



An  
Bord  
Pleanála

# Inspector's Report

## ABP-312567-22

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<b>Development</b>	Construction of a new access road and associated site development works
<b>Location</b>	The Cross, Featherbed Lane (L1315), Blackland, Loughshinny, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F20A/0701
<b>Applicant(s)</b>	Fintan Price
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Richard and Lorraine Branagan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	28 <sup>th</sup> April 2022
<b>Inspector</b>	Ian Boyle

## 1.0 Site Location and Description

- 1.1. The subject site comprises a section of land on the eastern and southern sides of an existing nursing home called Loughshinny Residential Home. The nursing home is on the southern side of Featherbed Lane (L1315), which runs in an east – west direction.
- 1.2. The character of the surrounding area is mainly low density residential development and of agricultural uses. The village centre of Loughshinny is roughly 500m to the east.
- 1.3. The nursing home building itself comprises a large, detached structure and is surrounded by an internal road system that caters for its staff, visitors, services and deliveries. The building is at a lower level than Featherbed Lane with steep embankments running along part of the site's northern and eastern boundaries. The embankments reduce views of the building from the adjacent public road network and surrounding area, generally. There is a public car park for visitors to the nursing home within the eastern section of the site.
- 1.4. To the east of the site, past the public car park, there are existing detached dwellings. The rear gardens of these residential properties face towards the appeal site and there is a low-lying concrete block wall running in a north – south direction along the back of their gardens. The section of land situated between the nursing home car park and these properties has been recently planted with small trees, bushes, and low-lying shrubs and is intended to act as a future landscaping strip.
- 1.5. The physical topography of the is undulating and mostly slopes downwards from its northern section (high point) towards the south. Therefore, the existing road profile on the approach to the nursing home from Featherbed Lane, and past it, declines as one travels southwards.
- 1.6. The site has a stated area of approximately 0.92ha.

## 2.0 Proposed Development

- 2.1. The proposed development comprises a new access road leading off Featherbed Lane and associated site development works.

- 2.2. The purpose of the access road is to cater for a future-planned education facility, for which the Applicant states a planning application will be submitted later.
- 2.3. The Planning Authority requested further information in February 2021, including a revised site layout plan and justification as to why the proposed access road was not situated to the west of the existing nursing home, which would be away from nearby dwellings (Item 1), further traffic management and construction management details (Item 2), a foul drainage strategy (Item 3), a cross section drawing showing the proposed detention basin (Item 4), a flood risk assessment (Item 5), and updated versions of the previously submitted EIAR Screening Report and AA Screening Report to reflect new information submitted as part of further information (Item 6).
- 2.4. The Applicant responded with further information in November 2021.

### **3.0 Planning Authority Decision**

#### **3.1 Decision**

The Planning Authority issued a Notification of Decision to Grant Permission on 17<sup>th</sup> December 2021, subject to 12 no. conditions, which were mainly standard in nature.

Notable conditions include:

- No works to commence on the proposed access road until such time permission has been obtained for the associated educational facility (Condition 3).
- Completion of a Road Safety Audit and final Construction Management Plan to be submitted to the Planning Authority prior to construction of the proposed development (Condition 5).
- Proposed tree planting shall be native and the planting scheme shall be implemented no later than the first planting season following construction (Condition 6).

## 3.2. Planning Authority Reports

### 3.2.1. Planning Report

- The main issues to consider are compliance with the Development Plan, archaeology, impact on the visual and residential amenity of the area, vehicular and pedestrian access, car and bicycle parking, flood risk, services, and drainage, and potential impact on Nature 2000 sites and EIA screening.
- The site is a 'Highly Sensitive Landscape' as per Sheet No. 14 'Green Infrastructure 1' of the County Development Plan and there is a specific objective to 'preserve views' along Featherbed Lane to the north and R128 to the east.
- The Applicant has submitted ownership details and an engineering report that justifies the access route in its proposed eastern location, as opposed to the west of the existing nursing home, which is deemed unsuitable. Whilst the Applicant owns a narrow strip of land to the west of the nursing home, this is used for agricultural access for fields to the south only and is not suitable to serve as a larger accessway for a future educational facility.
- The revised site layout drawing, details relating to construction methodology and drainage strategy information submitted as part of further information is considered acceptable.
- The Flood Risk Assessment submitted by the Applicant as part of further information indicates that the attenuated runoff from the site would not have an impact on flooding downstream and that the outfall location / existing ditch is dry and, therefore, not a potential flood risk.
- The EIAR Screening and AA Screening Reports are considered acceptable.

