



An
Bord
Pleanála

Inspector's Report ABP-312970-22

Development	Retention permission for the construction of an amenity deck structure including below-deck storage area, landing and steps to beach.
Location	Seabank, Castlebellingham, Co Louth.
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	21/1485.
Applicant(s)	Edward McCloskey.
Type of Application	Retention permission.
Planning Authority Decision	Refuse retention permission.
Type of Appeal	First Party
Appellant	Edward McCloskey.
Date of Site Inspection	3 rd August 2022.
Inspector	Enda Duignan

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1.0 Site Location and Description

- 1.1.** The appeal site is located c. 1.5km to the north-east of the settlement of Castlebellingham and is accessed from the Dundalk Road which runs parallel to the coastline to the east. This section of the Dundalk Road culminates at the entrance to the site and a private driveway leads to the existing dwelling. A single storey pitched roof dwelling, detached garage and store is located within the larger landholding.
- 1.2.** The lands which are subject to this appeal relate to an existing deck, below deck storage area, landing and a series of steps which lead down to the beach, all of which are located on the eastern side of the existing dwelling.

2.0 Proposed Development

- 2.1.** Retention permission is sought for the construction of a decking structure with a series of steps connecting to a landing area. Additional steps lead from the landing area to the adjacent beach. A storage area measuring c. 5.5m x c. 4m is located beneath the deck area and is accessible from the landing area.
- 2.2.** A c. 1.35m high frameless glass balustrade bounds the northern, southern and eastern side of the existing deck area. It is evident that that existing decking area cantilevers above the existing stone gabion wall and the edge of the existing beach.

3.0 Planning Authority Decision

3.1. Decision

Louth County Council refused retention permission for the development for the following 3 no. reasons:

1. Policy Objective ENV 56 of the Louth County Development Plan, 2021-2027 is “To strictly control the nature and pattern of development within coastal areas and ensure that it is designed and landscaped to the highest standards, and sited appropriately so as not to detract from the visual amenity of the area. Development shall be

prohibited where the development poses a significant or potential threat to coastal habitats or features, and or where the development is likely to result in altered patterns of erosion or deposition elsewhere along the coast”. Having regard to the location of the development to be retained along the coastline within a European site, the visual prominence of the development in an area designated as high amenity value, potential for disturbance to protected species by way of noise, light overspill and intrusion into the designated site, and the undesirable precedent that this development would set it is considered that the development is contrary to the proper planning and sustainable development of the area.

2. The subject site is located immediately adjacent to Dundalk Bay SPA and SAC. It is the policy of the council to protect the designated SAC, SPAs and pNHAs of Dundalk Bay from any adverse impacts of development. The Planning Authority is not satisfied that the development would not impact this protected site by reason of disturbance and also through potential future erosion. Further protected species, *Numenius Arquata*, as set out in Annex II of the Birds Directive 2009/147/EC were noted in the vicinity of the site at the time of inspection and the Planning Authority is not satisfied that the development would not impact on the range and intensity of use of the areas used by these protected species for feeding or foraging immediately adjacent to the SPA. As such, it is not possible to determine beyond reasonable scientific doubt that the proposed development would not be likely to have a significant effect, individually, or in combination with other plans or projects, on European Sites. As such the Planning Authority is precluded from granting planning permission.
3. It is Policy ENV 50 of the Louth County Development Plan, 2021-2027 to require that all proposed developments within 100m of the coastline of Louth, outside the main settlements (Levels 1-4) submit a Coastal Erosion Assessment Report. New developments will be prohibited, unless it can be objectively established based on the best scientific information at the time of the application, that the likelihood of erosion at a specific location is minimal taking into account, inter alia, any impacts. In the absence of a Coastal Erosion Assessment and when considering existing erosion that is evident on site, it is not possible to determine the full implications of this development

upon the integrity of the surrounding coastline. The retention of the subject development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Report is the basis for the decision and highlights that the primary focus of assessment is with respect to the structures potential visual impact and the impact of the proposal on the coast and the adjacent Dundalk Bay Natura 2000 Site. The Planning Authority consider that the development as constructed erodes the unspoiled nature of the shoreline in this locality by introducing a structure that is alien in appearance to the area and clearly protrudes above the natural shoreline.

