



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313922-22

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<b>Development</b>	Construction of 10 houses and all associated site works (NIS submitted to PA)
<b>Location</b>	Sites 1, 3, 6 and 8 - 14 incl. of unfinished housing estate, Oldtown Avenue, Fieldstown Road (R122), Oldtown, Fingal, Co Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F21A/0249
<b>Applicant(s)</b>	Sherwood Investment Properties Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Sherwood Investment Properties Ltd.
<b>Observer(s)</b>	- Residents of Oldtown Avenue - Owners of Ashlawn
<b>Date of Site Inspection</b>	3 <sup>rd</sup> May 2023.
<b>Inspector</b>	Lucy Roche

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## 1.0 Site Location and Description

- 1.1. The appeal site is in the village of Oldtown in north County Dublin, c5km west of the settlement of Ashbourne in Co. Meath and c7.2km northwest of Swords.
- 1.2. The appeal site comprises lands within Oldtown Avenue, an unfinished housing development on the eastern side of the village, close to the village core. Laid out to contain 15 dwellings, the estate currently comprises five complete and occupied, two storey detached dwellings. A further six dwellings have been constructed to floor plate level with the remaining 4 plots undeveloped. These 10 unfinished/vacant housing plots form the basis of this current application.
- 1.3. Oldtown Avenue is served by two areas of public open space to the northwest and west of the development. The northwestern section of the site, including lands associated with Housing Plot No.3, forms part of Oldtown ACA which itself encompasses the central core of the village. The site is bounded by the Church of Our Lady Queen of Peace (built c1964) to the south, residential property to the west and agricultural lands to the north and east. The Daws River, a tributary of the Ballyboghil River, flows in an easterly direction through the centre of Oldtown village, to the northwest of the appeal site. Residential development within the immediate vicinity of the site comprises a mix single and two-storey, mainly detached, residential units on large plots.
- 1.4. The appeal site, as originally presented with the application, has a stated area of 0.432ha. The redline boundary was extended at further information stage to incorporate ancillary areas (road, area of open space etc) within Oldtown Avenue, the extended site has an area of c0.9ha.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of 10 no. detached, two storey houses on sites 1, 3, 6 and 8 - 14 inclusive of unfinished housing estate (Fingal Co. Co. reg. ref. F06A/0748 and F07A/0024). The 10 detached two storey houses comprise:
  - 1 no. 4 bed type A (site 9),
  - 1 no. 4 bed type A1 (site 10),

- 1 no. 4 bed type B (site 12),
- 2 no 5 bed type C (sites 1 & 8),
- 4 no. 5 bed type D (site 3, 11, 13 & 14)
- 1 no. 4 bed type E (site 6)

2.2. A request for further information was issued by the planning authority on the 24<sup>th</sup> of June 2021. The applicant's response was received on the 24<sup>th</sup> of March 2022 and deemed to be significant. Revised public notices were received 7<sup>th</sup> of April 2022.

2.3. The further information received on the 24<sup>th</sup> of March 2022 included:

- A Natura Impact Assessment (NIS)
- An Ecological Impact Assessment (EclA)
- An Environmental Report (inspection of sewers / drainage)
- An Arboriculture Report
- A Design Statement
- Construction Management Plan
- Revised layout plans and road sections which include for the provision of a 4.8m wide shared surface road with no delineated footpath and additional landscaping, and the extension of the Redline site boundary to include proposed road works.
- A revised house type for Unit 6 to facilitate adequate separation distances. (House Type F)
- A revised site layout plan showing the single storey extension to the rear of Ashlawn the neighbouring property to the west of sites 8.9 and 10.
- A Landscaping Plan

2.4. The Board, under Section 142(4) of the Planning and Development Act, 2000 (as amended) requested the submission of revised notices which were received on the 8<sup>th</sup> of September 2022.

2.5. Table 2.1 below provides a brief overview of the proposed development:

<b>Table 2.1 - Site / Development Details</b>	
<b>Site Area</b>	0.432ha (as stated). The redline site boundary was extended at further information to incorporate an area of c0.9ha.  The overall landholding (Oldtown Avenue) has a stated area of 0.97ha
<b>No. of Units</b>	10
<b>Gross Floor Area</b>	1713.6sqm
<b>Housing Mix</b>	4no 4-bed detached two storey dwellings.  6no 5-bed, detached two storey dwellings
<b>Density</b>	c23units/ hectare (10units on a site area of c0.432ha)  Completed Oldtown Avenue = c15.5units / ha.
<b>Design:</b>	All dwellings incorporate a traditional pitched roof with ridge heights ranging from c8.4m to c9.6m. House types C, D and F incorporate a double height projecting gable to front elevation. Material finishes include a mix of stone and sand /cement render (dry dashing) to external walls with decorative brick features.
<b>Parking</b>	2 in-curtilage parking spaces per unit
<b>Public Open Space</b>	Public open space provided on foot of FCC. Reg. Ref F06 F06A/0748.
<b>Vehicular Assess</b>	It is proposed to utilise the existing vehicular access to Oldtown Avenue off the R122 to the west of the site

## 3.0 Planning Authority Decision

### 3.1. Decision

3.2. Fingal County Council did by order dated 2<sup>nd</sup> June 2022 decide to refuse permission for the proposed development for two reasons as follows:

- 1 *Insufficient information has been submitted to enable the Planning Authority to determine whether the WWTP has the capacity to provide for the additional loading capacities needed for the development. As such the proposed residential development is considered premature by reference to the existing deficiency in the provision of sewerage facilities. The proposed development would therefore be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.*
- 2 *It has not been demonstrated to the satisfaction of the Planning Authority that the proposed development, individually or in combination with other plans and projects, would not significantly affect the integrity of European Sites (i.e., Rogerstown Estuary SAC and SPA) in view of the conservation objectives of these sites.*

### 3.3. Planning Authority Reports

#### 3.3.1. Planning Reports

##### Planning Officer Report #1

The initial report of the Planning Officer (June 2022) has regard to the locational context and planning history of the site; to local and national planning policy and guidance and to the third-party submission and reports received. The following provides a summary of the main points raised in the assessment of the Planning Officer:

- The proposed residential development is considered to accord with the 'RV' zoning objective for the site.
- The proposed dwellings accord with the standards of the Fingal Development Plan 2017- 2023 in respect of minimum floor sizes, room widths, separation distances. House types are compliant in terms of dedicated storage, and the

quantum of private and public open space provided accords with FDP standards.