### 3.2.2. Other Technical Reports

Transportation Department: Initially requested further information in relation to the proposed road layout and its alignment, right of way, construction methodology, etc. Subsequently, it was stated that the most of the Transportation Department's concerns have been addressed, post receipt of further information, and requested that the following conditions be included in the event permission granted:

- 1) The road should only be constructed in the event the future proposed education facility has been permitted.
- 2) The distance required to provide a maintenance strip between the existing residential boundaries to the east of the road embankment shall be agreed in writing with the Planning Authority prior to construction and the developer shall make any required changes to accommodate this in the design and construction details.
- 3) All finishes should comply with the Council's Standard for Taking in Charge.
- 4) Road Safety Audits to be carried out.
- 5) A final Construction Management Plan to be agreed with the Council's Operations Department prior to construction of the proposed development. The Plan should include the construction phasing of development and haul routes.

Water Services: No objection.

Parks Department: No objection, subject to condition.

### 3.3. **Prescribed Bodies**

Irish Water: No objection, subject to standard conditions including that a connection agreement with Irish Water must be signed prior to the commencement of the development, and that the development should be carried out in compliance with Irish Water Standards codes and practices.

Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media: No objection, recommended the inclusion of a condition requiring archaeological monitoring take place in the event permission granted.

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

The Planning Authority received a number of third party observations from residents in the area, including from Loughshinny Community Association, objecting to the proposed development.

The main concerns raised are as follows:

- The application is for a road and footpath only and not for an education facility. Therefore, it is not possible to consider the overall impact of the road, path, and proposed education facility, without all of these elements being made in a single planning application.
- No line of sight analysis included in the application.
- The drawings provide insufficient context for the surrounding area.
- The future intended education facility may never occur whilst construction of the road would lead to potential unnecessary disturbance and amenity impacts.
- The proposed development is not in accordance with the 'RU – Rural' zoning that applies to the site and it is questioned whether the proposed new road, and future education facility, would comply with the vision of the RU zoning attached to the lands.
- The future proposed land use, 'education', is not listed as a permitted use under the applicable zoning. Therefore, to grant the permission would materially contravene the Development Plan.
- The subject site is not zoned objective 'CI Community Infrastructure' under the Development Plan, which would have catered for educational use.
- The site comprises sensitive landscaped and agricultural land.
- A new road in this area is unnecessary and would lead to large volumes of traffic and related traffic safety problems to people in Loughshinny, which is small village.
- The existing agricultural access at the northwest corner of the site should be used instead.

A letter of support was received from Cllr. Tom O'Leary requesting that the proposed access road be granted permission and that it would facilitate access on the lands for a new future school (St. Michael's House Special Needs School, Skerries).

## 4.0 Planning History

### Subject Site

Reg. Ref. F18A/0361: In September 2018, the Planning Authority granted retention permission for an increase in floorspace of the existing nursing home and permission for various design revisions and ancillary works.

Reg. Ref. F15A/0168: In September 2015, the Planning Authority granted permission for the construction of a two storey, 123 bedroom nursing home (5,983sqm gross internal floor area), incorporating communal spaces, treatment rooms, dining rooms, kitchen, sanitary accommodation, staff accommodation, ancillary service, administration rooms, substation, new access off Featherbed Lane, car parking, bicycle parking and ancillary site works.

Reg. Ref. F11A/0330: In December 2011, the Planning Authority granted permission for the replacement of an onsite wastewater treatment system with a new private onsite underground foul water pumping station and underground foul sewerage pressure main to connect the nursing home to the existing Skerries foul sewer network.

ABP Ref. PL06F.236126 (Reg. Ref. F09A/0551): In September 2010, the Board granted permission for the construction of a 98 no. bedroom nursing home (5,976sqm) consisting of communal spaces, treatment rooms, dining rooms, kitchen, sanitary accommodation, staff accommodation, ancillary service and administration rooms, substation, and ancillary site works.