Concerns were highlighted with respect to the cantilevered nature of the decking area which overhangs the public shingle beach below and the steps which appear to encroach onto the public area. It is stated that this form of development is unacceptable and would set an undesirable future precedent which would erode the enjoyment of this amenity for the public.

The Planning Authority notes that no Coastal Erosion Assessment Report has been submitted and even though the development is to be retained, such an assessment is still required to ensure that future coastal erosion is not such that would undermine the structure that is sought to be retained. It is stated that it is not appropriate that retention permission be granted in the absence of such assessments.

The Planning Authority Acknowledge that an appropriate Assessment Screening Report has been provided which concludes that impacts from the development on the Dundalk Bay SAC and SPA will not be significant and there is no need to proceed to Stage 2. However, the Planning Authority note that the report does not adequately address the issue of potential erosion at the site and the long term stability of the structure. Concerns are highlighted with respect to the long term stability of the existing gabion wall and in the absence of a Coastal Erosion Report and it is not possible to

state that the development for which retention is sought will not be vulnerable to coastal erosion.

Another issue that is not considered to have been addressed satisfactorily is the potential impact of the development upon wildlife by reason of noise/disturbance and also by illumination from a spotlight located on the decking area. The Planning Authority indicate that a number of Curlew were present in this area on the date of the site inspection and there are concerns that the proposal could result in disturbance in an area that is comparatively free from human disturbance. In considering these issues, the Planning Authority is not satisfied that the proposed development, individually, or in combination with other plans or projects would not adversely affect the integrity of the adjacent European site.

3.2.2. Other Technical Reports

Infrastructure Section: Report received dated 31st January 2022 stating no objection to the proposal.

Environmental Compliance Section: Report received dated 13th January 2022 stating no comment.

County Heritage Officer: Report received recommending a refusal of retention permission.

4.0 Planning History

4.1. There are 3 permissions on the wider landholding, the details of which can be summarised as follows:

13/459: Planning permission granted on 09/12/2013 for the construction of a new garage on the north-west side of the existing dwelling with all associated site works.

05/39: Planning permission granted on 28/02/2005 for the demolition of an existing holiday home and the erection of a new replacement dwelling house together with all associated site works (outline permission ref. no. 99/1339).

99/1339: Outline permission granted on 10/05/2000 to demolish the existing holiday home and erect a replacement dwelling, house and garage.

4.2. Enforcement History

Reference 21 U154 – Alleged unauthorised works taking place within the Dundalk Bay Special Protection Area (SPA, site code 004026) and immediately adjacent to the boundary of the Dundalk Bay Special Area of Conservation (SAC, site code 000455) which includes the replacement of a structure/decking at the edge of a residential property and the construction of an access ramp on the shoreline.

5.0 Policy and Context

5.1. National Policy

5.1.1. Project Ireland 2040 National Planning Framework (NPF) Local Policy

National Policy Objective (NPO) 41b states it is an objective “In line with the collective aims of national policy regarding climate adaptation, to address the effects of sea level changes and coastal flooding and erosion and to support the implementation of adaptation responses in vulnerable areas.”

5.1.2. Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES).

A Regional Strategic Outcome (RSO) of the RSES is to “Ensure the long-term management of flood risk and build resilience to increased risks of extreme weather events, changes in sea level and patterns of coastal erosion to protect property, critical infrastructure and food security in the Region.” Regional Policy Objective (RPO) 7.4 also notes that “Statutory land use plans shall take account of the risk of coastal erosion, whereby new development should be avoided in areas at risk of coastal erosion to the greatest extent practicable”.

5.2. Section 28 Guidelines

5.2.1. Flood Risk Management Guidelines for Planning Authorities 2009

These Guidelines seeks to avoid inappropriate development in areas at risk of flooding and avoid new developments increasing flood risk elsewhere (including from surface water run-off) and they advocate a sequential approach to risk assessment.