- The density of the proposed development at 23 units per hectare would generally accord with the guidelines on Sustainable Residential Development in Urban Areas (2009).
- The application site is one of two unfinished estates within Old Town. The proposal would allow for the redevelopment of the site which currently detracts significantly from the amenities of the area.
- Units 6 and 14 have the potential to impact the amenities of adjoining properties by way of overlooking (insufficient separation distance / rear garden depths).
- The design and layout of the proposed development is generally considered acceptable.
- The applicant has submitted a copy of the Irish Water's response to their pre-connection inquiry. The response indicates that the Oldtown WWTP is overloaded and cannot accept an additional load.
- The option to construct a pumping station and 4.5km of rising main is unsustainable.
- In relation to the capacity issues - the development permitted may have formed part of the initial wastewater treatment capacity calculations, there may be misconnections and surface water infiltration.
- In relation to surface water disposal, underground attenuation tanks should be avoided. Revised proposals in accordance with SuDS required.
- The site is located within Flood Zone C.
- In the absence of an Appropriate Assessment Screening Report and having regard to the hydrological connection to Natura 2000 sites and the nature of the proposed development, it was not demonstrated to the satisfaction of the Planning Authority that the project would not affect the integrity of European Sites.
- EIAR is not required.

- The report concludes with a request for further information. The main item in the request relates to the capacity of the wastewater treatment plant. In the event that this item can be addressed the applicant is also requested submit:
  - An Appropriate Assessment Screening document
  - Details on the design of the proposed access Road.
  - A revised site layout plan to address concerns of overlooking / impact on adjoining property.
  - A detailed Design Statement for the proposal in accordance with objective DMSO3 of the FDP 2017 to 2023.
  - A landscaping plan and tree survey
  - An Ecological Assessment
  - A Construction Management Plan
  - A revised site layout plan showing the red line boundary extended to encompass areas on the landholding where works are required to facilitate the proposed development including the internal road layout and the areas of public open space.

The second report of the Planning Officer (May 2022) has regard to the further information received on the 24<sup>th</sup> of March 2022 along with the interdepartmental reports.

- While acknowledging that the application site forms part of an unfinished estate and that there is an objective within the Oldtown LAP to seek to agree site resolution plans for the estate, in light of the lack of clarity with regards to the carrying capacity of the WWTP, FCC conclude that they are unable to determine whether the WWTP has the capacity to provide for additional loading and will not therefore impact on a Natura 2000 site.
- The report concludes with a recommendation to refuse as per FCC decision.

### 3.3.2. Other Technical Reports

#### Water Services:



June 2021: Further information requested regarding proposals for foul and surface water drainage.

Flood Risk – no objection subject to condition.

May 2022: The applicant's response to the additional information request regarding the capacity of the WWTP is not acceptable.

Further information requested in relation to surface water drainage.

Flood Risk – no objection subject to condition.

Env. & Water Services: Further information requested – Construction and demolition waste management plan.

Transportation Planning:

May 2022: No objection subject to condition

Parks and Green Infra:

June 2021: Further information requested – Landscape plan and tree survey.

### 3.4. Prescribed Bodies

Uisce Éireann (Irish Water):

June 2021: Further information, in the form of a pre-connection inquiry, requested.

May 2022: Further information, in the form of a pre-connection inquiry, requested.

### 3.5. Consultant Reports prepared on behalf of FCC:

#### 3.5.1. Natura Impact Assessment (NIS):

Fingal County Council commissioned CAAS Ltd to carry out a review of the appropriate assessment documentation (including NIS) submitted by the applicant at

further information stage. CAAS Ltd in their concluding statements, note that the NIS identified that wastewater treatment capacity of the receiving WWTP is unknown. They refer to Section 3.4.2 of the NIS which states that the '*relevant authority must ensure that the existing infrastructure is capable of coping with any access land associated with the proposed development*' and note that issue is not considered in the NIS itself and is left for Fingal County Council to consider.

The review concludes with a recommendation that FCC assess if the receiving WWTP has capacity to provide for the additional loading capacities needed or alternatively that FCC seek clarification from the applicant in this regard.

### 3.5.2. Ecological Impact Assessment (EclA):

Fingal County Council commissioned CAAS Ltd to carry out a review of the EclA submitted by the applicant at further information state. CAAS Ltd, in their concluding statements, state that the EclA is generally robust in terms of its scope, methods, and assessment approach; however, they note that the EclA was unable to identify if the receiving wastewater treatment plant has capacity to take on board the additional loadings. In relation to the additional surveys suggested in the report, CAAS Ltd consider that such survey would provide minimal benefit in the absence of significant sources of impact and deem them unnecessary.

The review concludes with a recommendation that FCC assess if the receiving WWTP has capacity to provide for the additional loading capacities needed or alternatively that FCC seek clarification from the applicant in this regard.

### 3.6. **Third Party Observations**

Three third-party submissions were received by the planning authority during the course of their determination of the application. Two of the three submissions received are from existing residents of Oldtown Avenue who outline their support for the completion of the development; however, they express concerns in relation to redesign (narrowing) of the internal road, as recommended by the FCC Transport Section.

The third submission received was from the owners of Ashlawn, a neighbouring residential property to the west of the site and one of the observers to this appeal. A

number of the issues raised in this submission are repeated in the observation received, which is summarised in Section 6.3 of this report. The following issues also noted:

- The plans submitted with the application fail to correctly identify the neighbouring property of Ashlawn, which was extended 2012-2013. The proposed development has the potential to detract from the residential amenities of Ashlawn by way of overlooking / loss of privacy and overshadowing / loss of sunlight.
- The proposed development will have a negative impact on the amenity and character of Oldtown, an ACA.
- The development, due to its height and design will detract from the Church of Our Lady Queen of Peace, a landmark building.
- The scale, density and housing mix are not in keeping with the rural area.
- No public open space provided to date.
- Issues raised regarding the need for traffic calming and the safety of the entrance.
- The design is dated and inappropriate.
- The information submitted in response to the planning authority's request for further information was lacking or incorrect in relation to almost all points.