## 5.0 Policy Context

### 5.1. Fingal County Development Plan 2017-2023

#### Zoning

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

*‘Protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage.’*

The following vision applies to this zoning:

*‘Protect and promote the value of the rural area of the County. This rural value is based on:*

- *Agricultural and rural economic resources*
- *Visual remoteness from significant and distinctive urban influences*
- *A high level of natural features*

*Agriculture and rural related resources will be employed for the benefit of the local and wider population. Building upon the rural value will require a balanced approach involving the protection and promotion of rural biodiversity, promotion of the integrity of the landscape, and enhancement of the built and cultural heritage.’*

The Development Plan does not include a specific land use class for a ‘road’. However, it is noted that the proposed road is intended to be used as an access to serve a future education use, which is to form part of a later planning application.

The use ‘education’ is not listed in either the ‘permitted in principle’ or ‘not permitted’ categories and the Development Plan states that such uses will be assessed in terms of their contribution towards the achievement of the relevant zoning objective and vision.

### **Landscape Character**

The site is within an area defined as ‘Highly Sensitive Landscape’ as per the mapping under ‘Green Infrastructure 1, Sheet No. 14’.

### **Preserve Views**

There is a ‘Preserve Views’ objective along Featherbed Lane to the north and the R128 to the east.

## **5.2. Natural Heritage Designations**

There are no designated sites in the vicinity of the appeal site.



The nearest European Site is Rockabill to Dalkey Island SAC (Site Code: 003000), which is roughly 2.1km to the east.

The Skerries Islands SPA (Side Code 004122) and NHA (Side Code: 001218) is approximately 2.5km to the north

Rogerstown Estuary SPA (Site Code: 004015), SAC (Site Code: 000208) and pNHA (Site Code: 000208) is approximately 2.7km to the south.

Rockabill SPA (Site Code: 004014) is approximately 3.5km to the northeast.

## **6.0 The Appeal**

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

The main grounds of appeal are as follows:

- The future proposed school, including its size, design, and access route, should be the subject of a separate planning application in order that the full extent of the proposed development can be fully understood.
- There are concerns regarding project splitting from an Environmental Impact Assessment perspective and in relation to Appropriate Assessment.
- The natural buffer of landscaped open space and screening planting along the shared eastern boundary would be removed if the proposed development proceeds. The provision of such setbacks, landscaping, and screening were important mitigating factors in the assessment of Reg. Ref. F15A/0168 (permitted nursing home). The insertion of a busy road into this buffer zone is unacceptable.
- A site notice should have been erected along the public road (R128) and adjacent the public pedestrian entrance to the nursing home near the bus stop.
- There is insufficient legal interest to make the application for the first section of road. I.e. The section which extends eastwards before turning south.
- The application is premature given the RU zoning for the site and lack of certainty as to whether an education facility will be permitted in the future.

The access road, footpath, and associated site development works should only be considered as part of a full application for the building they intend to serve.

- The proposed road could potentially be used to serve a future development of a different scale/nature. Despite the grant of permission for the nursing home, it should not follow that further extensive development will be permitted incrementally.
- The proposed development is not compatible with the RU zoning for the site and would result in unacceptable residential impacts for the properties situated east of the site.
- The Applicant's justification for not locating the road west of the existing nursing home is not satisfactory. It would be possible to share the existing nursing home entrance off the L1285 and upgrade the internal roadway.
- The Planning Authority should have requested new public notices given the change in configuration of the proposed access road.

## 6.2. Applicant Response

The Applicant lodged an Appeal Response on 21<sup>st</sup> February 2021, which includes the following main points:

- The Planning Authority completed a thorough assessment of the proposed development, which included a request for further information and resulted in 12 no. conditions being attached to the Council's notification of decision to grant permission.
- Regarding the third party assertion in relation to potential EIA project splitting, it is noted that the Planning Authority stated that 'no work shall commence on the subject access road until such time as planning permission has been obtained for the proposed educational facility for which the access road is intended to serve, any such application will be subject to EIA Screening'. Therefore, no project splitting can occur.