5.3. Local Policy

5.3.1. Louth County Development Plan 2021-2027

The appeal site is located with Rural Policy Zone 2 which is identified as an 'Area under strong urban influence.'

Given the location of the appeal site in the context of Dundalk Bay, Chapter 8 (Natural Heritage, Biodiversity and Green Infrastructure) of the current County Development Plan is relevant to the assessment of the development proposal. Policy Objective 'NBG 6' also seeks 'To ensure a screening for Appropriate Assessment (AA) on all plans and/or projects and/or Stage 2 Appropriate Assessment (Natura Impact Report/ Natura Impact Assessment) where appropriate, is undertaken to make a determination...'.

With the location of the appeal site in the context of the coastline, Chapter 10 (Infrastructure and Public Utilities) of the current County Development Plan contains relevant policies with respect to Flood Risk Management including Policy Objectives IU 26 and IU27. Relevant policies with respect to coastal erosion and fluvial flooding are also contained within Chapter 11 (Environment, Natural Resources and the Coast) of the current County Development Plan. Relevant policies to the development proposal include Policy Objectives ENV 50, ENV 51, ENV 52, ENV 53, ENV 54, ENV 55, ENV 56 and ENV 57.

5.4. Natural Heritage Designations

The site is partially located within the Dundalk Bay Special Protection Area (SPA, site code 4026) and adjacent to the Dundalk Bay Special Area of Conservation (SAC, site code 455). The site is also located adjacent to the proposed Natural Heritage Area (pNHA) of Dundalk Bay.

5.5. EIA Screening

Having regard to the nature and scale the development to be retained which consists of an amenity deck structure including below-deck storage area, landing and steps to beach, there is no real likelihood of significant effects on the environment arising from the development to be retained. The need for environmental impact assessment can,

therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The development or which retention permission is sought comprises an area of decking consistent in size with that which was installed in 2009. The works which are the subject of this appeal were undertaken in 2021 and replaced the original wooden structure with a more robust concrete structure which was designed in accordance with BS8007¹⁰ to ensure climate resilience and robustness against erosion.
- 6.1.2. The existing desk structure is considered to be a significant improvement in design terms over the structure it has replaced. The steps to the beach are cast into a full height reinforced concrete wall and unlike the previous structure, place no load on the beach surface.
- 6.1.3. The structure to be retained is considered to be sited appropriately on a previously developed site, and is designed and landscaped to the highest standards and therefore does not detract from the visual amenity of the area.
- 6.1.4. The reality is that the Planning Authority's assessment takes no account of the long presence of the residential development on the wider property and the adjoining site, or of the previous decking structure which has been replaced. As the development to be retained is located on a previously developed site, the proposal does not intensify its permitted residential use.
- 6.1.5. The materials and finishes of the structure have been chosen to match the materials and colour palette of the existing dwelling house, with the result that it integrates much more effectively with the wider site and cannot therefore be considered to be 'alien in appearance to the area' as stated by the Planning Authority.

- 6.1.6. The proposal cannot be viewed as introducing human activity to an area given this section of the beach is well frequented by casual visitors. The development for retention does not introduce any significant additional human disturbance.
- 6.1.7. When considering the potential for light and noise disturbance from the use of the development on bird species present within the Dundalk Bay SAC and SPA, the AA Screening Technical Note concludes that adverse effects from the proposed development on the feeding behaviour of common wader species are unlikely. The Technical Note states that relatively high noise levels are required to cause a flight response, and that birds are likely to have become habituated to regular noise events. Furthermore, the prolonged use of the decking structure will be greatest during the summer months, outside the period when there is intensive use of the SPA/SAC by its designation species.
- 6.1.8. In terms of the potential impacts on Curlew, the Technical Note has been informed by vantage point (VP) watches which were taken over three days in the vicinity of the application site. The Technical Note concludes that the VP watch results verify the conclusions of the AA Screening Report and maintains that there is no likelihood of a significant impact on the Natura 2000 sites arising from the development to be retained.
- 6.1.9. The development does not impact on the gabion wall and does not rely on it in any way for support. A Coastal Erosion Assessment (CEA) accompanies the planning appeal and concludes that the development to be retained will have a negligible impact on coastal erosion at this location or elsewhere. Based on an inspection of the existing gabion wall (but unrelated to the development for retention) by the consulting engineer, it recommends repair and replacement where necessary.
- 6.1.10. The appeal purports that all development proposals must be considered on their own merits and the circumstances of this case are very specific and should not be viewed as establishing a precedent for development elsewhere.