## 4.0 Planning History

### **F06A/0748**

Permission granted (2006) for the construction of a residential development comprising 15 No. 2 storey detached dwellings. Condition 11 attached to the grant of permission is considered relevant to this appeal:

*Condition 11            The following requirements of the Water Services Department shall be complied with in the development. Foul Sewer: There is currently insufficient*

capacity in the local Authority Wastewater Treatment Plant to cater for this development. The permanent upgrade works for the aforementioned treatment plant is expected to take 5 years to complete. The Council are undertaking to carry out interim upgrade works to facilitate the lands within the current local area plan. The direct costs of the interim works must be borne by the developers. Notwithstanding the above if the applicant wishes to carry out works prior to the permanent solution being commissioned the following conditions will apply:

1. No work to commence on site pending the permanent upgrade unless the applicant enters into agreement with the Water Services Department re interim works to accommodate development. Any such agreement will require the direct costs being borne by the developer. The cost per unit has been set as €1,600.
2. No foul drainage is to discharge into the surface water system under any circumstances Surface Water: No objection pending. 1. No surface water/rainwater is to discharge into the foul sewer system under any circumstances. Water Supply: No objection pending: -
3. No occupation of this development may occur pending completion of the upgrading of the water supply to the Oldtown area or as otherwise agreed with the Local Authority.
4. To assist in monitoring the level of service, at each stopcock the applicant is to provide a boundary box to a design approved by the Water Division, Fingal County Council.
5. The following works shall be carried out by Fingal County Council Water Division at the applicant's prior expense: a) The connection to the public watermain b) The testing, cleansing and sterilisation of all new mains. c) The provision of tappings to serve individual properties. 4. To ensure a continuation of water supply, the applicant is to provide for 24-hour water storage.

*REASON: In order to comply with the Sanitary Service Acts 1878-1964*

**F07A/0024**

Permission granted for change of house types on approved site nos. 2, 4, 5, 6, 9 & 10 (Reg. Ref. F06A/0748).

## 5.0 Policy Context

### 5.1. Development Plan

The application was assessed by Fingal County Council in accordance with the policies and objectives of the Fingal County Development Plan 2017-2023. The Fingal County Development Plan 2023-2029 was made on the 22<sup>nd</sup> of February 2023 and came into effect on the 5<sup>th</sup> of April 2023. I have assessed the proposal under the provisions of the operative Development Plan, namely the Fingal County Development Plan 2023-2029.

#### 5.1.1. Strategic Objectives of the FDP 2023-2029 include the following:

10. Protect, enhance, and ensure the sustainable use of Fingal’s key infrastructure, including water supplies and wastewater treatment facilities, energy supply including renewables, broadband and transportation.

#### 5.1.2. Table 5.1 provides details of the zoning objective and relevant FDP Designations pertaining to the site.

<b>Table 5.1 – FDP Zoning and Designations</b>		
Settlement Hierarchy	Oldtown is designated as a Level 5 Town and Village within the Core Area	
Land Use Zoning:	Zoning	RV Rural Village
	Description	Protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved land use plan, and the availability of physical and community infrastructure.
	Vision	Protect and promote established villages within the rural landscape where people can settle and have access to community services, including remote work hubs. The villages are areas within the rural landscape where housing needs can be satisfied with minimal harm to the countryside and surrounding environment. The villages will serve their rural catchment, provide local services and smaller scale

		rural enterprises. Levels of growth will be managed through approved land use plans to ensure that a critical mass for local services is encouraged without providing for growth beyond local need and unsustainable commuting patterns.
	Note:	Residential is listed as a use class that is permitted in principle within the RV zone.
Masterplans	Oldtown is listed (Table 2.18) in the schedule of Masterplans to be commenced over the plan period.	
Landscape Character Type:	Low lying Agricultural	
Architectural Heritage	Part of the appeal site, including the site of Unit 03 is located within the Oldtown ACA	
Airport Noise Zone	The site is located within Assessment Zone D	

### 5.1.3. Policies and Objectives:

The following policies / objectives are noted:

Policy CSP40: Sustainable Expansion and Development

Promote sustainable expansion and development at a level appropriate to and integrated with the existing town or village, meeting the socio-economic and civic aspirations of the community, whilst preserving the settlements distinctive character, heritage, amenity, and local identity.

Objective CSO68 Rural Villages

Manage the development of Rural Villages within the RV boundaries and strengthen and consolidate their built form providing a suitable range of housing as an alternative to housing in the open countryside.

#### 5.1.4. Infrastructure and Utilities:

Table 11.1 refers to Uisce Éireann's 'Statement of Capacity', which contains the broad strategic water and wastewater capacities at present and the relevant infrastructural investments programmed by Uisce Éireann in its Investment Plan.

With respect to the Oldtown WWTP – Table 11.1 notes that it is planned to upgrade the plant under the National Certificate of Authorisation Programme.

#### 5.1.5. Development Management Standards

Section 14.12.1 Design Criteria for Rural Villages and Rural Clusters states that village development shall be guided by adopted Local Area Plans and Village Development Framework Plans, where in place, and by future Framework Plans where identified.

#### 5.2. **Oldtown Local Area Plan 2012:**

The Oldtown LAP was adopted by Fingal County Council June 2012 and extended in May 2017 for a period not exceeding five years (from the 8<sup>th</sup> of May 2017 up to the 7<sup>th</sup> of May 2022). The plan has therefore expired.

Further to the above, it is noted that the Oldtown LAP is not listed as an 'Operational LAP' in Table 2.15 of the FDP 2023-2029. The council proposes to prepare a new Masterplan for the settlement during the plan period.

#### 5.3. **Natural Heritage Designations**

The appeal site is not located within or adjacent to any designated site. The Daws River, a tributary of the Ballyboghil River, flows in an easterly direction through the centre of Oldtown village, to the west of the appeal site. The Ballyboghil River flows through Ballyboghil and discharges to the Rogerstown Estuary, c10km to the east of the appeal site. The Rogerstown Estuary is a designated SPA (Site code:004015), SAC (Site Code: 000208) and NHA and is adjacent to the Rush-Howth Shellfish Area.

The Malahide Estuary, a designated SPA (site Code:004025), SAC (site Code 000205) and NHA, is located c10km to the southeast.

#### **5.4. EIA Screening**

- 5.4.1. Having regard to the nature and scale of the proposed development, comprising a residential scheme of only ten units within a designated settlement, the location of the site outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. 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**

This is a first party appeal lodged on behalf of the applicants Sherwood Investment Properties Ltd against the decision of Fingal County Council to refuse permission for the development of lands at Oldtown, Co. Dublin. The grounds of appeal are summarised as follows:

- There is no change in the deficiencies, if any, of the wastewater treatment plant since the parent planning permission was granted in 2006. Under Condition 11 of the parent permission (F06A/0748), the overloading of the wastewater treatment is to be addressed by development contribution by the applicant towards the cost of interim upgrading works.
- The planning authority now appears to renege on the commitment that interim upgrading works are feasible in accordance with the terms of the parent planning permission. There is no indication that Irish water would not accept such an interim upgrading works.
- The applicant is willing to contribute towards the cost of the interim upgrading works.



