriately within its surrounding context by virtue of its scale and mass.
- 7.4.20. The observers in this appeal consider that the proposed design and layout represent a level of overdevelopment of a backland site with the density and pattern of development proposed being out of character with that of its setting. They further contend that the height, scale through to the tight terrace 3-storey forms of the development proposed fails to respect the established pattern of development and provides inadequate setbacks between them and existing properties.
- 7.4.21. The applicant on the other hand considers the design and layout with the density of 32.7 units per hectare makes efficient use of serviced zoned land and despite the three

storey built forms of the dwelling units proposed these have been designed to not have heights that are dissimilar to those in its immediate setting.

- 7.4.22. I am cognisant that the Development Plan promotes the redevelopment of underutilised sites in existing residential areas like this. This however is subject to the protection of the character and amenities of the area. In this regard, Development Plan Objective DMS39 indicates that infill development shall respect the height and massing of existing residential units and shall retain the physical character of the area. In addition, Section 5.9 of the Sustainable Residential Development in Urban Areas Guidelines state that: *“in residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of established character and the need to provide residential infill.”*
- 7.4.23. In relation to the demolition of the proposed dwelling on site while there is some arts and crafts vernacular charm to the dormer dwelling on site, it and the single storey dwelling on site are not afforded protection, they appear to have been unoccupied for some time and they are in a poor state of upkeep as well as repair. I also note that the maximum given ridge height of the existing dormer and single storey dwellings are given as 18.47 and 15.35 respectively. The ground level of the single storey dwelling is given as 10.74 and the dormer structure is given as 10.9. I observed that the site is relatively flat through it does appear that the ground levels of adjoining and neighbouring land reflect the sloping nature of this suburban setting.
- 7.4.24. The submitted drawings also set out that the adjoining dwellings bounding the site consist of varying heights with No. 12 Yellow Walls Road, having a given maximum ridge height of 17.15. Which I note has a slightly raised ground level of 11 than the site of 17.15. In addition, they indicate that No. 16A to No. 20 Yellow Walls Road maximum ridge heights vary from 19.14 (Note: 20 Yellow Walls Road) to 20.05 (No. 16A Yellow Walls Road which bounds the driveway serving the main site area). They further show the variable height of the adjoining Ard Na Mara and McCreadies Lane properties which have variable heights 18.74; 19.84 through to 20.01.
- 7.4.25. The submitted drawings in relation to the now proposed part two storey and part three storey scheme at its maximum parapet ridge height would be 19.8 on a ground floor level of 11. With the eastern and western most unit having their third-floor level omitted and as such having a maximum parapet height of 17.8.

- 7.4.26. I do not consider that the overall height of the dwelling units as proposed is one that could be considered to be out of character with the established nature of building heights of their setting. I also consider that the minor deviation in heights between the heights of the two storey and three storey dwelling units proposed are consistent with its setting. Whilst the terrace groups are not consistent with the pattern of development of the site's setting and the density is higher than its context arguably due to the limited views that would be available of them from the public domain, the planting to be retained in the vicinity of the entrance and the driveway serving them. Through to light weight palette of materials, finishes and treatments for the proposed units. Together would ensure that the terrace built form would not give rise to any adverse visual amenity impacts on its setting.
- 7.4.27. In addition, the planting to the front of each of each of the terrace unit has the potential to further break up the homogeneity of the terrace group in an area where the built forms are predominantly detached.
- 7.4.28. The improvements proposed to the roadside boundary together with securing a viable future use for this site would contribute to the visual amenities of the streetscape scene.
- 7.4.29. In addition, having regard to the site area of 0.366ha, its serviced nature, its proximity to public transport, its proximity to a plethora of other beneficial to residential development services and amenities I concur with the Planning Authority that it is suitable for some type of infill housing scheme, but this is subject to safeguards. Including but not limited to compromising the visual amenities of its setting. I consider that in this case the proposed design and layout does not achieve a satisfactory level of balance between the quantum of development proposed and ensuring that the sylvan character of the site is sufficiently maintained as a valuable natural and place defining feature. I therefore consider that to permit the proposed design, layout, and density of development whereby the sylvan character would be effectively eroded from the main area of the site would not be in accordance with Development Plan Objective DMS77. I also consider that the proposed loss of trees would be inconsistent with Chapter 3 of the Development Pan which sets out that: "*trees provide both valuable amenity and wildlife habitat. Visually they add to an area, softening the impact of physical development on the landscape while also fulfilling an important role in the improvement of air quality in urban areas and providing wildlife habitats*". In addition,

Development Plan Objective PM64 states that the Council will: “*protect, preserve and ensure the effective management of trees and groups of trees*”.