6.2. Planning Authority Response

6.2.1. The planning authority reiterates its concerns raised in the initial planning assessment report with regard to:

- The developments close proximity to the Dundalk Bay SAC & SPA.
- The level of coastal erosion is visibly evident on this site.
- Potential disturbance to wildlife through the facilitation of human activity and illumination on the European site boundary.
- The loss of visual amenity to the coast area.
- The precedent set for further similar developments along the coast.

6.2.2. The planning authority note that the appeal provides details of a previous decking structure in this location which was essentially constructed from timber. This structure sought to be retained as a substantial concrete base underneath the decking area and situated immediately adjacent to the coast. Considering the softer nature of the gabion structure on either side of the decking structure, the further erosion of this gabion wall will eventually result in the hard engineering base of the decking area protruding from the coastline which could result in disturbance to the natural ebb and flow of the tide in this location. In terms of visual amenity, whilst approaching the site from either side it is not evident that there is a dwelling in this location due to it being set back from the coast and also surrounding planting. The decking area is an obvious addition to the site and is clearly visible on both approaches, on what is essentially a rare undeveloped and secluded stretch of the coast. The issue of precedent is considered applicable when considering the amount of residential properties located along the coast in particular to the north in the Blackrock area. Granting a concrete structure with direct access onto the beach would clearly set a harmful precedent and increase human activity within the SAC & SPA area. The Planning Authority's response is also supported by a report from the Council's Heritage Officer.

6.3. Observations

None.

6.4. Further Responses

None.

7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Report, and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Visual Impact
- Coastal Erosion
- Appropriate Assessment
- Other Matters

7.1. Visual Impact

- 7.1.1. The Planning Authority in their assessment of the application refer to Policy ENV 56 of the current CDP which seeks “To protect the special character of the coast by preventing inappropriate development, particularly on the seaward side of coastal roads. New development, wherever possible, shall be accommodated within existing developed areas and be climate resilient in their design.” Policy ENV 57 is also of relevance to the development proposal, and it is an objective of the Council “To strictly control the nature and pattern of development within coastal areas and ensure that it is designed and landscaped to the highest standards, and sited appropriately so as not to detract from the visual amenity of the area...”.
- 7.1.2. The proposal comprises a decking structure with a series of steps connecting to a landing area, with additional steps leading from the landing area to the adjacent beach. A c. 1.35m high frameless glass balustrade bounds the northern, southern and eastern side of the existing deck area. The Planning Authority formed the opinion that the development to be retained erodes the unspoilt nature of the shoreline in this locality by introducing a structure that is alien in appearance to the area and clearly protrudes above the natural shoreline. The Appellant has argued in their appeal submission that the existing structure replaced a previous decking structure that was constructed c. 2009 and the proposal is located on a previously developed site and therefore does

not intensify its permitted residential use. Photos of the previous structure have now been enclosed within the appeal submission.

7.1.3. From a review of the site's planning history, it would appear that the previous structure did not benefit from planning permission and the existing proposal therefore replaced an unauthorised structure. The existing decking area for which retention permission is sought is a robust structure which has been designed to a high standard and comprises high quality materials and finishes. Its contemporary design is also considered to be generally consistent with the architectural detailing of the existing house on site. Whilst I acknowledge that the current proposal represents an improvement on what was previously constructed on site, the existing decking area is elevated relative to the garden embankment and gabion wall on its southern and northern sides. As the decking area also cantilevers above the adjacent beach, views of the structure are prominent when approaching the site from the north and south along the coastline. I would share the concerns of the Planning Authority with respect to the visual impact of the development on what was observed to be an unspoilt stretch of the coastline. The visual impact of the proposal could very well have been mitigated by setting back the structure within the site which would help nestle it within the existing landscape. Setting the structure back would not in my view diminish the amenity value of this space for the dwelling's existing occupants.