- The applicant is further willing to accept a condition which states that no dwelling shall be occupied until the interim upgrade works have been completed.
- The proposed development is necessary in order to achieve a proper standard of development in an unfinished housing estate with a stated policy in the local area plan to complete the development.
- Subject to the interim of grading works being completed as per the Irish water letter dated the 13th of April 2021, there will be no adverse impact on the integrity of any relevant Natura 2000 sites as per the results of the Natura Impact Assessment that was submitted by the applicant.
- It is in the interest of proper planning and sustainable development of the area that an unfinished housing estate is completed in accordance with the stated policies and objectives in the statutory development plan and local area plan for the area.

## 6.2. Planning Authority Response

The planning authority's response to the issues raised in the grounds of appeal is set out in correspondence received on the 27<sup>th</sup> of July 2022 and can be summarised as follows:

- The planning authority while supportive of the proposed development, were unable to support the application for the two reasons stated. In particular, the issue of the capacity of the Oldtown WWTP – Irish Water (now Uisce Éireann) are responsible for this asset.
- However, subsequent to the making of their decision, Fingal County Council have been informed by Uisce Éireann that a project to provide additional wastewater treatment capacity in Oldtown is to be delivered as part of the implementation of their Small Towns and Village Growth Programme (STVGP).
- The project, to be delivered via the National Certification of Authorisation Programme, will be subject to the standard capital investment delivery

process and will be required to meet governance and budgetary requirements.

- If Uisce Eireann confirms the same to An Bord Pleanála, this would address the substantive issues that warrant the reason for refusal by the planning authority.
- In the event of a grant of permission the planning authority request that the Board include conditions requiring the payment of Section 48 development contributions and a security bond.

### 6.3. Observations

Two observations have been received in respect of this appeal from:

- The joint residents of Oldtown Avenue
- The owners of Ashlawn, a neighbouring residential property to the west of the site.

The issues raised can be summarised as follows:

#### The joint residents of Oldtown Avenue:

- The existing residents of Oldtown Avenue support the appeal due to the need to complete the unfinished housing estate.
- The residents in the unfinished development object to the decision of Fingal County Council to refuse permission to the planning application to finish the development in accordance with the stated policy in the local area plan.
- The planning authority's decision to refuse permission based on lack of wastewater treatment is inconsistent with decisions made by the planning authority and An Bord Pleanala to similar scale development in the village.
- Having regard to the bends at various locations in the layout with individual access points to houses, the original layout as permitted of seven meters with a four-meter-wide road section in the center is essential.

- Adherence to the road layout and road width as per the original parent permission is essential to ensure compliance with planning code for units already completed and occupied in the overall development.
- The residents fully support the appeal by the applicant against the decision of the planning authority to refuse permission and urge the board to overturn this decision.

The owners of Ashlawn:

- The application F06A/0748 has lapsed and is therefore irrelevant.
- It is the responsibility of planning authorities and Irish Water to efficiently use the resources available to them for the public good.
- The argument in support of the appeal relies heavily on the desire to complete unfinished estates in the area, which is not in dispute, however the capacity to service this site is not available at present.
- It has been quite clear from the outset that Irish Water does not have any plans to extend or commence upgrade works to its network in this area.
- The applicants failed to submit proposals for the pumping station and rising main leaving FCC with no option but to refuse permission.
- The applicant's willingness or otherwise to contribute to the cost of upgrade works is irrelevant and fails to consider the change to Oldtown in the intervening years.
- The assumption that Refusal Reason 2 stems from reason 1 is not based on any evidence and is supported by irrelevant excerpts of the Natura 2000 reports that appear to try and establish a connection between the two reasons where none exists.

**6.4. Further Responses**

None

## 7.0 Assessment

### 7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, (including the submissions received in relation to the application and appeal), and inspected the site, and having regard to relevant local/regional/national policies and guidance, and the planning history of Oldtown Avenue, I consider that the main issues in this appeal are:

- The principle of Development
- Wastewater Treatment
- Design Quality
- Impact on Adjoining Properties
- Other
- Appropriate Assessment

I am satisfied that all other issues were adequately addressed by the Planning Authority and that no other substantive issues arise. Accordingly, the issues for consideration are addressed below.

### 7.2. The Principle of Development:

7.2.1. The proposed development is located within the development boundary of the Level 5 settlement, rural village, of Oldtown, as designated in the Fingal Development Plan 2023-2029 (FDP 2023). The subject site is zoned 'RV' Rural Village, the objective for which is to '*Protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved land use plan, and the availability of physical and community infrastructure*'. Residential is listed as a use class that is permitted in principle within the 'RV' zone.

7.2.2. The proposal relates to an unfinished housing development known as 'Oldtown Avenue', on the eastern edge of the village. Proposals for the development of Oldtown Avenue were originally permitted under FCC Ref: F06A/0748. This grant of permission allowed for the construction of 15no. two-storey detached houses. A change of house type was subsequently granted on sites no's 2,4,5,6,9 and 10 (FCC

Ref: F07A/0024). Of the 15 houses permitted, 5 were constructed and are now occupied. A further 6 units were constructed to floor plate level. All previous permissions have now lapsed, and 'Oldtown Avenue' remains unfinished. The proposed development, if permitted, would allow for the completion of the development which I consider, would be of benefit to existing occupants of the scheme as well as the wider community; however, the availability of key infrastructure (sewerage facilities) to cater for the proposed development is a concern.

### **7.3. Wastewater Treatment:**

- 7.3.1. Having reviewed the planning history associated with the site and the information contained within the Oldtown LAP 2012, it is evident that at the time of the grant of parent permission under FCC Ref: F06A/0748 (c2006), the Oldtown WWTP (then a local authority asset), did not have sufficient capacity to cater for the level of development proposed. A permanent upgrade of the treatment plant was deemed to be required to cater for the long-term needs of the village; however, the Council undertook to carry out interim upgrade works to facilitate lands within the local area plan, in advance of the permanent upgrade. The direct cost of the interim works was to be borne by the developer; the development proposed under FCC Ref: F06A/0748 was permitted on this basis. 5 of the 15 houses permitted under FCC Ref: F06A/0748 were constructed and are now occupied. The nature and extent of the interim works carried to facilitate the construction of the existing five houses, if any, is unknown; however, it is apparent that permanent upgrade works to the WWTP did not take place.
- 7.3.2. The applicants (First Party appellants) are now seeking permission to develop the remaining ten housing plots within Oldtown Avenue, thereby facilitating the completion of the estate. As set out in the documentation submitted in support of the application and appeal the applicants are willing to accept a condition, similar to Condition 11 attached to FCC Ref: F06A/0748 (refer to Section 4.0 Planning History for details) requiring payment of a reasonable and proportionate financial contribution in respect of interim works required to facilitate the development. By not accepting the offer of a financial contribution, the applicants contend that the

planning authority are renegeing on the commitment that upgrade works are feasible in accordance with the terms of the parent permission.