7.4.30. Thus, to permit the proposed development would diminish the visual amenities of the area in a manner that would be contrary to the proper planning and sustainable development of the area.

7.5. Impact on Residential Amenities

7.5.1. There are a significant number of observers in this appeal case and they all object to the proposed development, including as revised by way of the appellants submission to the Board. In their submissions they have raised substantive concerns in relation to the potential impact of the proposed development on the residential amenities of their property should the proposed development be permitted by way of overlooking, overshadowing, overbearing and also by way of diminishment to their property values.

7.5.2. In terms of overlooking, concerns are raised that in order to achieve the Development Plan standards for private open space for dwelling units that the design includes the provision of open space above ground level. With this above ground level provision giving rise to overlooking of properties particularly to the south.

7.5.3. The revised House Type D1 (House No. 1 and 12) includes a rear elevation first floor level 5m² balcony. This is setback into the first-floor level main façade. Immediately adjoining it is the flat roof over the projecting rear ground floor level of this unit. With the flat roof over including a parapet. As such there is potential that this adjoining flat roof structure could function as an extension to the first-floor balcony open space proposed for this now revised unit. The second floor level over and the private open space for House No.s 1 and 12 the appellant proposes to omit to address the residential amenity concerns that gave rise to the Planning Authority’s third reason for refusal.

7.5.4. Whilst this amendment in part reduces the potential level of overlooking arising from the eastern and westernmost dwelling units within this scheme. It does not in my opinion fully address the overlooking issues that would arise from this development if permitted as revised.

7.5.5. I consider that the omission of the second floor level over House No. 1 and 12 would reduce some of the visual overbearance of the proposed development as viewed from

the adjoining Ard Na Mara properties bounding the western boundary of the site and No. 12 Yellow Walls Road that bounds the eastern boundary of the site. Should the Board be minded to grant planning permission further improvements to the visual apartness of the proposed terrace groups as viewed from adjoining properties could be achieved by way of a condition that requires improved articulation of these elevations. This would be appropriate given the proximity of these elevation to the eastern (Note: 1.091m) and western (Note: 2.092m) boundaries of the site.

- 7.5.6. In relation to the remaining terrace units, these have less generous private open space provision than House No.s 1 and 2 due to the terrace built forms and with there being more generous private open space remaining behind the rear building line. Like House No.s 1 and 2 they include a ground floor rear projection that extends nearer to the rear boundaries. At their nearest point the flat roof structure over is c7.4m from the rear boundaries with some of the rear boundaries containing hedgerows/trees that encroach into the rear private amenity same. They contain inset balconies of 5m² with these balconies adjoining the flat parapet roof over the projecting ground floor level. For the 8 mid terrace units (Note: House No.s 2 to 5 and 8 to 11) the 5m² balcony forms part of the private open space area to make up for the ground level rear private amenity space that falls short of the Development Plan standards of 60m² for 3-bedroom houses or less under Objective DMS87.
- 7.5.7. In addition to this, at 2nd floor level there is an additional 10m² proposed that is accessed from a study/reading room. With this room being of the size that it could be used as a one-bedroom space should it be provided with a door and with its parapet level projecting 1.1m over the projecting second floor level.
- 7.5.8. In relation to House No.s 6 and 7, whilst these are end of terrace units they also are of a very similar built form with their ground floor rear projection within c7.4m of the southern boundary of the site, with a first floor recessed balcony of 5m² immediately adjoining the flat roof over which in comparison to all units show internal floor, balcony and this roof structure over as the same, together with a 10m² private open space accessed from a matching study/reading room with this having a rear parapet height of 1.1m. Additionally in comparison to No.s 2 to 11 the second floor level consists of predominantly a glazed elevation.