7.1.4. Whilst I acknowledge that the residential use is established at this location and the existing dwelling is visible from many vantage points to the north and south, the design of the dwelling is sympathetic to its surrounds due to its single storey form and its siting and setback from the beach. Given the cantilevered form of the structure to be retained, its overall siting and its elevated position relative to the existing garden embankment and gabion wall, I consider the proposal to be contrary to Policy Objectives ENV 56 and 57 of the current CDP. Although I do not agree with the Planning Authority's concerns that regularising the planning status of the structure would set an undesirable precedent for similar development, the existing structure is visually pronounced and detracts from the overall visual amenity of what is a relatively unspoilt section of the coastline. It is on this basis that I recommend that retention permission be refused for the development proposal.

7.2. Coastal Erosion

- 7.2.1. Given the location of the subject site, Policy Objective ENV 50 of the current CDP is relevant to the assessment of the application which seeks “To require that all proposed developments within 100m of the coastline of Louth, outside the main settlements (Levels 1-4) submit a Coastal Erosion Assessment Report. New developments will be prohibited, unless it can be objectively established based on the best scientific information at the time of the application, that the likelihood of erosion at a specific location is minimal taking into account, inter alia, any impacts.” The Planning Authority noted that a Coastal Erosion Assessment Report was required to ensure that future coastal erosion is not such that would undermine the structure and it was therefore not appropriate to grant retention permission in the absence of such assessments. The Planning Authority note that a portion of the gabion wall which forms the coast side boundary of the site has become damaged. It is stated that the same wall is in place below the decking and concerns are highlighted with respect to the longer term stability of this wall when viewing the eroded section of wall at the site.
- 7.2.2. The Applicant has now submitted a Coastal Erosion Assessment which is included within Appendix F of the appeal submission. The deterioration of the northern end of the gabion wall is acknowledged within the assessment. However, the report indicates that this was likely due to an installation error at the time which was rectified for the subsequent sections of the wall. I note from my inspection of the site, that the remainder of the wall was in good condition and showed little signs of erosion or damage. In terms of the existing structure, the assessment highlights that neither the decking structure or steps are dependent on the gabion wall for support either vertically or horizontally.
- 7.2.3. Historical maps are included within the Coastal Erosion Assessment and demonstrate that minimal inland advancement of the existing coastline adjacent to the site has occurred since 1880 and it is therefore noted that existing sea defences are performing effectively. It is concluded within the Coastal Erosion Assessment that based on the information provided by the structural engineer involved in the original project, the stability of the replacement deck, which is described as a fully independent and

structurally stable entity, will not be affected by the erosion of any of the surrounding banks. It is purported within the assessment that the development will have a negligible impact on coastal erosion at this location or elsewhere. Various recommendations with respect to remedial works to the existing gabion wall (northern section) are included within the Coastal Erosion Assessment but I note that these are outside the scope of this application.

- 7.2.4. Based on the information contained within the Coastal Erosion Assessment and due to the scale of the structure and by the fact that it is independent from the existing gabion wall, I consider the likely impact of the proposal on erosion at this location or elsewhere to be negligible. I am therefore satisfied that the proposal is in accordance with Policy Objective ENV 50 of the current CDP.

7.3. Appropriate Assessment

- 7.3.1. The Stage 1 AA Screening Report submitted, provides a description of the site and the proposed development. The decking structure is located in the vicinity of 2 no. "European Sites", being the Dundalk Bay SPA (site code: 004026) and Dundalk Bay SAC (site code: 000455). The SAC boundary lies c. 10.5m to the east of the existing property boundary. It is stated that the decking extends c. 1.1m beyond the property boundary and eastwards towards, but not into the SAC. The boundary of the SPA lies within, sub-parallel to and c. 5m inland of the property boundary at the decking location. It is stated therefore that the decking is largely located within the SPA. The possibility that works on the appeal site might have an effect on the adjacent Natura 2000 sites therefore needs to be examined to determine whether the proposed development would be likely to have significant effects on those Natura 2000 sites, and so whether an appropriate assessment is required.
- 7.3.2. The conservation objectives of the relevant sites are as follows:

European Site	Qualifying Interest	Conservation Objectives
Dundalk Bay SAC (000455)	Estuaries [1130] Mudflats and sandflats not covered by seawater at low	To maintain the favourable conservation condition of estuaries, mudflats and sandflats, perennial vegetation, Atlantic salt

	<p>tide [1140]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p>	<p>meadows, Mediterranean salt meadows, in Dundalk Bay SAC, which is defined by a list of attributes and targets. To restore the favourable conservation condition of Salicornia and other annuals colonizing mud and sand in Dundalk Bay SAC, which is defined by a list of attributes and targets. To maintain the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA</p>
Dundalk Bay SPA (004026)	<p>Great Crested Grebe (Podiceps cristatus) [A005]</p> <p>Greylag Goose (Anser anser) [A043]</p> <p>Light-bellied Brent Goose (Branta bernicla hrota) [A046]</p> <p>Shelduck (Tadorna tadorna) [A048]</p> <p>Teal (Anas crecca) [A052]</p> <p>Mallard (Anas platyrhynchos) [A053]</p> <p>Pintail (Anas acuta) [A054]</p> <p>Common Scoter (Melanitta nigra) [A065]</p> <p>Red-breasted Merganser (Mergus serrator) [A069]</p> <p>Oystercatcher (Haematopus ostralegus) [A130]</p> <p>Ringed Plover (Charadrius hiaticula) [A137]</p> <p>Golden Plover (Pluvialis apricaria) [A140]</p> <p>Grey Plover (Pluvialis squatarola) [A141]</p> <p>Lapwing (Vanellus vanellus) [A142]</p> <p>Knot (Calidris canutus) [A143]</p> <p>Dunlin (Calidris alpina) [A149]</p> <p>Black-tailed Godwit (Limosa limosa) [A156]</p> <p>Bar-tailed Godwit (Limosa</p>	<p>To maintain the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p>

	lapponica) [A157] Curlew (Numenius arquata) [A160] Redshank (Tringa totanus) [A162]	
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- 7.3.3. As detailed in the Appropriate Assessment Screening Report, the decking structure is supported on columns that are located within the boundary of the private property and are outside the SAC boundary but inside the area of established private garden within the SPA boundary. The decking is cantilevered over the property boundary wall. Approximately 4.7sq.m. of the decking overhangs, but does not rest on, the shingle beach within the SAC. A cantilevered landing and steps overhang (c. 2.5sq.m.), but do not rest on, the beach within the SAC.
- 7.3.4. In terms of the SAC, the report notes that access to the beach provided by the steps has the potential to result in some trampling of the habitat, but this effect is unlikely to result in a significant change in habitat destruction. Steps from the property to the beach were present prior to the construction of the present house, and it is unlikely that there will be a significant increase in public use of the beach arising from the use of the new steps. It is also stated that the open structure of the decking means that the natural processes of sediment transport, erosion and accumulation are unlikely to be interrupted. It is stated that zonation of habitat features will not be affected by the structure and the presence of the structure is unlikely to have a significant effect on the core values of the target habitat, nor on the presence of atypical or invasive plant species. Given the limited extent of the decking, its function as an in-situ amenity and its distance from the other designation features of the SAC, indicate that it has no significant effect on the conservation condition of the Estuaries, Mudflats and sandflats, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows and Mediterranean salt meadows designation features.
- 7.3.5. With respect to the SPA, the screening report notes that the limited extent of the decking structure and its remoteness from the major feeding habitats and roosting sites necessary to maintain the water bird designation populations indicate that it will have no significant effect on either the habitat or the species features of the SPA. Based on NPWS data (2011), the report notes that it is unlikely that there will be any

increase in disturbance of roosting birds arising from use of the decking, on a stretch of beach that is, in any case, accessible to the public. The screening report concludes that the impacts of the structure are not significant as the development abuts a public beach, and feeding birds are likely to be habituated to the presence of people, or else are likely to avoid those areas used by the public. It is also stated that the shingle habitats in the immediate vicinity of this structure are likely to be little used by feeding birds, and roosting birds generally avoid areas of human habitation. This is relevant given the structure is part of a single dwelling development in a location that has been occupied for many years and it is considered that the level of usage of the site is unlikely to be significantly increased as a result of the presence of the decking structure.