- 7.3.3. I note that a period of c17 years has lapsed since the grant of planning permission under FCC Ref: F06A/0748. The Oldtown WWTP is no longer a Council asset, with responsibility for the provision of water services and the management of water supply and wastewater investment now under the remit of Uisce Éireann (Irish Water).
- 7.3.4. Uisce Éireann, in their response to the applicant's pre-connection inquiry (April 2021), stated that the Oldtown WWTP is overloaded and cannot accept any additional load. A new connection, while feasible, would be subject to upgrade works comprising either (1) the upgrade of the Oldtown WWTP or (2) the construction of a new pumping station and approximately 4.5km long rising main to facilitate the discharge of wastewater from the development to the Swords Agglomeration. The letter however goes on to state that Uisce Eireann, does not have any plans to extend or commence upgrade works to its network in this area. I note that no upgrade works, either to the network or the Oldtown WWTP, have been proposed by the applicant as part of this proposal.
- 7.3.5. The basis of the planning authority's decision to refuse permission relates substantially to the existing deficiency in the provision of sewerage facilities in the area. However, I note that in their response to the grounds of appeal, they state that they have been informed by Uisce Éireann (UÉ) that a project to provide additional wastewater treatment capacity in Oldtown will be delivered as part of the implementation of the Small Towns and Villages Growth Programme (STVGP). In this regard, I refer the Board to Table 11.1 of the FDP 2023-2029, which highlights Uisce Éireann's 'Statement of Capacity' and which contains the broad strategic water and wastewater capacities at present, and the relevant infrastructural investments programmed by Uisce Éireann in its Investment Plan. As per the details provided in Table 11.1, Uisce Eireann plan to upgrade the Oldtown WWTW under the National Certificate of Authorisation Programme.

- 7.3.6. I have reviewed the Irish Water Investment Plan 2020 to 2024. Appendix 3 of the Plan lists the projects and programmes that are expected to be either commenced, progressed, or completed during the 2020-2024 period. There are 14 projects listed for Fingal, upgrade works to the Oldtown Wastewater Treatment Plant is not included on the list. Furthermore, while Uisce Eireann have announced funding for a number of projects under the STVGP, I am not aware of any announcement regarding the upgrade of the Oldtown WWTP.
- 7.3.7. The upgrade of the Oldtown WWTP to address capacity issues etc would, I consider address the planning authority's reason for refusal; however, I am not satisfied, on the basis of the information currently available, that there is sufficient clarity and certainty on the timeline to progress the necessary upgrade works, given the likely required design, planning and consent processes. Consequently, I consider that the proposed development would be premature because of the existing deficiency in the provision of wastewater treatment facilities in the area and the time-period within which such deficiencies are likely to be resolved and I recommend that permission be refused on this basis.

#### **7.4. Design and Layout:**

- 7.4.1. The proposal for consideration, in terms of its form, design, density, scale and character, is consistent with that of the previously permitted development under FCC Reg. Ref: F06A/0748. This is I consider an appropriate design approach for this unfinished residential estate as it ensures that the proposed dwellings 'fit' both physically and visually with the existing development in Oldtown Avenue. Material finishes should match those of the as constructed dwellings, and I recommend that a condition to this effect be included in a grant of permission.
- 7.4.2. The proposal comprises a mix of 4 and 5 bedroomed detached dwellings, which given the village location and limited scale of development proposed, is acceptable. Such development would contribute to the achievement of FCC Objective CSO68, which aims to provide suitable alternatives to housing in the open countryside.

- 7.4.3. A Housing Quality Assessment was submitted with the application. This document indicates that the proposed housing units have been designed to exceed the standards for 4- and 5-bedroom units as set out in Quality Housing for Sustainable Communities (2007). Each of the proposed housing units is provided with an area of private open space in the form of rear gardens, ranging in size from 120-248sqm, in all cases the minimum standard of 75sqm for dwellings with four or more bedrooms, as set out in the FDP, is exceeded. Two separate areas of public open space (to the northeast and east of the landholding) have been provided for the within the scheme. The areas of open space provided are sufficient in terms of quantity and quality to cater both existing and proposed dwellings.
- 7.4.4. The planning authority in their assessment of the application noted that the proposed dwelling on Plot no. 14 would, due to its design, orientation, and proximity to the (rear) site boundary, c6.5m, result in direct overlooking of the private amenity space serving the adjoining dwelling to the south, No.13. They consider, that in the event of planning permission being granted, the dwelling on Plot No.14 should be reduced to single story. The Board may wish to give this matter further consideration in the event of a grant of planning permission.
- 7.4.5. I note the concerns of the observers (owners of Ashlawn) regarding the potential impact of the proposed development on the character of the Oldtown ACA and on the setting of the Church of Our Lady Queen of Peace, which is located to the south of the site. However, having inspected the site and the general area, I am of the opinion that the proposed scheme would integrate successfully with the established built fabric of the settlement and in a manner that would not detract, to any significant degree, from the character or architectural heritage of the settlement.
- 7.4.6. In conclusion, having regard to the location of the proposed development within an unfinished housing estate, in the rural village of Oldtown and the pattern of development in the area, I am satisfied that the proposed development is appropriately designed, that it could be accommodated at the subject site, and that it would result in a development that is sympathetic to its setting in terms of design, scale, character and layout.