- The location of the 2 no. site notices were the most appropriate positions for informing the public. The Planning Authority inspected the notices and deemed them acceptable.
- A Legal Certificate prepared by Gartlan Furey Solicitors confirms that the Applicant has all the necessary legal rights and entitlements to make the application.
- A detailed masterplan demonstrates that the proposed access road will be well screened with mature tree planting and native hedges. Therefore, it would be well separated from the dwellings to the east. The access road is also to be constructed 1m below the floor level of these dwellings, which will reduce any potential for visual impact.
- The nearest dwelling is location over 40m away from the proposed access road.
- The future educational facility will be a low traffic environment with special needs pupils arriving mainly by a free minibus.
- The proposed development cannot be premature as Condition No. 3 requires that the proposed access road must not proceed until such time as permission has been obtained for the education facility.
- Condition No. 8 seeks to reduce, manage and mitigate potential light spill by requiring all lighting to be cowled. A detailed lighting strategy will also be prepared in advance of construction of the proposed development.
- The option of relocating the access road to the west side of the nursing home is not viable as:
  - The agricultural entrance referred to by the appellants is physically restricted and less than 4m from an existing ditch.
  - It is not possible to upgrade this existing access as it is only capable of accommodating one-way traffic and has been retained for the purposes of accommodating agricultural vehicles only.
  - The Applicant does not have rights over any other the adjoining lands.

### 6.3. Planning Authority Response

- No further comment to make in relation to the application.
- In the event permission is granted, provision should be made to apply a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

## 7.0 Assessment

The main planning considerations relevant to this appeal are:

- Zoning
- Visual and Residential Amenity
- Alternative Route
- Environmental Impact Assessment
- Other Issues
- Appropriate Assessment

### 7.1. Zoning

7.1.1. The site is zoned 'RU – Rural' under the Fingal County Development Plan 2017-2023, which seeks to protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage. I note that the Development Plan does have a specific land use class for 'road'. However, I am satisfied that the proposed road would not be against the relevant zoning objective, nor its vision, particularly as the purpose of the road is intended to serve a future planned educational facility, which is not prohibited under the zoning.

7.1.2. This appeal case is confined to an assessment of the proposed development only, which is an access road and ancillary works. However, I note that 'education' is not listed in either the 'permitted in principle' or 'not permitted' land use categories under this zoning. The Development Plan states that such uses should be assessed in terms of their contribution towards the achievement of the relevant zoning objective

and vision and I accept that it is reasonable for this to be addressed in a future planning application in due course.

- 7.1.3. Therefore, and in summary, I do not consider that the proposed access road would be premature pending the outcome of the later application for the education facility. In my opinion, it is not unusual for large development types to be divided into smaller elements, and I do not consider that the approach of deferring the special needs school to be part of a future application to be a cause for concern.
- 7.1.4. In relation to the Appellant's assertion that such an approach could potentially constitute 'project splitting' from an Environmental Impact Assessment perspective, this is addressed under Section 7.4 of this report below.

## **7.2. Visual and Residential Amenity**

- 7.2.1. The proposed development comprises a new access road, associated footpath, landscaping, and ancillary site works at Loughshinny Nursing Home. The road would be approx. 6m wide with a 2m wide footpath adjacent.
- 7.2.2. The proposed access road runs in a general north to south direction. The first section of the road would tie in with the existing internal road and wrap around the north and east sides of the existing nursing home car park. It then travels eastwards, after the car park, before turning south on towards agricultural fields.
- 7.2.3. The Applicant states that the proposed road will ultimately be used to provide access from Featherbed Lane (north) to a new educational facility. It is understood that the educational facility will be operated by St. Michael's House (Special Needs School), Skerries.
- 7.2.4. I note that there is a 'Preserve Views' objective along Featherbed Lane to the north and the R128 to the east. However, the proposed development is situated some distance away from each of these roads. Therefore, it is unlikely to have any significant visual impact on these routes, in my opinion.
- 7.2.5. However, there are four residential dwellings to the east of the proposed road. The rear gardens of these houses are orientated westwards and towards the nursing home. They are separated only by a low-lying concrete block wall along the back of

these properties, which runs on a north – south axis, and a planted strip of vegetation comprised mainly of young saplings and smaller tree species.