- 7.3.6. The screening report concludes overall that there is no likelihood of a significant impact on any Natura 2000 site and so in accordance with the Regulations there is no requirement for a Stage 2 AA to be carried out.
- 7.3.7. At application stage, the Planning Authority raised concerns that the screening report did not adequately address the issue of potential erosion at the site and the long term stability of the structure. It was indicated that in the absence of a Coastal Erosion Report, it is not possible to state that the development for which retention permission is sought will not be vulnerable to coastal erosion. As detailed earlier in this assessment, I am satisfied that this matter has been adequately addressed and it has been demonstrated in the Coastal Erosion Assessment that the development will have a negligible impact on coastal erosion at this location or elsewhere.
- 7.3.8. An additional matter raised by the Planning Authority related to the potential impact of the development upon wildlife by reason of noise or disturbance and also by illumination from a spotlight located on the decking area. The Planning Authority indicate that a number of Curlew were present in the area on the date of the site inspection. It was considered that the creation of this decking in such a prominent position above the beach and also the use of lighting which is likely to lend itself to nighttime use which is a time of day that there would not be expected to be human activity in this area, it was considered that this could result in disturbance in an area

that is comparatively free from human disturbance. The Planning Authority were therefore not satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of the adjacent European Site.

7.3.9. In support of the planning appeal, a Technical Note has been prepared by the consultant ecologist in response to the Planning Authority's concern that the proposed development may potentially disturb protected species by way of noise, light overspill and intrusion into the designated site. Vantage Point (VP) watches, were carried out by the consultant ecologist over three days on 26/02/2022, 04/03/2022 and 05/03/2022 and at various states of tide, to take account of both possible variations in human behavior and likely responses of bird populations to different tidal conditions. The total numbers of all wader and wildfowl species were counted at the beginning of the VP watch within around 300m of the head of the beach between the two beach access points. The time and duration of visits to the beach were recorded and the behavior of birds in apparent response to these visits was noted in the case of the first two visits. The present data recorded at the beginning of the VP watch was used as a baseline for comparison. It is indicated that high tidal conditions at the beginning of the final two visits meant that few birds were present along the survey beach and this approach was therefore not relevant for those visits.

7.3.10. The following conclusions are provided within the technical note:

Visitor numbers	It is stated that small numbers of visitors appear to use the beach in front of the application site regularly. Although observations are based on a small sample size, there is no reason to believe that the observed use of the beach is unusual for the time of year. It is not known what use is made of the beach during colder, or indeed warmer months. The SPA is designated for bird populations that use the site predominantly during the winter months.
Waterbird use of the study area.	The study confirms that the beach fronting the application site is used as a tidal roost by a minimal number of birds (maximum 14). Any disturbance of the small numbers of birds using the beach near the application site is of minimal significance. Considerable numbers of birds use the mud flats offshore of the application site for foraging at lower tides when undisturbed. Up to 700 waders and 275 Brent Geese used the mud flats within 300m of the beachhead prior to visitor disturbance.
Disturbance.	It is stated that the occasional use of the application structure, and the degree of disturbance observed at this location more generally, is unlikely to initiate significant loss of feeding time for any species and

	will not have a significant effect on any of the wader designation species of the SPA. Some evidence of habituation to human presence was noted.
Effects of lighting.	It is stated that research has found that artificial lighting may enhance nocturnal feeding opportunities for waders. The technical notes highlight that species can become habituated to artificial lighting of feeding grounds and adverse effects from the application structure on the feeding behavior of common wader species are unlikely.
Effects of noise	it is acknowledged that noise from the use of the structure has the potential to disturb birds. Relatively high noise levels are required to cause a flight response and birds are likely to become habituated to regular noise events. It is noted that prolonged use of the decking structure is likely to be greatest during the summer months, outside the period when there is extensive use of the SPA by its designation species.
Curlew	The Technical Note indicates that the maximum number of Curlew within 350m of the site during the study was 5 no. birds. The wintering population of the species in Dundalk Bay is known to be several hundred, and the numbers present within the study area are a small proportion of this total. It is stated that the primary reasons for the declining number breeding birds is agricultural intensification, which reduces the area of suitable breeding habitat, and low nesting productivity. Conditions on Irish wintering grounds such as Dundalk Bay are unlikely to contribute significantly to losses to Curlew populations.