## 7.5. Impact on Adjoining Properties:

- 7.5.1. I note the concerns of the observers (Owners of Ashlawn) regarding the impact of the proposed development, on their residential amenity, by way of overlooking and loss of sunlight. The observers refer to the proposed houses on Plots 8, 9 and 10, their height, and proximity to their home, and to the lack of adequate boundary treatment. Their submission also refers to the fact that their property, Ashlawn, was extended, c2012, by way of a single storey addition to the rear. While they acknowledge that the development of these houses was permitted previously; It would appear to be their contention that the extension of their property, closer to the rear (eastern) boundary, justifies further consideration of the proposed development and necessitates the movement or significant modification of housings on Plots 8,9 and 10. However, in my opinion it would not be reasonable to allow the extension of a residential property to undermine or unduly influence the development potential of adjoining zoned lands.
- 7.5.2. Housing Plots 8, 9 and 10 within the proposed scheme back onto a shared boundary with Ashlawn, a detached single storey dwelling to the west of the appeal site. The shared boundary is delineated by a concrete block wall. Drawing No. D1248-006 (Rev A), submitted to the planning authority on the 24<sup>th</sup> of March 2022 as part of the applicant's further information response, details Ashlawn (as extended) and its relationship with the proposed development. This drawing indicates that Housing Plots 8, 9 and 10 have been designed with rear gardens depths of between 9.8m and 16m. It also indicates a separation distance of c19.8m from the rear elevation of Ashlawn (as extended) to the rear of the directly opposing dwelling on Plot 9.
- 7.5.3. With regard to separation distances, FDP Objective DMSO23 requires a minimum distance of 22 metres between directly opposing rear first floor windows, unless alternative provision has been designed to ensure privacy. In this case, the single storey nature of Ashlawn means that there are no directly opposing first floor windows, therefore a separation distance of less than 22m may be deemed acceptable. Having reviewed the plans submitted and inspected the site I am satisfied that the rear garden depths and separation distances provided by the proposed scheme, together with the retention of the existing block wall along the

site's western boundary, would be sufficient to ensure an adequate level of privacy for both existing and proposed residences.

- 7.5.4. In relation to the loss of sunlight. I note that the property of concern, Ashlawn, comprises a detached dwelling, centrally located on a large plot with a generous circulation area. Having regard to the separation distances available I consider that the rear garden of Ashlawn, to the west of the appeal site, would not be impacted in any significant way by overshadowing. Similarly, having considered the height and design of the proposed development and the separation distances available, I am satisfied that no significant loss of daylight to west facing rooms of Ashlawn, is likely to occur as a result of the proposal.

## 7.6. Other

### Road Design:

- 7.6.1. The proposed development as amended by way of further information received on the 24<sup>th</sup> of March 2022, includes proposals for alterations to the (unfinished) internal road network serving the Oldtown Avenue. Such proposals were submitted on the advice of Fingal's Transportation Department. As detailed on the revised site layout plans and sections (Drawing No's D1248-06A; D1248-033A and D1248-008A), the internal road as proposed now comprises, a 4.8m wide shared space estate road with no delineated footpath and flanked by planted verges. The existing residents of Oldtown Avenue, as set out in their observation to this appeal, are opposed to the proposed redesign. They consider that the provision of internal road, as previous granted i.e., 4m roadway with 1.5m width footpaths on either side (without kerbing), is necessary to facilitate safe access to the development and to individual houses. While I note the concerns of residents, having reviewed the plans submitted and having regard to the reports on file, it would appeal that the shared internal road, as now proposed, accords with the standards set out in DMURS and with the requirements of Fingal's Transport Section. I am therefore satisfied that the proposal (as amended) is acceptable in terms of traffic and pedestrian safety.

## Surface Water Drainage

- 7.6.2. As proposed surface water is to drain to the existing system permitted under FCC Reg Ref F06A/0748, which in accordance with the report from FCC Water Services section (9<sup>th</sup> of June 2021) comprises a single underground attenuation unit, a flow control device and petrol interceptor, with discharge into the Ballyboughal River. The Water Services Section have advised; that the use of attenuation tanks should be avoided and have requested that the proposal be amended to incorporate SuDS measures. I recommend a condition to this effect be included in the event that planning permission is granted.

## **7.7. Appropriate Assessment:**

### Introduction

- 7.7.1. A document entitled – *Natura Impact Statement in Support of Appropriate Assessment of a Proposed Development at Oldtown, Co. Dublin, March 2022*, and prepared by FERS, Forest Environmental Research and Services Ltd, was submitted by the applicants at further information stage. The further information submitted also included An Ecological Impact Assessment (EclA) and Construction Management Plan.
- 7.7.2. Both the NIS and EclA were reviewed by CAAS Ltd on behalf of Fingal County Council. The responding reports from CAAS Ltd (copies of which are on file) were used to inform the decision of the Planning Authority. Refusal Reason #2 of the planning authority decision is noted in this regard.

### **Stage 1 Screening Assessment**

- 7.7.3. Section 2 of the applicants document comprises a Stage 1 Screening Assessment which includes a description of the proposed development and its receiving environment. It also includes details of data obtained from the National Bio-diversity Data Centre (NBDC) database, on the flora and fauna found within the surrounding area, as well as a wetlands map.

7.7.4. As per the details provided, the primary habitats occurring on site comprise recolonised bare ground in varying stages of revegetation, with some smaller areas or amenity grassland. The report notes the presence of the River Daws proximate to the proposed development and the presence of habitat with the potential to be utilised as ex-situ foraging habitat by Qualifying Interests of Special Protection Areas within 15km of the proposed development.

Identification of European Sites

7.7.5. Section 2.4 of the report identifies four designated European sites located within 15km of the boundaries of the site:

<b>Table 7.1: Summary Table of European Sites within 15km</b>		
<b>European Site</b>	<b>Site Code</b>	<b>Distance</b>
Rogerstown Estuary SPA	004015	C9.2km
Malahide Estuary SPA	004025	C9.7km
Rogerstown Estuary SAC	00208	c. 8.5km
Malahide Estuary SAC	00205	c.9.3km

7.7.6. No rationale is provided to support the geographic scope of the assessment or the restriction of the ‘zone of influence’ to within a 15km radius. While I note that the Appropriate Assessment Guidance (2009) recommends an assessment of European sites within a Zone of Influence of 15km, this distance is for guidance purposes only. A potential Zone of Influence of a proposed development is the geographical area over which it could affect the receiving environment in a way that could have significant effects on the Qualifying Interests of a European site. In accordance with the OPR Practice Note, PN01, the Zone of Interest should be established on a case-by-case basis using the Source- Pathway-Receptor framework and not by arbitrary distances (such as 15km). The Zone of Influence may be determined by connectivity to the proposed development in terms of:

- Nature, scale, timing and duration of works and possible impacts, nature and size of excavations, storage of materials, flat/sloping sites;

- Distance and nature of pathways (dilution and dispersion; intervening ‘buffer’ lands, roads etc.); and
- Sensitivity and location of ecological features.

7.7.7. In this instance I note that there are potential indirect hydrological pathways between the appeal site and a number of European sites outside of the 15km radius, via the River Daws and the marine environment. However, I am satisfied, having regard to the nature and scale of the proposed development, the separation distances available (in excess of 16km) and the dilution factor, that these sites can be screened out of any further assessment.