- 7.2.6. The houses are not generally visible from within the car park area as the nursing home is set down into the landscape and lies lower than the adjoining lands to the east. There is also a high earthen embankment extending around the north, east and south sections of the car park. From the top of the embankment, relatively unimpeded views are possible into the rear gardens of these properties. However, there is no formal public access to this part of the property and those people who would be most likely to frequent this space would be for site maintenance purposes only (cutting grass, etc.)
- 7.2.7. The Appellant raises a concern that the proposed access road would result in visual and residential amenity impacts arising due to its proximity and likelihood of carrying high volumes of traffic travelling to / from the educational facility. In terms of visual impact, I note that the proposed road would be situated lower in the landscape than the houses and that this would assist in reducing any potential visual impact caused by the physical presence of the road and that of vehicles using it.
- 7.2.8. I note that the rear gardens for these properties are relatively deep and that the houses themselves for the most part would be positioned closer to the R128, which is to the east, than they would be to the new access road. Furthermore, as there is only a low-lying concrete block wall at present separating the properties from the appeal site, it is my opinion that any visual or residential impact caused by the new road could be significantly reduced by the installation of an appropriate boundary treatment.
- 7.2.9. In this regard, I note that the Applicant has prepared and submitted a Landscape Masterplan, which includes planting various specimen and understorey species, including large acer trees (denoted as T1 on the relevant plans), native hedges and whip planting varieties on each side of the proposed roadway. Furthermore, the road will sit in behind and below a small embankment, which will be on the road's eastern side. It is along and atop of this embankment where the eastern strip of landscaping will be planted.
- 7.2.10. In summary, I consider the proposed landscaping strategy acceptable. Furthermore, and in my opinion, it would also significantly help to offset any potential impact

associated with the removal of the existing buffer of screen planting that currently exists along the site's shared eastern boundary, near the car park.

7.2.11. There is potential for lightspill as a form of residential amenity impact that could be caused by the type and spec of lighting columns and poles that would be used to accommodate the operational phase of the proposed access road, footpath, and its associated works. I do not see where in the application this has been addressed adequately or specific details of lighting installations and / or related fixtures are to be installed along the proposed road layout.

7.2.12. Therefore, I recommend that a public lighting plan should be completed by the Applicant and that this be made a requirement under condition. The plan should be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. The plan should be cognisant of adjoining land uses, including the residential dwellings to the east of the site, and take precautions to avoid potential for excessive lightspill, light fall and / or glare.

### **7.3. Alternative Route**

7.3.1. A key concern raised by the Appellant is that the proposed road should be positioned to the west part of the site, which would be further away from the residential dwellings to the east. This would avoid / reduce potential amenity impacts being incurred by the residential properties in proximity to the appeal site and that it would also avoid the removal of the existing landscaped area and screen planting, which assists in screening the existing nursing home facility from view.

7.3.2. The Planning Authority shared similar concerns upon receipt of the original application and requested that the Applicant address the issue by way of submitting further information. The Applicant states in their appeal response that a detailed justification was prepared and submitted to the Planning Authority as part of further information that dealt with this concern.

7.3.3. The Applicant submits that the agricultural entrance referred to by the Appellant is only 4m from an existing, adjoining ditch on the shared western boundary of the site and that they have no rights over any other lands in the vicinity. It is also stated that the western access would only be sufficient to cater for one way traffic and is used solely by agricultural vehicles.

- 7.3.4. I have reviewed the information on file and examined the agricultural access during my site inspection. The accessway runs tight against the western boundary of the site and there is a large glasshouse and associated farming buildings on the shared boundary between the two properties. The entrance is narrow and would potentially be physically impeded and visually obscured by the presence of an existing utilities' structure.
- 7.3.5. There is also a residential estate roughly opposite the site entrance, which is to the north, across Feather Bed Lane, called Baldongan Close. In my opinion, and in the absence of an improved junction layout, there could be potential for traffic conflict and road safety issues if the primary access to the future educational facility were relocated to be via this existing route. There would also be potential conflicts between visitors and staff using the access to get to the future intended school and large farming machinery and agricultural vehicles. This would particularly be the case during busier times of the farming season. Therefore, I consider that the better option is the one sought under the current proposal, which involves a new accessway being positioned on the eastern side of the appeal site.
- 7.3.6. In relation to the Appellant's concern that a larger and unrelated development could potentially be built on the land to the south, and then served by the proposed road instead of the future school, I consider that this could be adequately addressed by way of condition, stating that the road should only be built in the event the school has been permitted.
- 7.3.7. The inclusion of such a condition as part of a decision to grant permission for the current application would also ensure that the proposed access road would not be premature.