7.3.11. In its concluded in the technical note that the VP watch results verify the conclusions of the AA Screening Report that feeding birds are likely to be habituated to the presence of people, or to avoid those areas used by the public. The general area is used by a minimal number of boosting birds, which may be sporadic or transient users of this part of the SPA. It is also concluded that the number of birds potentially affected is a very small percentage (<0.3%) of the total designated population. As such, it is maintained that there is no likelihood of significant impact on the Natura 2000 site arising from the development.

7.3.12. From a review of the application documents, it is evident that the Planning Authority referred the application to the National Parks and Wildlife Service (Department of Housing, Local Government and the Heritage). However, no comments were received at the time of the application with respect to the development proposal. Despite the recommendation of the Planning Authority to refuse permission for retention, I am also cognisant of the commentary of the Planning Authority's Heritage Officer, whereby they state in their report they agree with the original findings of the AA Screening

Report that the impacts of the development on the Dundalk Bay SAC and SPA, should retention permission be given, would not be significant.

7.3.13. I note that the existing structure has been designed to cantilever over the existing beach and there are no habitats within the adjoining SAC that have been lost or removed as result of the development to be retained. I also note that although this section of the beach is relatively secluded, I observed a number of people walking along the beach in close proximity to the site at the time of my site inspection which would be consistent with the pattern of usage observed during the VP watches. On the basis of the information submitted in support of the appeal, including the Technical Note and Coastal Erosion Assessment Report, and having regard to the scale and nature of the development to be retained including its location on an established residential site, it is reasonable to conclude that the development to be retained, individually or in combination with other plans or projects would not be likely to have a significant effect on the Dundalk Bay SAC (000455) or Dundalk Bay SPA (004026), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.4. Other Matters

7.4.1. I note that from an inspection of the subject site, it was evident that the decking structure cantilevered above the adjacent beach by c. 1.1m with a series of steps also encroaching onto the beach. This is confirmed in the application documentation, including the consultant ecologist's Technical Note which accompanied the appeal submission. I note that the Planning Authority in their assessment of the application highlighted this matter. From a review of the application documents, it is evident that the structure is located within the Blue Line boundary which indicates land ownership. When examining the planning history of the site (notably reg. ref. 05/39 & 13/459), it would appear that the boundary of the site has incrementally encroached into the adjacent beach area. It is unclear from the documentation submitted whether there has been a formal transfer of land or not. Should an application for a modified proposal be forthcoming, the Applicant should satisfy themselves that they have sufficient legal interest to carry out the intended works.

8.0 Recommendation

I recommend that the planning application be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the cantilevered form of the structure to be retained, its overall siting relative to the adjacent coastline and its elevated position relative to the existing garden embankment and gabion wall, I consider the proposal to be contrary to Policy Objective ENV 56 of the Louth County Development Plan, 2021-2027 which seeks “To protect the special character of the coast by preventing inappropriate development, particularly on the seaward side of coastal roads”. In addition, the proposal does not accord with Policy Objective ENV 57 of the Louth County Development Plan, 2021-2027, which has an objective “To strictly control the nature and pattern of development within coastal areas and ensure that it is designed and landscaped to the highest standards, and sited appropriately so as not to detract from the visual amenity of the area...”. The existing structure is visually pronounced and is considered to detract from the overall visual amenity of what is a relatively unspoilt section of the coastline. The retention of the subject development in its current form would therefore be contrary to the proper planning and sustainable development of the area.

Enda Duignan
Planning Inspector

10/08/2022