- 7.5.9. When considered together all of the dwelling units contain significant private open space above ground floor level with the majority of the dwelling units being dependent upon the open space provision above ground floor level to meet the 60m² minimum private open space Development Plan requirement.
- 7.5.10. These above ground floor private open spaces given the lateral separation distance to the adjoining properties to the south and to the north would give rise to a significant level of additional overlooking and perception of being overlooked than that which characterises this setting.
- 7.5.11. Further, the level of private open space provision that requires a design solution that gives rise to such adverse residential amenity impacts for adjoining properties due to the design being unable to achieve the required standards of DMS87 in my view highlights that the proposed development, if permitted, would give rise to overdevelopment of this site.
- 7.5.12. Given the concerns also raised by the observers that the size of the dwelling units together with the study/reading room is of the size and dimensions of a 1-bedroom space arguably these dwelling units No. 2 to 6 and 7 to 11, with the room using being simply a label, I don't think this concern is unreasonable in relation to the adequacy of the quality and quantity of private open space proposed at ground floor level of most units does not meet the 60m². I note that under Development Plan Objective DMS87 a minimum quantum of 70m² is generally required.
- 7.5.13. I also note that the Development Plan sets out under Chapter 3 that all residential units should be provided with private open space and that the open space standards set out in the Development will set out qualitative and quantitative standards so as to ensure that the maximum benefits are derived from the open space.
- 7.5.14. In addition, Objective PM65 sets out that the Council will: "*ensure all areas of private open space have an adequate level of privacy for residents through the minimisation of overlooking and the provision of screening arrangements*".
- 7.5.15. Moreover, Chapter 12 of the Development Plan states that: "*a minimum standard of 22 metres separation between directly opposing rear first floor windows shall be observed, normally resulting in a rear garden depth of 11 metres. However, where sufficient alternative private open space (e.g., to the side) is available, this may be reduced - subject to the maintenance of privacy and protection of adjoining residential*

amenities". In keeping with this Objective DMS28 reiterates that a separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. This is not achieved in the case of the lateral separation distance between House No.s 6 and 7 and the rear elevation of two adjoining McCreadies Lane properties.

- 7.5.16. Given the above I consider that the design and layout of the proposed development, if permitted, is one that would give rise to adverse overlooking on adjoining properties over and above that normally expected in such a suburban setting. This would arise by way of inadequate separation distance and the nature of the private open space proposed above ground floor level. I also consider that the design and quantum of private open space provided above ground floor level is out of character with this suburban setting and would result in a level of visual incongruity and visual overbearance from the two terrace groups as perceived from adjoining properties.
- 7.5.17. In relation to the Shadow Analysis received with the application and with the appeal submission, with the latter reflecting the revisions proposed to address the Planning Authority's concerns with regards to amenity impacts arising from the proposed development, I am satisfied that together they provide an adequate technical assessment of the potential shadowing impacts.
- 7.5.18. I also acknowledge that there is an inherent level of overshadowing that would arise to the proposed dwelling units as well as their private open space amenity rear gardens by way of existing to be maintained natural features on site, at the site boundaries and in the vicinity of the site which includes a number of similar in height buildings through to other mature trees.
- 7.5.19. The analysis provided indicates that the adjoining garden areas of properties to the east and west would be overshadowed during daytime periods in March and December as well as lesser in June. I consider that the extent of overshadowing that would arise is to be expected in a suburban built-up area and that by maintaining the built forms towards the southern boundary of the site it minimises overshadowing of adjoining properties to the north, in particular No.s 16 to 20 Yellow Walls Road.

- 7.5.20. Further, the reduction in height of House No.s 1 and 12 reduces the extent of overshadowing of adjoining properties when compared to the original scheme as proposed to the Planning Authority.
- 7.5.21. I do not consider that the level of overshadowing that would arise from the proposed development as revised would constitute reasonable grounds for refusing planning permission. But I am of a view that the level of overshadowing could be improved by way of greater separation distances between the proposed terraces groups and the eastern as well as western boundaries but fundamentally when considered in relation to the other substantive concerns raised in relation to the overall design and layout of the proposed development.
- 7.5.22. In this case I concur with the Planning Authority, that the proposed development would give rise to serious injury of the residential amenities of property in the vicinity by way of overlooking and visual overbearance. I also consider that the private open space provision with the reliance upon above ground floor level spaces to meet the Development Plan standards for three-bedroom dwellings. When taken together with the incursion of planting along the southern boundary of the site which would be desirable to maintain for amenity and biodiversity purposes but unfortunately the maintenance of these existing natural features that encroach in places significantly into what are mainly restricted in depth and width rear private amenity space would be in jeopardy in the future in favour of more standard boundary treatments so as to improve the ground floor rear private amenity provision. If permitted, the proposed development would result in overdevelopment of the site, in a manner that would be contrary to the proper planning and sustainable development of the area.
- 7.5.23. In relation to the communal open space provision, I do not consider any of the spaces demarcated as such in the submitted drawings to constitute qualitative or quantitative open space. They are just residual pockets of space within the scheme that are of limited if any recreational and/or passive amenity value.
- 7.5.24. This is a concern also raised by the Planning Authority in their assessment of this application.
- 7.5.25. The applicant I note is amenable to meeting this deficit in the residential scheme by way of a financial contribution which is provided for in the Development Plan in such circumstances and to which the Planning Authority raises no objection.