## **7.4. Environmental Impact Assessment**

### Screening

- 7.4.1. An Environmental Impact Assessment Screening Report was submitted with the application (dated October 2020).
- 7.4.2. The proposed development is for the construction of a new access road, footpath, and associated site development works to serve a future educational facility located to the southeast of the existing nursing home development.



- 7.4.3. Schedule 5 of the Planning and Development Regulations, 2001, as amended, ('the Regulations') set out the thresholds for which a project must be subject to an Environmental Impact Assessment Report (EIAR), if a threshold is exceeded. I note that the proposed development is not a listed project in either Part I or II of Schedule 5 of the Regulations. Therefore, a mandatory EIAR is not required in this case.
- 7.4.4. However, a development which is below the EIAR threshold (i.e. 'sub-threshold') may still require an EIAR if the proposed works would be likely to have significant effects on the environment. Schedule 7A of the Regulations sets out the information to be provided by the Applicant for the purposes of screening out a sub-threshold development for the purposes of EIA.
- 7.4.5. I note that the site has an area of 0.92ha and is located within an existing built up area but not in a business district. It comprises an undeveloped greenfield site, operational car park area with artificial and hardstand surfaces, a grassy embankment, and a landscaped strip of land, which is to the east.
- 7.4.6. The introduction of an access road would not have an adverse impact in environmental terms on surrounding lands uses. The proposal would not give rise to waste, pollution, or nuisance that significantly differs from the existing surrounding road network, internal access road, or car park that is associated with the existing nursing home development. It would not give rise to a risk of potential major accidents or risks to human health. There are no demolition works proposed, except for normal site clearance works, which in any event are considered minor and unlikely to have a significant negative effect on the environment.
- 7.4.7. The proposed development would use typical building materials in the construction of new roads. In this regard, I note that the Applicant has prepared a Waste Management and Mitigation Measures proposal as part of their Waste Management Plan and that it is intended to maximise the recycling of building materials through measures such as onsite segregation and reuse of materials.
- 7.4.8. The application is accompanied by architectural drawings, a landscape masterplan and drawings, engineering services report, and a flood risk assessment study, which provide further details of the proposed development and seek to address issues in terms of the sensitivity of the surrounding area.

7.4.9. I note that the site is not with a European Site, and the nearest such site is Rockabill to Dalkey Island SAC (Site Code: 003000), which is roughly 2.1km to the east.

7.4.10. I further note the EIA Screening Report submitted by the Applicant, which addresses Schedule 7A of the Regulations and provides information for the purposes of screening out the proposed development for EIA purposes, which is sub-threshold.

7.4.11. In summary, and having regard to:

- the nature and scale of the proposed development, which is below the threshold in respect of either Part I or II of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location and context of the site and pattern of development in the surrounding area,
- the guidance set out in the ‘Guidelines on the information to be contained in Environmental Impact Assessment Reports’ published by the Environmental Protection Agency, Ireland (2022)’ and
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that by reason of the nature, scale, and location 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 is not necessary.

#### Project Splitting

7.4.12. Project splitting typically refers to the attempt by a developer to deliberately frame development as a series of projects, each of which would fall below the relevant threshold for EIA, and thus evading the obligations pursuant to the EIA Directive.

7.4.13. However, it is important to recognise that large developments will often be split into smaller components and that this, in itself, is not problematic. The problem only arises where this is done for the purposes of avoiding the need to complete an EIA, which is the concern raised by the Appellant.

7.4.14. In relation to the Appellant’s concern that the proposed development would constitute potential splitting, I note that no works will commence on the future

educational facility – which the proposed access road is intended to facilitate – until such point that planning permission has been obtained for it, and that any such application will be subject to a separate EIA screening exercise at that point.