7.7.8. Section 2.5 of the applicant’s report provides a detailed description of each of the four identified European Sites potentially affected by the proposed development, stating the sensitivities and conservation objectives of qualifying interest species and habitats.

7.7.9. The Conservation Objectives and qualifying interest of the four identified sites are summarised in the Table 7.2 below.

<b>Table 7.2- Summary of European Sites</b>	
<b>Rogerstown Estuary SAC (000208) c. 8.4km east of the subject site.</b>	
Conservation Objectives:	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
Qualifying Interests:	<ul style="list-style-type: none"> <li>• Estuaries [1130]</li> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> <li>• Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</li> <li>• Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</li> </ul>

	<ul style="list-style-type: none"> <li>• Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</li> </ul>
<b>Rogerstown Estuary SPA (004015) c. 9.2km east of the subject site.</b>	
Conservation Objectives:	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA
Qualifying Interests:	<ul style="list-style-type: none"> <li>• Greylag Goose (<i>Anser anser</i>) [A043]</li> <li>• Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</li> <li>• Shelduck (<i>Tadorna tadorna</i>) [A048]</li> <li>• Shoveler (<i>Anas clypeata</i>) [A056]</li> <li>• Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</li> <li>• Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</li> <li>• Grey Plover (<i>Pluvialis squatarola</i>) [A141]</li> <li>• Knot (<i>Calidris canutus</i>) [A143] Dunlin (<i>Calidris alpina</i>) [A149]</li> <li>• Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</li> <li>• Redshank (<i>Tringa totanus</i>) [A162]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>
<b>Malahide Estuary SAC (000205) c. 9.3km southeast of the subject site</b>	
Conservation Objectives:	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
Qualifying Interests:	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• <i>Salicornia</i> and other annuals colonising mud and sand [1310]</li> <li>• Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</li> <li>• Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</li> </ul>

	<ul style="list-style-type: none"> <li>• Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</li> </ul>
<b>Malahide Estuary SPA (004025) c. 9.7km southeast of the subject site</b>	
Conservation Objectives:	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA
Qualifying Interests:	<ul style="list-style-type: none"> <li>• Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</li> <li>• Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</li> <li>• Shelduck (<i>Tadorna tadorna</i>) [A048]</li> <li>• Pintail (<i>Anas acuta</i>) [A054] Goldeneye (<i>Bucephala clangula</i>) [A067]</li> <li>• Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</li> <li>• Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</li> <li>• Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>• Grey Plover (<i>Pluvialis squatarola</i>) [A141]</li> <li>• Knot (<i>Calidris canutus</i>) [A143]</li> <li>• Dunlin (<i>Calidris alpina</i>) [A149]</li> <li>• Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</li> <li>• Redshank (<i>Tringa totanus</i>) [A162]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>

Identification of Likely Significant Effects

7.7.10. Section 2.6 identifies and evaluates likely significant effects. As per the details provided, there will be no land take, etc of any habitats within designated sites and as such there will be no direct impacts on Natura 2000 sites through land take, habitat loss. The proposed development is located proximate to the River Daws, which discharges to the Rogerstown Estuary, the primary component of the

Rogerstown Estuary SAC and SPA. The Qualifying Interests of these sites are directly or indirectly dependent on water quality and disturbance levels. The report notes that if there is an impact on the water quality of the River Daws, there is potential for impact on the water quality of Rogerstown Estuary and its associated Natura 2000 sites. The Rogerstown Estuary is proximate to the Malahide Estuary which is the primary component of the Malahide Estuary SPA and SAC. The report notes that as qualifying interests move between the Rogerstown Estuary and Malahide Estuary, there is therefore potential for any impacts on the Rogerstown Estuary to indirectly impact on the Malahide Estuary and its associated Natura 2000 sites.

- 7.7.11. Discharge of surface water during construction / operation has the potential to cause the release of suspended solids and/or pollutants to the Daws River which provides a hydrological link to the Rogerstown Estuary SPA and SAC. Any such discharges have the potential to affect hydrological processes occurring within the Estuary and may also affect qualifying species by degrading habitats and reducing prey availability.
- 7.7.12. Surface water generated on site during the operational phase will discharge to the existing drainage system serving 'Oldtown Avenue', which comprises a single underground attenuation unit, with a flow control device, and petrol interceptor. I note that Fingal's Water Services Section have requested the implementation of additional SuDS measures.
- 7.7.13. Notwithstanding, I am satisfied that with the existing system in operation, the risk of pollutants being discharged from the site as part of surface water flow during the operational would be low. Furthermore, in the event of failure of the surface water system, I am satisfied, having regard to the separation distances available and the dilution factor, together with the nature and scale of the development proposed, that the potential for significant effects on the qualifying interests of Natura 2000 sites as a result of surface water deterioration during operation can be excluded and that this matter does not require further in-depth scientific examination.



7.7.14. During the project's operational phase, the project would be connected to the public wastewater. Treated effluent from Oldtown village WWTP discharges to the Daws River, a tributary of the Ballyboghil River, which discharges into Rogerstown Estuary SAC and SPA, approximately 9km downstream. The Oldtown WWTP is overloaded and cannot accept any additional load. The proposed development would lead to more sewage and potentially the addition of nutrients, resulting in changes to the quality of water bodies to which the treated effluent is ultimately discharged.

7.7.15. Section 2.6.5 of the applicant's report considers potential cumulative /in-combination effects. It identifies potential in-combination impacts on water quality as a result of quarrying activity, water abstraction and land spreading of organic wastes. In relation to current and future planning permissions it notes that any such proposal would be subject to an appropriate assessment screening exercise. Following a planning search, I note that there is an extant planning permission ABP 300045-17 (FCC Reg: Ref: F17A/0357), allowing for the construction of 14 houses with connection to the Oldtown WWTP. If progressed, this project, has, in combination with the proposed development, the potential to contribute to the deterioration of water quality.

#### *Screening Conclusion*

7.7.16. The screening conclusion set out in Section 2.7 of the applicants report found that *'it was not possible to exclude (on the basis of objective information and in the absence of specific prescribed precautionary/mitigation measures) that the proposed plan individually or in combination with other plans or projects, has the potential to have significant negative impacts on the following Natura 2000 sites (given the limited scale, location and nature of the development):*

- *Rogerstown Estuary SPA*
- *Rogerstown Estuary SAC*
- *Malahide Estuary SPA*
- *Malahide Estuary SAC*

*Screening having identified potential impacts of the proposed plan upon Natura 2000 sites and in accordance with Article 6(3) of the Habitats Directive, a Stage 2 Appropriate Assessment is required.'*

7.7.17. On the basis of the information on the file, which I consider adequate in order to issue a screening determination, it is reasonable to conclude that the project individually or in-combination with other plans or projects could have a significant effect on the Rogerstown Estuary SPA and SAC and the Malahide Estuary SPA and SAC., in view of the site's Conservation Objectives, and Appropriate Assessment and submission of a NIS is, therefore, required.