7.5.26. I also note that there are qualitative and quantitative public open spaces within this area that are within easy reach of the site.

7.5.27. Given the nature of this modest infill backland site I concur that the payment of a contribution subject to the residential scheme being otherwise acceptable is an acceptable solution in terms of this scheme meeting its communal open space provision.

7.5.28. In conclusion, I consider that the proposed development by virtue of its design and layout would if permitted give rise to serious diminishment of residential amenities of properties in the vicinity by way of overlooking and visual overbearance and I therefore consider the Planning Authority's third reason for refusal is reasonable on this basis.

7.6. **Appropriate Assessment**

7.6.1. The closest Natura 2000 site that could potentially be impacted by the proposed development are Malahide Estuary SPA (Site Code: 004025) which is located c0.5km to the north of the site and Malahide Estuary SAC which is located c0.6km to the north of the site at their nearest points. Other Natura sites within a 15km radius include Broadmeadows/Swords Estuary SPA, Skerries Islands SPA, Rockabill SPA, Lambay Island SPA, Baldoyle Bay SAC and SPA, Howth Head Coast SPA, Howth Head SAC, North Dublin Bay SAC, North Bull Island SPA, South Dublin and River Tolka Estuary SPA and South Dublin Bay SAC.

7.6.2. Having regard to the nature and scale of the proposed development, the proposal to connect to public water services and the nature of the receiving environment together with the proximity to the nearest European sites no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with others plans and projects on a European site.

8.0 **Recommendation**

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

9.0 Reasons and Considerations

1. It is considered that the proposed development, which would result in the intensification of use of a substandard access onto Yellow Walls Road and Yellow Walls Road junction with Texas Lane, at a point where adequate sightlines cannot be achieved and would endanger public safety by reason of traffic hazard and the additional and conflicting traffic movements generated by the development. In addition, the proposed development would interfere with the safety and free flow of traffic on the public road. As such the proposed development would endanger public safety by reason of a traffic hazard and the proposed development is not in accordance with the proper planning and sustainable development of the area.
2. Adequate car parking spaces, access, and egress arrangements at the entrance to Yellow Walls Road have not been provided within the curtilage of the site to meet the intensification of residential proposed under this application. The proposed development, would, therefore, result in on-street public parking, where there is a limited provision. Additionally, the proposed development has the potential to create serious traffic overspill and conflict on the adjoining heavily trafficked Yellow Walls Road and its junction with Texas Lane. The proposed development would therefore endanger public safety by reason of a traffic hazard and the proposed development would not be in accordance with the proper planning and sustainable development of the area.
3. Having regard to the objectives of the Fingal Development Plan, 2017 to 2023, for the area which under Objective DMS77 and Objective PM64 requires the protection, preservation and seeks to ensure the effective management of trees and groups of trees, having regard to the sylvan character of the site which is a result of its significant number of trees and groups of trees/hedgerows and with these positively contributing to the visual amenities and biodiversity of its setting, the excessive number of mature trees to be removed from the site to facilitate the proposed development, it is considered that, the proposed development would seriously injure the visual amenities of the area and would conflict with the objectives of the development plan. As such the proposed development would,

therefore, be contrary to the proper planning and sustainable development of the area.

4. It is considered that the proposed development, by reason of its scale, design, built form and layout, its three storey nature, and its poorly considered provision of private open space for future occupants of the proposed dwelling units with this provision being dependent upon balconies and terraces above ground floor level in order to meet Fingal Development Plan, 2017-2023, quantitative standards as set out under Development Objective DMS87, with these above ground floor private open space being of a design that would seriously injure the amenities of adjoining residential property by way of overlooking, visual overbearance and its general relationship to adjoining property, represents inappropriate overdevelopment of this backland site. Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector

21st day of February, 2022.