## 7.5. Other Issues

### Legal Entitlement

- 7.5.1. It is asserted by the Appellant that the Applicant does not have sufficient legal interest to make the application. Specifically, it is submitted that a letter of consent should have been procured from the relevant landowner(s) and accompanied the application for the section of the land where the proposed road extending eastwards and then turns south (i.e. 'the first section of road').
- 7.5.2. The Applicant's appeal response includes correspondence from their solicitor (dated 18<sup>th</sup> February 2021) confirming all the necessary legal rights and entitlements for the purposes of submitting a planning application have been obtained. I have read through the information and consider it acceptable.
- 7.5.3. Therefore, in terms of the legal interest, I am satisfied that the Applicant has provided sufficient evidence of their legal interest for the purposes of making the planning application. Any further consents that may have to be obtained are a subsequent matter and lie outside the scope of assessing this third party appeal. In any case, this is a matter to be resolved between the parties, having regard to the provisions of s.34(13) of the Planning and Development Act, 2000.

### Site Notices

- 7.5.4. The Appellant asserts that additional site notices should have been erected along the public road (R128), and adjacent the public pedestrian entrance to the nursing home, near the bus stop.
- 7.5.5. In terms of this alleged irregularity, which questions the location and adequacy of the site notices, I note that both matters were considered acceptable by the Planning Authority. I am also satisfied that this did not prevent the concerned party from making representations and that the above assessment represents my *de novo* consideration of all planning issues that are material to the proposed development.

## 7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development; which is for a new access road and associated site development works, and the distance from the nearest European site; no Appropriate Assessment issues arise. Therefore, it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

## 8.0 Recommendation

I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

The proposed development is considered to be in accordance with the provisions of Fingal County Development Plan 2017-2023, that it would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would respect the character of its receiving environment, and be acceptable in terms of traffic, pedestrian safety, and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
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2.	<p>The proposed development shall not commence until such time as planning permission has been obtained for the associated educational facility for which the proposed development is intended to serve.</p> <p><b>Reason:</b> In the interest of clarity.</p>
3.	<p>The landscaping scheme shown on Drwg. No. 02(A1) as submitted to the Planning Authority on 22<sup>nd</sup> December 2020 shall be carried out within the first planting season following substantial completion of construction works</p> <p>All planting shall be adequately protected from damage until established.</p> <p>Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interest of residential and visual amenity.</p>
4.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site.</p> <p>In this regard, the developer shall:</p> <ol style="list-style-type: none"> <li>a. notify the Planning Authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and</li> <li>b. employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.</li> </ol> <p>The assessment shall address the following issues:</p> <ol style="list-style-type: none"> <li>i. the nature and location of archaeological material on the site, and</li> <li>ii. the impact of the proposed development on such archaeological material.</li> </ol> <p>A report, containing the results of the assessment, shall be submitted to the Planning Authority and, arising from this assessment, the developer shall</p>

	<p>agree in writing with the Planning Authority details regarding any further archaeological requirement, including, if necessary, archaeological excavation, prior to commencement of construction works.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
5.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with the Planning Authority, prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
6.	<p>Construction and demolition waste shall be managed in accordance with a Construction Waste And Demolition Management Plan, which shall be submitted to, and agreed in writing with the Planning Authority, prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Construction Waste And Demolition Management Plan for the region in which the site is situated.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
7.	<p>Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which</p>

	<p>shall be submitted to, and agreed in writing with the Planning Authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of amenity and public safety.</p>
8.	<p>a. A Road Safety Audit (Stages 1 and 2) shall be submitted to, and agreed in writing with the Planning Authority prior to commencement of development, in order to demonstrate that appropriate consideration has been giving to all relevant aspects of the development in accordance with the Design Manual for Urban Roads &amp; Streets (DMURS).</p> <p>b. The measures recommended by the Auditor shall be undertaken, unless the Planning Authority approves any departure in writing. A detailed drawing(s) showing all accepted proposals and a feedback report should also be submitted.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
9.	<p>Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreements with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
10.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900, Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
11.	<p>The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to</p>

	<p>commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Ian Boyle  
Planning Inspector

8<sup>th</sup> June 2022