## **Stage 2 – Appropriate Assessment**

7.7.18. A Natura Impact Statement has been prepared having regard to the potential for significant negative impacts of the proposed development on the ecological integrity of the Rogerstown Estuary SPA and SAC and the Malahide Estuary SPA and SAC, in light of their Conservation Objectives.

7.7.19. Table 63 of the NIS document provides a summary of the conservation status of each of the identified sites while Table 64 sets out which of the qualifying interests and special conservation interests of the identified European sites are potentially affected due to the proposed development and why they are potentially affected.

7.7.20. The following provides a summary of the potential impacts identified:

- Impacts on water quality during construction.
- Impacts on water quality during operation.
- Impacts through disturbance if adjacent habitats are utilised as ex-situ feeding areas.

7.7.21. While in-combination effects from other plans and projects were identified to have potential effects in the AA Screening report, the NIS does not consider in-combination affects.

7.7.22. Section 3.4.1 of the NIS notes that impacts on water quality during construction can be avoided through the implementation of mitigation measures to prevent such impacts. Specific measures to be undertaken include:

- The erection of temporary environmental screens to prevent construction debris from entering watercourses.
- Plant and equipment shall be free of any mechanical defects and well maintained as to prevent soil or fuel discharging to the river.
- Plant and equipment shall arrive on site free of propagules of any plant species listed on Part (1) of the Third Schedule of the European Communities (Birds and Natural Habitats) Regulations of 2011 (as amended)
- The undertaker shall arrange that the cleaning out of concrete delivery trucks and equipment does not cause run-off to enter any watercourse / drains.
- The Undertaker's method statement shall include measures to ensure no spillage of fuel or cement/lime based material or other leakages occur.
- All works shall be undertaken in accordance with best practice guidelines.

The mitigation measures outlined above, are I consider in line with current best practice and appropriate to the risk identified. If implemented correctly, these measures should be sufficient to avoid any significant impacts on water quality during the construction phase.

7.7.23. In relation to impacts of water quality during operation (occupation), it is stated under Section 3.4.2 of the NIS that:

*Despite the limited scale of the proposed development, the relevant authority must ensure that the existing infrastructure is capable of coping with any excess load associated with the proposed development.*

The proposed scheme is reliant upon public wastewater infrastructure, in particular, the Oldtown WWTP which is currently operating above capacity. Treated effluent from Oldtown village WWTP discharges to the Daws River, a tributary of the Ballyboghil River, which in turn discharges into Rogerstown Estuary and its associated Natura 2000 sites. The proposed development would lead to more sewage and potentially the addition of nutrients, resulting in changes to the quality of water bodies to which the treated effluent is ultimately discharged. The NIS does not address this issue.

As set out in Section 7.3 of this report it has been indicated a project to provide additional wastewater treatment capacity in Oldtown is to be delivered by Uisce Eireann as part of the Small Towns and Villages Growth Programme (STVGP). Thus, the prospect exists that, in the future, the current issues with this WWTP would be resolved. However, uncertainty remains regarding the timeline for the implementation of such works. While I note that the applicant has offered to contribute towards the cost of interim upgrade works, no information on the nature, scale etc of works required to facilitate the development have been provided. Furthermore, any such works would be reliant upon agreement with Uisce Eireann and would be outside the control of the applicant.

7.7.24. Section 3.4.3 of the NIS states that any potential disturbance was assessed through winter bird surveys undertaken during the EclA as undertaken. The surveys undertaken found no evidence of ex-situ foraging on site and as such the NIS concludes that there will be no impact.

**7.7.25. Appropriate Assessment Conclusion:**

7.7.26. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.

7.7.27. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Rogerstown Estuary SPA (004015); Rogerstown Estuary SAC (00208), Malahide Estuary SPA (004025) Malahide Estuary SAC (00205). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites, in light of their conservation objectives.

7.7.28. Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European Site Nos 004015, 00208, 004025 and / or 00205, in view of the sites' Conservation

Objectives. In such circumstances the Board is precluded from granting approval/permission.

7.7.29. This conclusion is based on the precautionary principle that, as the project would result in an increase in nutrients being emitted into the Rogerstown Estuary and consequently, to the Rogerstown Estuary SPA (004015) and Rogerstown Estuary SAC(00208), it is not possible to conclude that the integrity of the European sites No's 004015 and / or 00208; would not be adversely affected. Furthermore, as the Rogerstown Estuary is proximate to the Malahide Estuary and its associated Natura 2000 sites, the Malahide Estuary SPA (004045) and SAC (00205), and as qualifying interests move between the Rogerstown Estuary and Malahide Estuary, it is also not possible to conclude, on the basis of the information provided, that the integrity of the European sites No's 004045 and / or 00205; would not be adversely affected.

## 8.0 Recommendation

8.1. I recommend that permission for this development be refused for reasons outlined below.

## 9.0 Reasons and Considerations

1.	Having regard to lack of capacity within the Oldtown Wastewater Treatment Plant to accommodate the additional loading generated by this development and notwithstanding the indication from Fingal County Council that a project to provide additional wastewater capacity in Oldtown is to be delivered as part of Uisce Eireanns Towns and Villages Growth Programme, it is considered that pending clarity and certainty on the timelines to progress the necessary upgrade works through design, planning and all relevant consents, the proposed development would be premature by reason of the existing deficiency in sewerage facilities. The proposed development would therefore be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.
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2.	Having regard to the existing deficiencies in the Oldtown Wastewater Treatment Plant, the lack of certainty in respect of future capacity improvements to the Oldtown WWTP, the appropriate assessment documentation including Natura Impact Statement submitted with the application on 24 <sup>th</sup> March 2022, and the absence of any assessment of the potential for effects from the deficiencies in the existing sewerage infrastructure, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site(s) including the Rogerstown Estuary SAC (Site code:000208) and Rogerstown Estuary SPA ( Site Code 004015) Malahide Estuary SPA (004025) Malahide Estuary SAC (00205) in light of their conservation objectives. In such circumstances the Board is precluded from granting permission.
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Lucy Roche  
Planning Inspector

07<sup>th</sup> June 2023